

or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) **PURCHASES PRESUMED TAXABLE.** When a contractor and an exempt entity enter into a construction contract to improve real property, which provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(4) **SUPPLIER IS CONTRACTOR.** A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. The sale of building materials to the consumer is subject to the tax.

(5) **EXEMPT GROSS RECEIPTS.** A supplier's sales of building materials made directly to an exempt entity are not taxable, even though such tangible personal property is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received from the exempt entity.

Note: The interpretations in s. Tax 11.04 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 11.05 Governmental units.** (ss. 77.51 (4) (c) 6 and (10), 77.52 (2) (a) 1, 2, 9 and 20 and 77.54 (9a), (10), (15), (17), (20), (30), (32) and (37), Stats.) (1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following:

(a) Admissions to recreational facilities.

**Example:** Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (c) Claims assessed against persons for damaging government property.
- (d) Rental of buildings or space, such as offices, warehouses and meeting rooms.
- (e) Storage fees, notary public fees and bid deposits.
- (f) Library fines, including charges for books that are not returned or charges for a duplicate library card.
- (g) Police escort and ambulance service charges.
- (h) Separately stated fees for instruction.
- (i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable unless a combined charge is made for removal and bags or receptacles and the amount allocated to the bag or receptacle is incidental to the charge for removal.

**Example:** A city government provides that in order to have trash removed by the city, the trash must be put in special bags which are sold for \$1 each. The \$1 charge is allocated as follows: 18¢ for the bag, 42¢ for removal and 40¢ for cost of the disposal site. The \$1 charge for the bag is not subject to tax because the transfer of the bag is incidental to the sale of the waste removal service.

- (j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.
- (k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.
  - (l) Meals, food, food products or beverages, except soda water beverages and beer, sold by hospitals, sanatoriums and nursing homes to patients, employes or guests; meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals; and meals sold to the elderly or handicapped by "mobile meals on wheels".
- (m) Service charges for snow removal, police officers at social gatherings, service of legal papers including summons, complaints and civil process, and ushers and door guards.
- (n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.
- (o) Fees charged for admission to a university student union building.
- (p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officer and clerk of court under ss. 59.42, 59.57 and 69.22, 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 record under s. 19.35 (1) (a), Stats., including charges for a 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 (7), (8) and (9), Stats.

(r) Camping fees in Wisconsin state parks imposed under s. 27.01 (10) (d), Stats.

(s) Admissions to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

(t) Gross receipts from telecommunications revenues collected in establishing a "911" emergency telephone system under s. 146.70 (3), Stats.

(4) PURCHASES. (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin 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, Stats., or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

Note: Refer to s. Tax 11.04 regarding the purchase of building materials used in the construction of buildings for governmental units.

(b) 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.

(c) A Wisconsin governmental unit's payments to retailers 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 the retailer a purchase order;
2. The retailer issues the billing or invoice for the purchases in the name of the governmental unit; and
3. The retailer keeps a copy of the governmental unit's purchase order and the retailer's billing or invoice to substantiate that the sale was exempt from sales and use tax.

**Example:** A governmental unit intends to purchase clothing for a welfare recipient. The governmental unit gives a purchase order to the retailer and the retailer makes the invoice out to the governmental unit. The sale is not subject to sales tax if the welfare recipient pays the retailer with funds given to the recipient by the governmental unit or if the governmental unit pays the retailer directly.

(d) 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.

(e) Purchases, including lodging, meals or uniforms, by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental unit, receives a purchase order or similar written document from the governmental unit and keeps a copy of both documents.

(f) 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 are exempt provided

the personnel present their tax exemption card issued by the United States department of state showing their tax exemption number.

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: (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; (g) A governmental unit's charges for copying public records became exempt effective April 27, 1984, pursuant to 1983 Wis. Act 287, later amended effective April 2, 1986, pursuant to 1985 Wis. Act 149 to clarify that the exemption also applies to confidential records, and again amended effective May 1, 1992, pursuant to 1991 Wis. Act 269, to include records under s. 19.35 (1) (a), Stats.; (h) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption for an agency or instrumentality of a Wisconsin governmental unit became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wis. Act 27; (k) The exemption for admissions to a museum operated by a nonprofit corporation under lease with the state historical society became exempt July 20, 1985, pursuant to 1985 Wis. Act 29; (L) The exclusion of hospital service insurance corporation from the definition of exempt entity became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (m) Revenues from establishing a "911" emergency telephone system became exempt August 1, 1987, pursuant to 1987 Wis. Act 27; and (n) State park camping fees became exempt effective September 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (e) and (i), cr. (2) (r), r. and recr. (3) (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (b) and (m), (3) (a), (l), (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; am. (2) (a), (d), (i), (k) and (o), (3) (i), (L), (p) and (q), and (4) (intro.), (d) and (e), cr. (3) (r), (s) and (t), r. and recr. (4) (b), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (p), renum. (4) (intro.) to (e) to be (4) (a) to (f), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.08 Medical appliances, prosthetic devices and aids. (s. 77.54 (14s), (22) and (28), 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

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Act 39; and (h) The sales of meals by hospitals off the hospital's premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

**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; am. (1) (b), (2), (3), (4) (b) 4. and (5), Register, March, 1991, No. 423, eff. 4-1-91; am. (1) (a), (3), (4) (a) 2. and (b) 4., renum. (4) (b) 5. to be (4) (b) 6. and am., cr. (4) (b) 5., Register, May, 1993, No. 449, eff. 6-1-93.

