

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing these services. Consequently, they shall pay the tax when purchasing the property.

Note: Section Tax 11.82 interprets ss. 77.51 (20), 77.52 (1), 77.53 (1) and 77.54 (2), Stats.

Note: The interpretations in s. Tax 11.82 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Written or typed lists of names and addresses are not tangible personal property effective January 1, 1979, pursuant to the Minnesota Supreme Court's decision in *Fingerhut Products Company et al. vs. Commissioner of Revenue*, 258 N.W. 2d 606 (1977); and (b) Mailing lists stored in machine-readable form are not tangible personal property, pursuant to the Wisconsin Tax Appeals Commission decision in *A-K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue* (1/15/87).

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (b), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (b), (c) and (2), Register, January, 1994, No. 457, eff. 2-1-94.

**Tax 11.83 Motor vehicles. (1) DEFINITION.** In this section, "motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck or road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

**(2) RETAILERS' TAXABLE GROSS RECEIPTS.** Gross receipts from the following sales in Wisconsin are taxable:

(a) The sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value, called a "trade-down," unless cash or services are received by the dealer.

Examples: 1) Dealer A sells a motor vehicle to Individual B and accepts the trade-in of two motor vehicles owned by Individual B. The selling price of the new vehicle is \$20,000. The values of the two motor vehicles traded in by Individual B are \$8,000 and \$9,000. Gross receipts subject to sales tax are \$3,000, the \$20,000 selling price less \$8,000 and \$9,000 trade-ins.

2) Dealer A sells two motor vehicles to Individual C and accepts the trade-in of a motor vehicle owned by Individual C. The selling prices of the new vehicles are \$10,000 and \$12,000. The value of the motor vehicle traded in is \$15,000. Gross receipts subject to sales tax are \$7,000, the \$22,000 selling price less \$15,000 trade-in.

(b) The delivery, handling and preparation of a motor vehicle being sold and the sale of a warranty, relating to the sale of a motor vehicle that is taxable.

Note: See s. Tax 11.27 for information regarding the sales and use tax treatment of warranties.

(c) The sale of equipment and accessories with a motor vehicle. However, adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as defined in s. 27.01 (7) (a) 2., Stats., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting directly on behalf of the handicapped person or a nonprofit organization.

(d) Sales of parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as described in par. (c).

Example: Charges for installation of a radio or air conditioner into a motor vehicle are taxable.

Note: Under s. 77.51 (14r), Stats., a sale takes place in Wisconsin if possession of the tangible personal property is transferred by the seller or the seller's agent to the buyer or the buyer's agent in Wisconsin. A common carrier or U.S. Postal Service is always an agent of the seller.

**(3) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS.** (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered in Wisconsin in the name of the transferor; and the transferor is not a motor vehicle dealer.

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

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

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

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

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

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

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (6).

**(5) TEMPORARY USE IN WISCONSIN.** Motor vehicles purchased outside Wisconsin, which are not registered or titled or required to be registered or titled in Wisconsin, brought into Wisconsin by a nondomiciliary for that person's own storage, use or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used or otherwise consumed in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

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

**(7) TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir or heirs of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate

is subject to the tax, and the purchaser shall pay the tax to the department of transportation at the time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable, unless the donor is an organization described in s. 77.54 (9a), Stats.

(c) Stats., is not subject to Wisconsin use tax.

**(B) VEHICLES USED BY LICENSED WISCONSIN MOTOR VEHICLE DEALERS.** (a) *General.* Motor vehicles purchased without tax for resale by a Wisconsin motor vehicle dealer licensed under s. 218.01, Stats., and used for a purpose in addition to retention, demonstration or display, except motor vehicles loaned to any school or school district for a driver training educational program conducted by the school or school district, are subject to Wisconsin use tax. Motor vehicles used by the dealership solely for retention, demonstration and display, while holding them for sale in the regular course of business, or solely for leasing to others, such as customers and employees, are not subject to Wisconsin use tax.

(b) *Amount subject to use tax.* The amount subject to use tax on a motor vehicle used by a licensed motor vehicle dealer for a purpose in addition to retention, demonstration or display is one of the following:

1. Motor vehicles held for sale which are assigned to a specific dealer employe subject to withholding from federal income tax on wages are subject to Wisconsin use tax on \$96 per motor vehicle registration plate per month.

Note: As provided in s. 77.53 (1m), Stats., the department annually, beginning January 1, 1997, will adjust the \$96 amount to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the *Wisconsin Tax Bulletin* prior to the January 1, that the change becomes effective.