**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, and parts and accessories for those items, 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, including parts and accessories for those items, 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.

**Note:** The interpretations in s. Tax 11.18 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for parts and accessories for certain items became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

**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; am. (1) and (2) (a) 3., Register, May, 1993, No. 449, eff. 6-1-93.

**Tax 11.19 Printed material exemptions.** (ss. 77.51 (8) and (13h), 77.52 (2) (a) 11, 77.54 (2m), (9a), (15) and (25) and 77.55 (1), 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 section describes exemptions which commonly apply to sales of printed material.

(2) STATUTES. (a) Section 77.52 (2) (a) 11, Stats., 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 customers, which property will be subsequently transported outside Wisconsin 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), Stats., 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 Wisconsin by the purchaser for use thereafter solely outside Wisconsin.

(d) Section 77.54 (2m), Stats., provides an exemption for the "gross receipts from the sales of and 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 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 (8), Stats.

(e) Section 77.51 (13h), Stats., provides an exemption for sales of printed material in Wisconsin by a foreign corporation that is a publisher of printed materials whose only activities in Wisconsin are:

1. The storage of its raw materials in Wisconsin in or on property not owned by the foreign corporation and delivery of its raw materials to another person in Wisconsin if the storage and delivery are for printing by that other person. "Raw material" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

2. The purchase from a printer of printing services or tangible personal property printed in Wisconsin for the publisher.

3. The storage of the printed material or raw material for any length of time in Wisconsin in or on property owned by a person other than the publisher.

4. Maintaining, occupying and using, directly or by means of another person, a place that is in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed material.

(3) **NEWSPAPERS, SHOPPERS GUIDES, CONTROLLED CIRCULATION PUBLICATIONS AND PERIODICALS DEFINED.** (a) Section 77.51 (8), Stats., defines a “newspaper” under ch. 77, Stats., 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 publi-

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cation 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; 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 or order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

**Example:** Books sold by the Book of the Month Club or similar organizations do not qualify for the newspaper and periodical exemption.

(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 Wisconsin by the purchaser for use thereafter solely outside Wisconsin. 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, stockholders' annual reports or proxy statements, display racks, or 3-dimensional plastic items designed to be used by wholesalers and retailers. Envelopes which do not contain exempt advertising, matchbooks, calendars, calendar pads, desk pads, folders, binders 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 the 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) became 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 sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1985 Wis. Act 149; and (h) The exemption for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336.

**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; am. (1), (2) (a), (c) and (d), (3) (d), (4) (a) and (b) and (5), cr. (2) (e), Register, March, 1991, No. 423, eff. 4-1-91.

**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. The 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. The tax may be imposed by Wisconsin, 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 the 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 are included in a retailer's gross receipts and sales price, except as provided in sub. (3):

(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. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel, tires, firearms, sporting goods and air or ship transportation.

(d) A federal, county or municipal fuel tax included in the price of special fuels and general aviation fuel subject to sales tax.

**Example:** Fuel taxes are included in the price of fuel used in aircraft, boats and for other nonhighway use. The taxes are included in gross receipts.

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motor vehicle has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property. Transferor for purposes of this paragraph means a natural person.

(e) Sales by nonprofit organizations meeting the requirements in s. 77.54 (7m), Stats.

Note: Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

(f) The sale of a business or business assets, not including inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property or taxable services as provided in s. 77.51 (9) (a) and (am), Stats.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

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

Examples: 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (g). However, purchases by the seller of tangible personal property which are sold are taxable.

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

(5) SALES WHICH ARE NOT OCCASIONAL SALES. Sales which are not exempt occasional sales, except as provided in sub. (4), include:

(a) Sales by a person who holds or is required to hold a seller's permit.

Example: Sales of used equipment by a retail store or vending machine operator are not occasional sales and would be subject to sales or use tax.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(c) The sale of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers, semitrailers and all-terrain vehicles. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, mobile home not exceeding 45 feet in length, snowmobile, trailer, semitrailer or all-terrain vehicle is registered or titled within Wisconsin.

(d) A sale made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of this property.

(e) Sales of bingo supplies to players or the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(f) A sale by persons engaged primarily in the business of making non-taxable sales of personal property, such as manufacturers and wholesalers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

**Note:** The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3) (b) became effective March 1, 1979; (b) Non-retailer sales of all-terrain vehicles as described in sub. (4) (c) became taxable and the sale of an all-terrain vehicle as described in sub. (3) (c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for the sale of a business or business assets in sub. (3) (e) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of motor vehicles, boats, etc., to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; am. (2), (4) (c) and (g), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.34 Occasional sales exemption for sale of a business or business assets.** (ss. 77.51 (9) (a) and (am) and 14g) (h), 77.52 (12) and 77.54 (7), Stats.) (1) SCOPE. This section describes the occasional sales exemption for the sale of a business or business assets as provided in s. 77.51 (9) (a) and (am), Stats.

(2) GENERAL. (a) The sale of business assets, consisting of tangible personal property, by a person who holds or is required to hold a seller's permit at the time of the sale is subject to sales tax, except as provided in sub. (3) (c).

(b) Except as provided in sub. (3) (c), the tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.
2. A single transaction or series of transactions at the time of termination of a business.
3. Piecemeal sales, whether part of a continuing business or upon termination.

(c) The tax does not apply to merchandise inventory sold to another retailer who purchases it for resale and sells it in the regular course of that retailer's business.

(3) EFFECT OF HOLDING A SELLER'S PERMIT. (a) Pursuant to s. 77.51 (9) (a) and (am), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sales exemption, except as provided in par. (b).

(b) A sale is exempt from sales and use tax as an occasional sale if all of the following conditions are met:

1. The sale is of personal property, other than inventory held for sale, previously used by a person to conduct a trade or business at a location.

2. The sale occurs after the person ceased operating the business at that location.

3. The person delivers the seller's permit to the department of revenue for cancellation within 10 days after the last sale of personal property at that location.

(c) A sale meeting the conditions in par. (b) is exempt from sales or use tax even though the person holds a seller's permit for one or more other locations.

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(d) The holder of a seller's permit shall wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

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

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

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

Note: Persons mailing their permit to the department should send it to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708.

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

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

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sales exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption if the person contemplates resumption of those activities which would require that person to hold a seller's permit.

(c) The fact that a business ceases operating and no longer conducts its day-to-day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. If the permittee does not surrender the permit as provided in sub. (3) (b), the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

Note: 1) Refer to s. Tax 11.33 regarding the general occasional sales exemption. Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

2) The interpretations in s. Tax 11.34 effective under the general sales and use tax law on and after September 1, 1969, except: (a) The procedure in sub. (3) became effective May 4, 1976, and reflects the Wisconsin supreme court's decision in *Three Lions Supper Club, Ltd. vs. Dept. of Revenue* (May 4, 1976), 72 Wis. 2d 546; and (b) The exemption described in sub. (2) (b) became effective May 17, 1988, pursuant to 1987 Wis. Act 399.



**Tax 11.35 Occasional sales by nonprofit organizations on or after January 1, 1989.** (ss. 77.51 (9) and 77.54 (7m), Stats.) (1) DEFINITIONS. In this section:

(a) "Admission event" means that access to the event involving entertainment is generally restricted to only those who pay a required fee, who make a required donation or who are required to make a purchase of some kind such as a meal or raffle ticket.

(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate \$300 or more per event by all persons for performing, for reimbursement of expenses or for prize money.

(c) "Gross receipts" means gross receipts as defined in s. 77.51 (4), Stats., from all sales in Wisconsin of otherwise taxable tangible personal property and services after subtracting allowable exemptions.

(d) "Nonprofit organization" includes a neighborhood association, church, civic group, garden club, social club or similar organization not operated or organized for profit where no part of the net income inures to the benefit of any private shareholder or individual. A governmental unit described in s. 77.54 (9a) (a) through (e), Stats., is considered a "similar organization" for purposes of this paragraph.

(2) SCOPE. This section describes the occasional sales exemption for nonprofit organizations as provided in s. 77.54 (7) and (7m), Stats.

(3) GENERAL. A nonprofit organization is required to charge Wisconsin sales tax on sales of tangible personal property and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to gross receipts from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(4) STANDARDS. Under s. 77.54 (7m), Stats., a nonprofit organization shall meet all of the following standards for its sales to qualify as exempt occasional sales:

(a) The organization is not engaged in a trade or business.

(b) Entertainment is not involved.

(c) The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

(5) NOT ENGAGED IN A TRADE OR BUSINESS. A nonprofit organization is not engaged in a trade or business for purposes of sub. (4) (a) if it meets at least one of the following:

(a) Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

**Example:** A boy scout troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the 20-day test, the troop should use the days of delivery rather than days orders are taken.

- (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 (5) (c) and (d), (6) (a), (6m), (6r) and (26m), Stats.) (1) GENERAL. (a) Section 77.54 (6) (a), Stats., exempts the gross receipts from the sale of and the storage, use or other consumption of "*Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property.*" Effective on December 1, 1981 and thereafter, "exclusively", as used in s. 77.54 (6) (a), Stats., 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. This exemption is to be strictly construed.

(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 the exemption under par (a), s. 77.54 (6) (a) and (6m), Stats., must be considered together.

(d) Section 77.54 (5) (d), Stats., provides an exemption for mobile mixing and processing units and the motor vehicle or trailer on which they are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units.

(e) Section 77.54 (5) (c) and (26m), Stats., provide exemptions for certain motor vehicles, machinery and equipment used in waste reduction and recycling processes.