2. Motor vehicles held for sale and not assigned to a specific dealer employe subject to federal withholding on wages are subject to Wisconsin use tax on the lease value of the motor vehicle computed on a calendar month basis. If a motor vehicle is used by the dealer for a period of less than one calendar month, the amount subject to use tax is the daily lease value calculated by multiplying the applicable monthly lease value by a fraction, the numerator of which is the number of days used by the dealer for a purpose in addition to retention, demonstration or display and the denominator of which is the number of days in the calendar month. Lease value is computed using the internal revenue service lease value table contained in internal revenue service regulation s. 1.61-21(d)(2). In the lease value table, the "automobile fair market value" is one of the following:

a. The amount an individual would have to pay in an arm's length transaction to purchase the motor vehicle. The amount includes all amounts attributable to the purchase of the automobile such as sales tax and title fees.

b. The motor vehicle dealer's cost of purchasing the automobile, including all expenses attributable to that purchase, provided the automobile is owned by the dealer and the purchase was made at arm's length.

3. Motor vehicles not held for sale, including motor vehicles properly capitalized for Wisconsin income or franchise tax purposes, are subject to use tax based on the sales price of the motor vehicle as defined in s. 77.51 (15), Stats. However, if the motor vehicles were purchased without tax using a resale or other exemption certificate and the first use, in addition to retention, demonstration or display, occurs more than 6 months after the purchase by the dealer, the dealer may use the fair market value of the motor vehicle at the time of first use as the amount subject to tax.

(c) *Recordkeeping.* It is presumed that all dealer plates issued by the department of transportation to a licensed motor vehicle dealer are used each month on motor vehicles assigned to employes subject to withholding for federal income tax purposes

for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par. (b) 1., unless one of the following applies:

1. The motor vehicle dealer keeps adequate records showing that the dealer plates were not used during the month on motor vehicles for a purpose in addition to retention, demonstration or display.

2. The motor vehicle to which the dealer plate is assigned is subject to use tax as computed in par. (b) 2. or 3.

(d) *Transitional provision.* For motor vehicles, not assigned to employes or salespersons subject to federal withholding on wages, that are used by the dealer for a purpose in addition to retention, demonstration and display both prior to September 1, 1995, and on and after September 1, 1995, upon which a sales or use tax was paid on the purchase price of the motor vehicle by the dealer, the imposition of use tax as described in par. (b) 2. does not apply.

(9) **SALES BY DEALERS TO THEIR SALESPERSONS OR OTHER EMPLOYEES.** When a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons or other employes, the transaction is subject to the sales tax.

(10) **HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration may not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with Wisconsin. The heavy equipment dealers may purchase motor vehicles for resale without tax.

(11) **MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. The property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle is subject to tax. The property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Taxable supplies include sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle even though a separate charge may be made to the customer for these supplies.

(c) A supplier may not accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, except when the purchaser does all of the following:

1. Inventories the property.  
2. Certifies that the purchaser sells the property in the regular course of business.

3. Specifies on the resale certificate each type of item the purchaser sells in the regular course of business.

(12) **EXEMPTION FOR MIXING AND PROCESSING UNITS.** Sales, leases and rentals of mobile units used for mixing and processing, and the motor vehicles or trailers on which the units are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units, are exempt from sales and use tax.

(13) **EXEMPTION FOR VEHICLES USED IN WASTE REDUCTION OR RECYCLING.** Gross receipts from the sale, lease or rental of vehicles which are not required to be licensed for highway use and which are used exclusively and directly in waste reduction or recycling activities are exempt from sales and use tax.

**(14) REFUNDS UNDER "LEMON LAW".** Sales tax refunds made under s. 218.015 (2) (f), Stats., the "lemon law," are normally made in the same manner as the other sales tax refunds. However, when a defective motor vehicle is returned to the manufacturer for a refund of the purchase price, the purchaser is permitted to collect a sales tax refund directly from the department if the manufacturer fails to refund the tax.

Note: Section Tax 11.83 interprets ss. 77.51 (13) (am) and (14) (j), 77.52 (1) and (15), 77.53 (1), (1m), (16), (17) and (18), 77.54 (5) (a), (c) and (d), (7) and (22) (g), 77.56 (2) and (3), 77.61 (1) and 77.71 (2) and (4), Stats.