Note: See s. Tax 11.11 for more information on waste reduction and recycling exemptions.

(2) CONDITIONS FOR EXEMPTION AND EXAMPLES. The exemption under sub. (1) (a) 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.

**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 producer of tangible personal property.

(b) Machines and processing equipment shall be used exclusively in manufacturing.

**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 stock 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 the machine and equipment are indirectly related to the step-by-step processes. Machine foundations are real property improvements rather than personal property and do not qualify for exemption.

**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; or 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.

(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 the items are also used 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 the manufacturer to produce tangible personal property.

**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 the 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.

**Example:** Machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities or equipment, research, or crating or packaging of tangible personal property for shipment are not exempt.

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant.

**Example:** Sweeping compounds are factory supplies rather than processing equipment.

(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.

**Example:** 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 used as replacement parts for exempt machines and processing equipment are exempt.

**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: (a) Mobile mixing units are exempt effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Vehicles and machines used in waste reduction and recycling are exempt effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) Motor vehicles or trailers upon which mobile mixing units are mounted are exempt effective July 20, 1985, pursuant to 1985 Wis. Act. 29; (d) Safety attachments became exempt effective June 1, 1986, pursuant to 1985 Wis. Act 149; and (e) The exemption in s. 77.54 (6), Stats., shall be strictly construed effective October 1, 1989, pursuant to 1989 Wis. Act 31.

**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, eff. 7-1-90; am. (1) (a) and (c), (2), (3) (a), (b), (d), and (4), cr. (1) (d) and (e), Register, March, 1991, No. 423, eff. 4-1-91.

**Tax 11.41 Exemption of property consumed or destroyed in manufacturing.** (s. 77.54 (2), (6) (a) and (30) (a) 4, Stats.) (1) GENERAL. (a) Section 77.54, Stats., 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), STATS. In construing the exemption provided in s. 77.54 (2), Stats., it is necessary to refer to another exemption provided in s. 77.54 (6) (a), Stats. The latter section

exempts gross receipts from the sale of certain machines, equipment and parts used in manufacturing. This exemption is interpreted in s. Tax 11.40. Machines, processing equipment and parts shall be within the exemption provided by s. 77.54 (6) (a), Stats., if they are exclusively and directly used in manufacturing tangible personal property. If they are not within the exemption in s. 77.54 (6) (a), Stats., they cannot be within the exemption provided by s. 77.54 (2), Stats.

(3) **PERSONAL PROPERTY WITHIN S. 77.54 (2), STATS., EXEMPTION.** (a) The following property is within the exemption provided by s. 77.54 (2), Stats., 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 used by a person other than a manufacturer. A purchaser also may not claim this exemption if the purchaser does not sell the item produced.

Examples: 1) Property sold to an automobile repair shop or other repair business does not qualify for exemption under s. 77.54 (2), Stats.

2) 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 the construction.

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 (2) (a) 2, (7) and (19), 77.54 (35) and 77.61 (2), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Admission" 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.

(b) Pursuant to s. 77.51 (10), Stats., "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.

(c) "Places of amusement, entertainment or recreation" 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.

(2) **GENERAL.** The gross receipts from the sale of admissions are subject to sales tax.

(3) **ENTREPRENEURS, PROMOTERS, SPONSORS OR MANAGERS.** (a) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of s. 77.51 (13) (c), Stats., if the 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 the 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.

(b) As retailers, the 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. The 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.

(4) **EXCEPTIONS.** This section does not apply to:

(a) Traveling attractions which perform in stadiums, theaters or other places where the permanent management of the 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.

(b) Churches or other nonprofit groups which operate within the occasional sale limitations of s. 77.54 (7m), Stats.

(c) Sales of admissions or tickets by any baseball team affiliated with Wisconsin department of American legion baseball.

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**Note:** The interpretations in s. Tax 11.54 are effective under the general sales and use tax law on and after September 1, 1969, except the exemption for sales by a baseball team of the Wisconsin department of American legion baseball pursuant to 1985 Wis. Act 29, is effective September 1, 1985.

**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; cr. (1) (intro.), (2) and (4) (c), renum. (1) to be (1) (a) and am., renum. (2) and (3) to be (1) (c) and (b) and am., renum. (4), (5) and (6) to be (3) (a), (b) and (4) and am., Register, March, 1991, No. 423, eff. 4-1-91.

**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 purchaser at the time of the sale, and when the name and address of the principal appear on the books and records of the agent.

(3) **ENFORCEMENT OF LIENS.** Pawnbrokers, storage persons and others selling tangible personal property to enforce a lien are retailers with respect to such sales, and tax applies to the gross receipts from such sales.

(4) **REPOSSESSIONS.** Repossessions of tangible personal property by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

**Note:** The interpretations in s. Tax 11.55 are effective under the general sales and use tax law on and after September 1, 1969.

**History:** Cr. Register, May, 1978, No. 269, eff. 6-1-78.

**Tax 11.56 Printing industry.** (ss. 77.51 (8), (11) and (14) (h), 77.52 (1) and (2) (a) 11 and 77.54 (2), (2m) and (6) (a) and (b), Stats.) (1) **DEFINITIONS.** In this section:

(a) The process of manufacturing printed matter by a manufacturer includes initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate-ready film, and producing an image carrier which is installed on a printing press, or equivalent prepress technology employed to produce an image carrier, and the bindery/finishing stage.

(b) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes, fonts, video display terminals, Register, June, 1991, No. 426

tape and disc making equipment, computers and typesetters which are interconnected to operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

(c) "Manufacturer" includes a printer or other person who performs any one or more of the processes in manufacturing printed matter, provided that the printer or other person qualifies as being engaged in manufacturing under s. 77.54 (6m), Stats., whether or not the printed matter is sold.

(2) PRINTERS' TAXABLE SALES. Taxable receipts of printers include gross receipts from the following, unless otherwise exempt:

(a) Charges for printing, lithography, photolithography, rotogravure, gravure, letter press, silk screen printing, imprinting, multilithing, mimeographing, photostating, steel die engraving, and similar operations for consumers, whether or not the paper and other materials are furnished by the consumers. A printer's charge for printing on paper furnished by a customer to produce printed matter not to be sold is subject to the tax.

(b) Charges for services in connection with the sale of printed matter, such as overtime and set-up charges, die cutting, embossing, folding, and binding operations, and charges for painting signs, show cards and posters, whether the materials are furnished by the printer or by the customer.

(c) Charges for envelopes, but not for separately stated charges for postage in the sale of prestamped envelopes.

(3) TAXABLE SALES BY OTHERS. (a) Sales of tangible personal property by persons who are not printers, including so-called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binder/finishers are taxable unless the sales qualify for exemption under s. 77.54 (2), (2m) or other statutes.

(b) 1. Section 77.54 (2) exempts the gross receipts from sales of ". . . tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale . . ."

2. Section 77.54 (2m), Stats., exempts the gross receipts from sales 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. The exemption . . . does not apply to advertising supplements that are not newspapers."

(c) Tangible personal property includes type-matter, whether or not combined with artwork, such as typeset output, a paste-up, mechanical, assembly, camera-ready copy, flat or a photoreproduction (including film plates).

(4) NONTAXABLE SALES. Tax does not apply to charges, if stated separately on invoices and in the accounting records, for mailing services such as:



(a) Addressing printed matter by hand or mechanically for the purpose of mailing.

(b) Enclosing, sealing and preparing for mailing.

(c) Mailing letters or other printed matter.

(5) **EXEMPT PRINTING MACHINERY AND EQUIPMENT.** Section 77.54 (6) (a), Stats., provides that: "*Machinery and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property*" are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements thereof used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property. Interpretations of this statute are contained in s. Tax 11.40.

(6) **PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER FOR SALE.** (a) Persons engaged in manufacturing printed matter for sale may purchase the following items without tax under the statutes indicated:

1. Section 77.54 (2). Property becoming an ingredient or component part of an item destined for sale (e.g., paper stock or printing ink).

2. Section 77.54 (2). Property such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate-ready film, other positives and negatives, flats and similar items which are consumed, destroyed or lose their identity in the manufacture of tangible personal property to be sold. For example, a printer's purchases of positives and negatives which are used to produce catalogs and shoppers guides it sells to other persons.

3. Section 77.54 (6) (b). Containers and packaging and shipping materials for use in packing, packaging or shipping printed matter to their customers.

(b) The exemptions under s. 77.54 (2), Stats., described in par. (a) 1 and 2, apply to property purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer in manufacturing tangible personal property to be sold. The exemption under s. 77.54 (2), Stats., does not apply if the manufactured tangible personal property is not to be sold. Examples of nontaxable purchases include:

1. A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives to produce printing on the manufacturer's products which are to be sold.

2. An advertising agency's purchases of color separations which are transferred to a commercial printer who uses the color separations to produce advertising material the agency sells to a retailer.

3. A publisher's purchases of paper and ink which are furnished to a commercial printer to produce a publication to be sold.

(7) **PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER NOT FOR SALE.** (a) An exemption applies for 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 they are transferred without charge to a recipient.

**Example.** Examples of nontaxable purchases include: 1) A shoppers guide publisher, who distributes the publication without charge, purchases paper and furnishes it to a printer who charges for the printing of the shoppers guide.

2) A shoppers guide publisher purchases paper it uses to print a shoppers guide which it distributes without charge to recipients.

(b) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items if such purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under par. (a).

**Example:** A retailer purchases color separations which are used in its own printing plant to produce advertising material it distributes to its customers in Wisconsin.

**Note:** The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983, and the exemption in subd. (3) (b) 2 for ingredients of publications was created by 1983 Wis. Act 27, effective July 2, 1983.