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for adaptive equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemption for parts and accessories for adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (h) the measure of use tax on motor vehicles as described in sub. (8) (b) became effective September 1, 1995, pursuant to 1995 Wis. Act 27.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7) (a) and (8), Register, May, 1981, No. 307, eff. 6-1-81; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (7) (a) 1. and 2., Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (7) (a) 1. and 2., eff. 3-24-86; am. (7) (a) 1. and 2., Register, October, 1986, No. 370, eff. 11-1-86; cr. (11), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (a), (c) and (d), (3) (a) and (4) (a) and (c), cr. (5), (13) and (14), renun. (5) to be (6), renun. (6) to (11) to be (7) to (12) and am. (8) (a), (9), (10), and (11) (a), (b) and (c) 1., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (a), (c), (d), (3) (a), (4) (a), (b), (6), (7) (a), (b), (8) (b), (10) and (14), cr. (7) (c), Register, April, 1993, No. 448, eff. 5-1-93; am. (1), (2), (3) (d), (4) (b), (5), (6), (7) (a), (11) (c) and (12), r. and rec. (8), Register, February, 1997, No. 494, eff. 3-1-97.

**Tax 11.84 Aircraft. (1) GENERAL.** (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor is not engaged in the business of selling aircraft.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of aeronautics. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state.

(d) The use tax does not apply to aircraft for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the aircraft into Wisconsin in connection with a change of domicile to this state.

(e) The use tax does not apply to aircraft registered in Wisconsin when all of the following requirements are fulfilled:

1. The aircraft is purchased in another state.
2. The aircraft's owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
3. The owner or lessee is one of the following:
  - a. A corporation, and that corporation and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or tangible personal property,

except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

b. A partnership, and all the corporate partners fulfill the requirements in subd. 3. a., none of the general partners or limited partners who have management or control responsibilities is domiciled in Wisconsin and the partnership has no other real property or tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

c. An individual not domiciled in Wisconsin.

d. An estate, trust or cooperative, and that estate, that trust and its grantor or that cooperative does not have real property or tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

4. The department has not determined that the owner, if the owner is a corporation, trust or partnership, was formed to qualify for the exemption from Wisconsin use tax.

**(2) TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.
2. The sale and delivery in Wisconsin of oil, equipment, parts and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52 (2) (a) 9., Stats., imposes the tax on "Parking or providing parking space for motor vehicles and aircraft for a consideration...." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational.

Examples: 1) A ready-to-fly aircraft occupying space in a hangar and available for immediate use is parked.

2) An aircraft occupying space in a hangar with its wings off is not parked, since it would require a substantial expenditure of time or effort to make it operational.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor, or "tie-down," parking are taxable.

(c) *Other taxable receipts.* The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

**(3) EXEMPT SALES OF AIRCRAFT.** (a) Section 77.54 (5) (a), Stats., provides that the tax does not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use the aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(b) The tax does not apply to charges for repair, service and maintenance of aircraft used by a certified or licensed carrier of persons or property in interstate or foreign commerce under the laws of the United States or any foreign government.

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

(a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for the instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in the business of crop dusting, spraying, fertilizing and seeding for farmers may purchase weed killers, fertilizer and seed without tax for resale, if these items are used in conjunction with but not incidental to providing the service.

(f) Landing fees.

Note: Section Tax 11.84 interprets ss. 77.52 (2) (a) 9., 77.53 (17r) and (18), 77.54 (5) (a) and (7) and 77.61, Stats.

Note: The interpretations in s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the exemption for federal aviation fuel is effective January 1, 1982, pursuant to Chapter 20, Laws of 1981; (b) The exemption for aircraft brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for certain nonresidents' aircraft became effective May 15, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of aircraft to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (b) 1; and 2., Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) 2. and (3), Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (e), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (b) 3., cr. (1) (d), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (c), cr. (1) (e) and (3) (b), renum. (3) (intro.) to be (3) (a), Register, June 1991, No. 426, eff. 7-1-91; am. (1) (b) 1., (c), (2) (b), (3), (4) (intro.) and (b), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.85 Boats, vessels and barges. (1) TAXABLE SALES.** Taxable gross receipts involving boats include the following:

(a) Gross receipts from the sale, lease or rental of boats and boat accessories, and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats. The tax applies to boat storage in public storage warehouses.

**(2) EXEMPT SALES.** (a) The sale of a boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may qualify as an exempt occasional sale if the transferor does not hold or is not required to hold a seller's permit.

(b) Sales of boats to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor shall be exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor is not engaged in the business of selling boats.