**History:** Cr. Register, March, 1983, No. 327, eff. 4-1-83; am. (3) (a), renum. (3) (b) to be (3) (b) 1., cr. (3) (b) 2., r. and recr. (7), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.57 Public utilities.** (s. 77.54 (3), (6) (a) and (c), (17), (26m) and (30), Stats.) (1) **TAXABLE SALES.** The gross receipts from the sale of the following tangible personal property and services provided by utilities are taxable:

(a) Utility services billed to household, industrial or commercial customers, with any adjustments for discounts taken by customers in the utility's next reporting period.

**Example:** An early payment discount is adjusted for in the next reporting period.

(b) Excess use charges and minimum or idle service charges.

(c) The gross amounts received for contacts on poles and excess pole height contributions.

(d) Parking space rentals.

(e) Rentals of transformers located on a customer's property.

(f) Labor and materials to install or repair conversion burners.

(g) The rental of water heaters.

(h) Sales of scrap, gravel or timber sold for removal.

(i) Sales of tools, used equipment and other tangible personal property to employees or other purchasers.

(j) Pilot relights for furnaces, such as "no heat" calls, or replacing appliance fuses.

(k) Sale of a utility overhead transmission or distribution line in place, if installed under easement or license on land owned by others.

**Note:** See s. Tax 11.86 for more information.

(l) Charges to builders to put in "temporary services".

(2) **NONTAXABLE SALES.** Gross receipts from the following charges to customers are not subject to the tax:

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

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

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

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

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

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

(h) "Wheeling" energy for another utility.

(i) Sales of gas or other fuel, not including electricity, to farmers for use in farming.

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

(k) Water delivered to customers through mains.

(1) 1. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use.

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

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

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

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

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

7. In this subsection, "residential use" means use in a structure or portion of a structure which is a person's permanent principal residence. Use

in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting and other ordinary uses by the purchaser in a residence. Residential use includes use in single-family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, nursing homes and farm houses, if the structure is used as a person's permanent principal residence. Residential use includes use in apartment houses, nursing homes and farm houses even though they are on a commercial or rural meter.

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

Examples: 1) A person owns a home in Wisconsin where he resides for 7 months each year and a cottage, also in Wisconsin, where he resides for 5 months each year. The home is his principal residence and the cottage is his secondary residence.

2) A person is a resident of Florida and has a home in Florida. The person also retains a home in Wisconsin. The person's Florida home is her principal residence and her Wisconsin home is her secondary residence.

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

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

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

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

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

Note: See s. Tax 11.86 for more information.

3. Charges for coating pipe or creosoting poles.

4. Charges for X-ray testing of welding joints in the construction of overhead utility facilities.

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

6. Charges for aerial photographs and maps.

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

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

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufacturing process begins when the coal starts moving by conveyor directly to the boiler bunker, and it ends at the generator bus duct. An overhead crane used for the installation and repair of a turbine, and a fuel storage tank are not directly used in manufacturing.

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

(d) Charges for X-ray testing of welding joints in the construction of underground utility pipelines.

(5) **WASTE TREATMENT FACILITIES.** The gross receipts from the sales of and the storage, use or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt or that would be exempt under s. 70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., is exempt from sales and use tax.

**Note:** The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales of coal, fuel oil, propane, steam and wood became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) The six-month exemption for electricity and gas became effective November 1, 1979, pursuant to Chapter 1, Laws of 1979; (c) The exemption for fuel converted to electrical energy, gas or steam by utilities became effective October 1, 1981, pursuant to Chapter 20, Laws of 1981; (d) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption for wood residue became effective September 1, 1987, pursuant to 1987 Wis. Act 27; (f) The exemption for component parts of an industrial waste treatment facility became effective July 1, 1989, pursuant to 1983 Wis. Act 426, later clarified effective May 17, 1988, pursuant to 1987 Wis. Act 399; (g) The sale of gas or other fuel used to heat farm buildings, including greenhouses, that are not exempt machinery under s. Tax 11.12 became taxable July 1, 1991; and (h) All fuel used in farming became exempt October 1, 1991, pursuant to 1991 Wis. Act 39.

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79; cr. (2) (1), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (4) (a), Register, June, 1983, No. 330, eff. 7-1-83; cr. (4) (c), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (e) 1., Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (a), (i), (j) and (k), (2) (f), (g), (i) and (L) 7. and 8., (3) (a) and (b) 1., 2. and 4. and (4) (a), cr. (4) (d) and (5), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (i), Register, April, 1993, No. 448, eff. 5-1-93.

**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.

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2. Grooming.

3. Clipping.

(c) Sales of tangible personal property by veterinarians which shall be taxable include the following:

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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 Barber or beauty shop operator.** (ss. 77.51 (13) (i), 77.52 (2) (a) 10 and 77.57, Stats.) (1) **NONTAXABLE SALES AND SERVICES.** Charges by a barber or beauty shop operator for services on human beings are not subject to sales tax.

(2) **TAXABLE SALES AND SERVICES.** (a) Over the counter sales by a barber or beauty shop operator of packaged cosmetics, hair tonics, lotions, shampoo, wigs, falls, toupees and other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property are subject to sales tax unless par. (b) applies. A barber or beauty shop operator who engages in sales subject to sales tax under this subsection shall register as a retailer and is responsible for collecting and remitting to the department the tax on taxable sales or charges.

(b) A barber or beauty shop operator is not required to register as a retailer and collect Wisconsin sales tax if the gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year.

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.

(3) **TAXABLE AND NONTAXABLE PURCHASES.** (a) Persons exempt as occasional sellers under sub. (2) (b) shall pay sales or use tax on all purchases of property used in the business, including items that may be resold to customers.

(b) Persons who register and collect sales tax under sub. (2) (a) may purchase tangible personal property, such as hair pieces, for resale without paying tax by issuing their supplier a properly completed resale certificate.

(c) Tangible personal property purchased by a barber or beauty shop operator and used in providing services is subject to sales or use tax.



(d) If a barber or beauty shop operator gives a resale certificate for tangible personal property to a supplier and then consumes the property in providing services, the barber or beauty shop operator is liable for use tax at the time the property is first used in a taxable manner.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (1) (b), Register, August, 1985, No. 356, eff. 9-1-85; r. and recr., Register, March, 1991, No. 423, eff. 4-1-91.

**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 the station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. The 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.

**Example:** A radio station has a program where the announcer places items of merchandise of local retailers or sponsors up for bid to the station's listeners. The successful bidder, chosen by the radio station, delivers the purchase price of the merchandise to the radio station and receives a purchase certificate that allows him to redeem the merchandise from the retailer or sponsor. The purchase money is retained by the radio station, although the retailer is compensated by the station for its participation in the form of radio advertising. The radio station is subject to sales tax on the gross receipts from the program.

(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 the merchandise and shall pay sales tax on the 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.** Gross receipts from the sale, lease or rental of motion picture films or tape, and advertising materials related to the motion picture films or tape, to a motion picture theater or radio or television station are exempt from the sales and use tax under s. 77.54 (23m), Stats. Sales of blank or raw video or audio tapes to television or radio stations are included in this exemption.

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

(5) **BROADCASTING TOWERS.** Commercial broadcasting towers constituting the transmission antenna system of a radio or television station

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

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.

(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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sumers of building materials which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax.

(b) Property which a construction contractor will resell as personal property may be purchased without tax for resale. This property includes personal property furnished as part of a real property construction activity when the personal property retains its character as personal property after installation. This property also includes personal property furnished as part of a real property construction activity when provided as part of a taxable landscaping service.

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

(c) Machinery and equipment, including road building equipment, tunnel shields, construction machines, and cement mixers, tools, including power saws and hand tools, and supplies, including machine lubricating and fuel oils, form lumber and industrial gases, purchased by a construction contractor for the contractor's use are generally either consumed in the process of construction or are removed when the project is completed. The contractor is the consumer of the personal property and shall pay the tax on its purchases of the property. However, an exemption is provided in s. 77.54 (5) (d), Stats., for mobile cement mixers used for mixing and processing and the motor vehicle or trailer on which a mobile mixing unit is mounted, including accessories, attachments, parts, supplies and materials for the vehicles, trailers and units.

(d) Under s. 77.54 (26), Stats., contractors may purchase without sales or use tax tangible personal property which becomes a component part of an industrial waste treatment facility that would be exempt under s. 70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., or a municipal waste treatment facility, even though they are the consumers of the property.

Note: Refer to s. Tax 11.11 regarding industrial and municipal waste treatment facilities.

(e) Under s. 77.54 (26m), Stats., contractors may purchase without sales or use tax waste reduction and recycling machinery and equipment, including parts, which are exclusively and directly used for waste reduction and recycling activities which reduce the amount of solid waste generated, reuse, recycle or compost solid waste or recover energy from solid waste, even though they are the consumers of the property.

**Examples:** 1) Equipment used in a foundry to clean sand so that the sand can be reused qualifies for exemption.

2) Equipment used to remove impurities from lubricating oil used in manufacturing machines so that the oil can continue to be used by the manufacturer qualifies for exemption.

3) Equipment used to produce fuel cubes qualifies for exemption. This equipment shreds waste paper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary and then compresses the materials into fuel cubes which are burned by homeowners or others to replace wood.

4) A roto-mill machine that mines old pavement and grinds up the mined materials to be reused in construction activities qualifies for exemption.

5) Large steel waste collection containers, including dumpsters, which may be picked up and dumped into waste collection trucks or hauled away on flatbed trucks, or which may mechanically compact the waste in the container do not qualify for exemption.

(f) Under s. 77.54 (41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11 (36), Stats. Section 70.11 (36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

(4) **CLASSIFICATION OF PROPERTY AFTER INSTALLATION.** (a) Contractors shall determine whether a particular contract or transaction results in an improvement to real property or in the sale and installation of personal property. In determining whether personal property becomes a part of real property, the following criteria shall be considered:

1. Actual physical annexation to the real property.
2. Application or adaptation to the use or purpose to which the real property is devoted; and
3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

Note: See *Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc.* (1976), 72 Wis. 2d 60, regarding determining whether personal property becomes a part of real property.