(c) Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more are exempt from the tax. Accessories, attachments and parts attached to the vessel or barge and fuel for the vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees. The use tax does not

apply to a boat for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the boat into Wisconsin in connection with a change of domicile to this state.

(e) A boat purchased by a Wisconsin or federal governmental unit or by certain nonprofit organizations is exempt from the tax, regardless of the boat's size or kind, pursuant to s. 77.54 (9a) or 77.55 (1), Stats.

(f) Section 77.53 (17m), Stats., exempts: "...a boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made."

**(3) PAYMENT OF TAX.** (a) No boat may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax with the boat registration, mailed to Wisconsin Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, WI 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin, unless exempt under sub. (2) (d).

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

(d) The "boat" subject to the use tax at the time the boat is registered in this state includes all accessories affixed or attached to the boat when in use. Anchors, boat cushions, marine radios, radar equipment and other similar accessories are included in the measure of the tax.

Note: In a decision dated July 25, 1983, in the case of *Alan G. Dwyer vs. Wisconsin Department of Revenue*, the Wisconsin Tax Appeals Commission held that the tax applies to boat accessories, including the anchor, boat cushions and marine radio, in addition to the bare hull of the boat.

**(4) TAXABLE SUPPLIES.** Sales of consumable supplies or furnishings not attached to the vessel or barge are not exempt from sales or use tax under s. 77.54 (13), Stats.

Note: Sales of bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, paper towels, etc., used on commercial barges or barges of 50 ton burden or over engaged primarily in interstate or foreign commerce or commercial fishing are subject to sales and use tax.

**(5) SALES TO SHIPS.** Sales of tangible personal property or taxable services delivered to operators of foreign flag ships or ships under the U.S. flag in a Wisconsin harbor are subject to tax, unless the retailer receives a properly completed resale or other exemption certificate from the purchaser.

Example: The operator of the ship may purchase without tax fuel and repair parts for a ship which exceeds 50-ton burden under s. 77.54 (13), Stats.

Note: Section Tax 11.85 interprets ss. 77.51 (13) (am), 77.52 (2) (a) 9. and 10., 77.53 (17), (17m) and (18), 77.54 (7) and (13) and 77.61 (1), Stats.

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Boats documented under laws of the United States do not qualify for the occasional sale exemption effective February 28, 1979, pursuant to Chapter 1, Laws of 1979; (b) Charges by governmental units for docking and storing boats became taxable effective June 1, 1980, pursuant to Chapter 221, Laws of 1979; (c) The exemption for boats of nonresidents kept in waters contiguous to the nonresident's state of domicile became effective September 1, 1985, pursuant to 1985 Wis. Act 29, later amended effective June 1, 1988, pursuant to 1987 Wis. Act 268; (d) The exemption for boats brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; and (e) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (d), (2) (a) and (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a), Register, September, 1984, No. 345, eff. 10-1-84; cr. (2) (f), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b) to (e), cr. (3) (d) and (4), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (a), (c) and (f) and (3) (b), cr. (4), renum. (4) to be (5), r. (1) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (b) and (3) (a), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.86 Utility transmission and distribution lines. (1) DEFINITIONS.** In this section:

(a) "Utility facilities" include telephone, telegraph and television lines; electrical, water and gas transmission and distribution lines; and poles, transformers and towers, including pipes, conduits, sleeves, risers for cable television lines, or other property by which lines are supported or in which they are contained or connected.

(b) "Real property" includes underground utility facilities; lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land; and concrete foundations, anchors, crushed rock and backfill whether or not on land owned by the utility.

(c) "Tangible personal property" includes overhead utility facilities and circuit breakers and other equipment, but not their foundations, installed to control the flow of electricity. It also includes other overhead property by which lines are supported or in which they are contained or connected if erected or installed under an easement or license, including authorizations under ss. 86.16 and 182.017, Stats., on land owned by a person other than the utility.

(2) GENERAL. (a) Gross receipts from the installation, lease, rental, repair, service or maintenance of tangible personal property are subject to sales tax.

(b) Materials used in construction or forming of real property are taxable when purchased by the contractor.

Examples: 1) The gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion of an overhead utility facility, and from a sale "in place" of the facility, if installed under an easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of the property may be purchased without tax for resale.

2) The gross receipts of a utility from the repair, service or maintenance of an overhead utility facility, or a portion of an overhead facility of another utility are taxable. Materials used in the repair, service or installation may be purchased without tax for resale.

3) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to sales or use tax. However, the materials used in the construction or installation of the underground utility facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

4) X-ray testing of weld joints in the pipe as part of the construction of an underground utility pipeline is part of the construction process and the gross receipts are not subject to sales or use tax. However, materials used in the X-ray testing of the underground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) RELATED EXPENSES. The gross receipts from the performance of a lump sum contract for the construction of an overhead utility facility, which is tangible personal property, may not be reduced by expenses in performing the contract, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and unloading and hauling materials.

Note: The related expenses described in sub. (3) are costs of performing the contract and do not affect the amount of taxable gross receipts.

(4) EQUIPMENT CHARGES. (a) The gross receipts from a contract to construct or repair an overhead utility facility which is tangible personal property may not be reduced by the amount of hourly charges for the use of equipment.

(b) The gross receipts from the rental of equipment, including any charge for an operator of the equipment, for the construction or repair of a utility line to a utility are taxable, unless the utility employs all of the crew to construct or repair the utility line, in which case only the charge for the equipment is taxable.

Note: See s. Tax 11.29 (4) for more information.

(5) NONTAXABLE SERVICES. (a) Gross receipts from tree and shrub trimming services for a utility for the purpose of keeping the overhead transmission and distribution lines free from interference from nearby trees and shrubs or inaccessible to children are not services which are taxable under s. 77.52 (2) (a) 20., Stats.

(b) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line are not taxable.

(c) Gross receipts from a separate charge for removing an existing utility line are not taxable.

(6) LANDSCAPING SERVICES. Gross receipts from landscaping services are taxable when performed in lawn and garden areas. This includes lawn, shrub and tree services, except for services described in sub. (5) (a), performed in developed areas found in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other developed areas.

Example: Restoration work performed when a utility extends its service or repairs or replaces existing lines is subject to sales tax.

Note: Section Tax 11.86 interprets ss. 77.51 (20), 77.52 (2) (a) 10., 11. and 20., 86.16 and 182.017, Stats.

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except: (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; and (c) The Wisconsin Tax Appeals Commission decision in *Capital City Tree Experts, Inc.*, dated June 19, 1987, later modified by stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (4) (a) and cr. (5), Register, September, 1984, No. 345, eff. 10-1-84; r. and recr., Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.87 Meals, food, food products and beverages. (1) DEFINITIONS.** In this section:

(a) "Community-based residential facility" has the meaning in s. 50.01 (1g), Stats.

(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54 (20), Stats.

(c) "Hospital" has the meaning in s. 50.33 (2), Stats.

(d) "Nursing home" has the meaning in s. 50.01 (3), Stats.

(e) "Retirement home" means a nonprofit residential facility, which as its primary function provides personal care above the level of room and board to retired persons, where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(f) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing and ambulation.

(g) "Sanatorium" means an institution for the recuperation and treatment of the victims of physical or mental disorders.

(h) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) TAXABLE SALES. (a) General. Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs, young men's christian associations, young women's christian associations and similar businesses, organizations or establishments.

(b) Sales by generally exempt seller. Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

Example: When a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food or beverages are taxable.

(c) Food components of meals. Food items which comprise or are components of a meal shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

Example: A basket of chicken with coleslaw and french fries sold "to go" is taxable food.

(d) *Caterers.* Meals, food, food products and beverages sold by caterers shall be taxable. For purposes of this paragraph:

1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute taxable gross receipts.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers, including dishes, silverware, linen napkins, tablecloths, punch fountains, coffee silver service and glassware, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering service. However, items such as tents, public address systems, portable dance floors, portable bars, chairs and tables may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for their use. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placements and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator has a "premises" as defined in s. 77.54 (20) (c) 6., Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for the service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe shall be exempt from the sales tax, if the amount of the tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of the meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Meals to employes.* Sales of meals to employes by an employer for a consideration shall be taxable. For purposes of this paragraph:

1. A consideration shall be deemed made for meals if any one of the following conditions is met:

a. The employe pays cash for meals consumed.

b. An actual, specific charge for meals is deducted from an employe's wages.

c. An employe receives meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.

d. An employe has the option to receive cash for meals not consumed.

2. In the absence of any of the conditions in subd. 1. a consideration is not deemed made when:

a. A value is assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA, social security, or union contract purposes.

b. An employe who does not consume available meals has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies, such as airlines or railways, to a customer while operating in Wisconsin for a specific charge shall be taxable. These meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage is not separately stated to the customer, the tax shall apply to purchases of these meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for the items, the place of business shall be considered selling directly to the members and not to the organization except as provided in subds. 2. and 3. The sales shall, therefore, be subject to the tax, even if the organization collects from the members, pays the seller, and retains a portion of the collections for its own purposes. In these situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. When an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for food and beverages out of its own funds and provides the items to members or others without charge, the sale of the items by a retailer to the organization is not subject to the tax. If the exempt organization holds a certificate of exempt status issued by the department, it shall give the retailer the certificate number to claim the exemption.