(b) Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others, including boilers, furnaces, stand-by generators, pumps, substations and transformers. When this property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

(5) **PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY.** A construction contractor is the consumer of personal property, such as building materials, which is incorporated into or becomes a part of real property, and sales of this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

- (a) Boilers and furnaces for space heating.
- (b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems and incinerators.
- (c) Cemetery monuments.
- (d) Buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors, including computer room floors, partitions and movable walls attached in any way to realty, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door

*involving the use of such property.*" However, some construction contractors who also sell construction supplies at retail do not know when they purchase these supplies whether they will be consumed in construction contracts or resold to others. In these instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give a resale certificate to suppliers and purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and collect and remit the tax on the sales price to customers. If the property is used in fulfillment of a construction contract, the contractor shall pay a use tax on its purchase price.

(b) Pay sales tax to suppliers on all property purchased. If the property is later consumed in fulfilling a construction contract, the tax obligation is taken care of. If the property is resold at retail, the contractor shall collect and remit sales tax on these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

**(8) PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY.** (a) The sales tax exemption provided to governmental units and other exempt entities, such as churches and nonprofit hospitals, does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair or improve real property for the exempt entity. Gross receipts from sales of these building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation.

**Examples:** 1) A contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or governmental building, since the property becomes a part of realty after installation.

2) A contractor shall pay tax on its purchases of pumps and other equipment for use at a municipal well or pumping station, since the property becomes a part of realty after installation.

(b) A contractor may purchase without tax as property for resale tangible personal property which retains its character as personal property after installation as described in sub. (6), even though the resale of the property by the contractor is exempt when the property is sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. This property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. This exemption does not apply to property which becomes a part of real property as described in sub. (5) and par. (a).

**(9) USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN.** (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made.

(b) If a construction contractor purchases property outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made or property was used prior to being stored in Wisconsin.



(c) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

(10) CONSTRUCTION AND REPAIR SERVICES. (a) A contractor who performs real property construction activities may not add tax to any charge for labor or material, since gross receipts from these activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of the materials and becomes a cost of doing business.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on this service, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of any items listed in par. (c) or other items of tangible personal property shall register as a retailer and pay the tax on gross receipts from the performance of these services.

(c) Section 77.52 (2) (a) 10, Stats., provides in part that “. . . the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration, but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.”

(d) Charges for tangible personal property, such as a repair part, incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible personal property incorporated into it is deemed purchased by the contractor for resale and, therefore, may be purchased without tax.

**Example:** If a contractor is engaged to repair a refrigerator, whether free-standing personal property or built-in so as to be a part of real property, in a home, the repair service and any charge for parts are taxable.

(11) **REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES.** Section 77.51 (4) (c) 4, Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52 (2) (a) 10, Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless of the extent to which fastened to, connected with or built into real property. Among these items are furnaces and boilers used for space heating. In view of these statutes, charges for services and repair parts for repair of tangible personal property covered by both statutes, such as a furnace boiler, are taxable, but charges for services in totally replacing the property are not taxable. In the nontaxable situation, the replacement personal property is taxable when sold to the contractor installing it, but the contractor's charge for the replacement service is not taxable.

(12) **COUNTY TAX ON BUILDING MATERIALS.** (a) Section 77.71 (3), Stats., imposes an excise tax upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county which has adopted the county tax. The tax is measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county, unless the contractor has paid the county tax of a county in this state or a similar local sales tax in another state on the purchase of that property.

(b) Building materials which become a component part of real property are used and consumed at the job site.

(c) In providing repair services to real property subject to taxation under s. 77.52 (2) (a) 10, Stats., a contractor may purchase without county tax for resale the building materials used in providing the taxable services, and the county excise tax imposed under s. 77.71 (3), Stats., does not apply to those purchases.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the excise tax under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The excise tax under s. 77.71 (3), Stats., on building materials used in real property construction activities is not imposed if the contractor purchased the building materials before the effective date of the county tax of that county or has paid the sales tax of another county in this state in purchasing the building materials.

**Note:** The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real

property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landseaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) Thirty-five percent of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (d), (6) (a) 2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337; emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86; am. (9) (a), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (g) and (12) (a), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (b) 1., 2. and 3., (2) (a) and (b), (3) (b) and (c), (4) (a) (intro.) and (b), (5) (intro.), (b), (e), (f), (h) and (j), (6) (a) 2., 4., 5., 6., 9. and 10. and (b), (7), (8), (9) (a), (10) (a), (b) and (d) and (11), cr. (3) (d) and (e), Register, June, 1991, No. 426, eff. 7-1-91; renum. (9) (b) to be (c); cr. (2) (c), (3) (f) and (9) (b), am. (6) (a) (intro.), 9., 10., (10) (a), (c), and (12) (c), Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.69 Financial institutions.** (s. 77.51 (14) (k), Stats.) (1) **EXEMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(2) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.
- (h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

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.

(3) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up Register, December, 1992, No. 444