3. Sales of food and beverages are not subject to tax even though the employe of an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for the sale of the food or beverages provided all of the following are met:

a. The retailer issues the billing or invoice for the food and beverages in the name of the exempt organization.

b. The certificate of exempt status number of the exempt organization is entered on the retailer's copy of the invoice or billing document.

c. The retailer keeps a copy of the documents described in subd. 3. a. and b.

(3) **EXEMPT SALES.** The following meals shall be exempt:

(a) *Health care facilities.* Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption does not apply.

*Example:* If a ladies' auxiliary of a hospital, separate from the hospital, operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at the coffee shop are taxable.

(b) *"Meals on wheels".* Meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels."

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of food, food products and beverages for human consumption exempt from tax under s. 77.54 (20), Stats. This includes sales of prepackaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are tax-

able. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

Note: See s. Tax 11.51 for more information.

(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental security income, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

(4) **SPECIALTY SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food.

Example: A restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

Note: Section Tax 11.87 interprets ss. 77.51 (4) (c) 2., (14) (b) and (f) and (15) (c) 1. and 77.54 (20), Stats.

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chapter 250, Laws of 1977; (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; and (c) Sales of meals by community-based residential facilities on their premises became exempt on June 1, 1994, pursuant to 1993 Wis. Act. 332.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renun. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (d), Register, September, 1984, No. 345, eff. 10-1-84; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats; am. (1) (intro.) and (f), (2) (a), (b), (c), (d) 1., (g), (j) and (k), (3) (a) and (4) (a), cr. (2) (k) 3., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d) (intro.), 3., (f), (i) (intro.), 1. intro. and 2. intro., (k) 2., (3) (a), (b) and (d), cr. (3) (e), Register, December, 1992, No. 444, eff. 1-1-93; renun. (1) (a) to (g) to be (b) to (h) and am. (1) (b), cr. (1) (a), am. (3) (a), (d) and (e), Register, December, 1996, No. 492, eff. 1-1-97.

**Tax 11.88 Mobile homes.** (1) **MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT.** A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) **SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS.** (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to the contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) **SALES AND RENTALS OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY.** (a) Under s. 77.54 (31), Stats., the total gross receipts from the sale of a used mobile home, which is a primary housing unit, are exempt from the sales and use tax.

(b) Under s. 77.51 (4) (b) 6. and (15) (b) 5., Stats., 35% of the total gross receipts from the sale of certain new mobile homes is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of these new mobile homes. The 35% exemption applies to a new mobile home that is:

1. A primary housing unit under s. 340.01 (29), Stats., or
2. Transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

(c) Under s. 77.54 (36), Stats., the rental of a mobile home, as defined in s. 66.058 (1) (e), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(d) Under s. 77.54 (7), Stats., mobile homes transferred to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor are exempt occasional sales if the mobile home has been previously registered or titled in Wisconsin in the name of the transferor and the transferor is not engaged in the business of selling homes.

(e) Under s. 77.53 (18), Stats., the use tax does not apply to a mobile home purchased by a nonresident outside Wisconsin 90 days or more before bringing the mobile home into Wisconsin in connection with a change of domicile to Wisconsin.

(4) **PAYMENT OF TAX.** (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) If a mobile home purchased outside Wisconsin is subject to the Wisconsin use tax, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) **CONSIGNMENT SALES.** When a mobile home dealer has possession of a mobile home owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

Note: For information regarding principals, see s. Tax 11.55.

(6) **DEFINITION.** In this section:

- (a) "Mobile home dealer" has the meaning defined in s. 218.10 (3), Stats.
- (b) "New mobile home" has the meaning defined in s. 218.10 (7), Stats.
- (c) "Primary housing unit" has the meaning defined in s. 340.01 (29), Stats.
- (d) "Retailer" is a person who has a seller's permit issued under s. 77.52 (9), Stats.
- (e) "Used mobile home" has the meaning defined in s. 218.10 (9), Stats.

Note: Section Tax 11.88 interprets ss. 77.51 (2), (4) (b) 6., (13) (am) and (15) (b) 5., 77.52 (2) (a) 1., 77.53 (17) and (18), 77.54 (7), (31) and (36), 77.61 (1) (a) and (c), 218.10 (3), (7) and (9) and 340.01 (29), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (g) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to

1991 Wis. Act 39; and (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. (3) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b), (3) (d), (4) (b) and (5), cr. (3) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (b) and (d), Register, April, 1993, No. 448, eff. 5-1-93.

### Subchapter X Administrative Provisions

**Tax 11.91 Successor's liability. (1) DESCRIPTION OF SUCCESSOR.** (a) A purchaser or assignee of the business or stock of goods, including furniture, fixtures, equipment and inventory, of any retailer liable for sales or use tax shall be personally liable for the payment of the sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation is created and acquires the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for any sales or use tax liability of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a creditor, including a financial institution, actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered, if it never operates the business and if its sole purpose is to sell the business in its entirety, as a whole or piecemeal, at whatever price it can obtain to recover its investment.

**(2) EXTENT OF LIABILITY.** (a) If there is no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

**(3) PROCEDURES FOR PURCHASER.** (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. An oral request for a clearance certificate shall not be accepted. The letter requesting the certificate shall include the real name, business name and seller's permit number, if known, of the prior operator. All sales tax returns for

all periods during which the predecessor operated shall be filed with the department before it may issue the certificate.

(c) Under s. 77.52 (18) (a), Stats., the department has 60 days from the date it receives the request for a clearance certificate or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

**(4) DEPARTMENT'S COLLECTION PROCEDURES.** (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

Note: Section Tax 11.91 interprets s. 77.52 (18), Stats.

Note: The interpretations in s. Tax 11.91 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (a), (b) and (g), (2) (a) and (3) (b) and (c) (intro.), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.92 Records and record keeping. (1) GENERAL.** All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in Wisconsin tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices which shall contain a posting reference, cash register tapes, credit memoranda which shall carry a reference to the document evidencing the original transaction or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. These records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property, including any services that are a part of the sale or lease, made within Wisconsin even if the seller or lessor regards the receipts as taxable or nontaxable. Taxable gross receipts shall be reported on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order and the supplier's invoice or billing document. Sales to organizations holding a certificate of exempt status, CES, including religious or charitable organizations, can be shown to be exempt by recording the CES number on the seller's copy of the bill of sale. All other exempt sales shall be supported by an exemption certificate signed by the purchaser and retained by the seller, unless the merchandise sold is specifically exempted by statute regardless of use, such as groceries. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase



orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in Wisconsin.

(d) Every person subject to the county sales and use tax shall keep a record of sales the person completes in each county enacting an ordinance under s. 77.70, Stats., imposing a county tax, separately from sales made elsewhere in the state. Every person shall also keep a record of the sales price of items on which the person is subject to county use or excise tax in each enacting county.

(2) **MICROFILM RECORDS.** Microfilm, including microfiche, reproductions of general books of account, such as cash books, journals, voucher registers and ledgers, and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

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

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

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

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

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

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

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

determination shall be preserved and retained until the tax redetermination has been finally resolved.

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

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

(7) **PENALTIES.** If the department has given notice to a person to keep certain sales and use tax records, and thereafter additional sales or use taxes are assessed on the basis of information not contained in the records, the department shall impose a penalty equal to 25% of the amount of sales or use tax assessed. This is in addition to all other penalties provided by law.

Note: Section Tax 11.92 interprets ss. 77.51 (4) (d), 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9) and 77.75, Stats.

Note: The interpretations in this s. Tax 11.92 are effective under the general sales and use tax law on and after September 1, 1969, except that the 25% penalty in sub. (7) became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; emerg. cr. (1) (d), eff. 3-24-86; cr. (1) (d), Register, October, 1986, No. 370, eff. 11-1-86; am. (1) (intro.), (a), (b) and (c), (2) (intro.), (3) (intro.) and (c) and (4), cr. (7), Register, June, 1991, No. 426, eff. 7-1-91.

#### Tax 11.925 Sales and use tax security deposits.

(1) **GENERAL.** Under s. 77.61 (2), Stats., the department may require a person liable for sales and use taxes to make a security deposit before or after a seller's permit is issued. The amount of the security deposit determined by the department may not exceed \$15,000. If a person fails or refuses to make a security deposit as requested, the department may refuse to issue a permit or revoke the permit.

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

1. Evidence of adequate financial responsibility. Evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.
2. Prior record of filing tax returns and paying taxes of any kind with the department.
3. Type of business.

Example: A temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location.

#### 4. Type of entity.

Example: A sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets.

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

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

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

- (a) *Non interest-bearing.* 1. Cash, certified check or money order.
2. Surety bonds issued by authorized underwriters.

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

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A security assignment, form S-127, shall be completed if this type of security is selected.

**Note:** Form S-127 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, (608) 266-2278.

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

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

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

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

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

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

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

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

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

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

(d) Compliance with subch. III, ch. 77, Stats., means that:

1. Sales and use tax returns were timely filed.

2. All payments were made when due.

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

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

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

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

**Note:** Section Tax 11.925 interprets s. 77.61 (2), Stats.

**Note:** The interpretations in s. Tax 11.925 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The return of deposit provisions in sub. (5) became effective March 13, 1980, pursuant to Chapter 125, Laws of 1979; and (b) The \$15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wis. Act 29.

**History:** Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. (1), (2) (a) 1., 3., and 4., (3) (b) 2., and (5) (c). Register, March, 1991, No. 423, eff. 4-1-91; am. (1), (2) (b), (3) (b) 1., (5) (c), (d) 4. and 5., r. (3) (a) 3., Register, December, 1992, No. 444, eff. 1-1-93.

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

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

**Note:** Section Tax 11.93 interprets s. 77.58 (5), Stats.

**Note:** The interpretations in s. Tax 11.93 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to that date, a \$100 standard applied; and (b) The "annual information return" was eliminated for 1981 and subsequent years, pursuant to Chapter 221, Laws of 1979.

**History:** Cr. Register, December, 1978, No. 276, eff. 1-1-79; r. (4), Register, January, 1983, No. 325, eff. 2-1-83; r. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

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

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is not a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employes or by a contract carrier engaged by the seller.

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

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

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

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

**Example:** When the seller charges the purchaser for delivery of the taxable tangible personal property in a Wisconsin county that has not adopted the 1/2 % county tax, the correct computation of tax is as follows:

Selling price of merchandise	\$100.00
Delivery charge	10.00
Subtotal	\$110.00
Tax at 5% (\$110 × 5%)	5.50
Total	\$115.50

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

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(d) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller.

**Example:** If the "delivered price" of a carload of lumber is \$6,000, including transportation, and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

**Note:** Section Tax 11.94 interprets ss. 77.51 (14) (intro.) and (d) and (14r) and 77.52 (1), Stats.

**Note:** The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969.

**History:** Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (e), r. (2) (b), renum. (2) (c), (d) and (e) to be (2) (b), (c) and (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (2) (b) and (d), Register, June, 1991, No. 426, eff. 7-1-91; reprinted to restore dropped copy in (1) (b), Register, December, 1995, No. 480.

**Tax 11.95 Retailer's discount. (1) COMPUTATION.** (a) Effective for Wisconsin sales and use tax returns filed for periods ending on or after January 1, 1997, for timely reporting state, county and stadium sales or use tax collected on their retail sales, except as provided in par. (b), retailers may deduct 0.5% of the sales and use tax payable on retail sales.

(b) If, for each reporting period required under s. 77.58 (1), Stats., multiplying the sales and use tax payable on retail sales by 0.5% results in \$10 or less, the retailer's discount is the lesser of \$10 or the amount of the sales and use tax payable on retail sales.

(2) **RETAILER'S DISCOUNT ALLOWED.** The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted.

(3) **RETAILER'S DISCOUNT NOT ALLOWED.** The retailer's discount is not allowed if any one of the following applies:

- The payment of sales and use tax is delinquent.
- The sales and use tax payable is as a result of a deficiency determination or filing an amended return after the due date of the return, or after the expiration of any extension period if one has been granted.
- The use tax payable is imposed pursuant to s. 77.53 (2), Stats.

**Note:** Section Tax 11.95 interprets ss. 77.61 (4) (c), 77.76 (3) and (3m) and 77.79, Stats.

**Note:** (a) The amount of retailer's discount on or after January 1, 1983 until December 31, 1992 was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use tax payable and 0.5% of the sales and use tax payable in excess of \$20,000 each year; (b) The requirement that county tax be remitted by dealers to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wis. Act 141; (c) The amount of retailer's

discount for returns filed for periods ending on or after January 1, 1993 and before January 1, 1997, was 0.5% of sales and use tax payable on retail sales, pursuant to 1991 Wis. Act 269; and (d) The amount of retailer's discount in sub. (1) became effective for returns filed for periods ending on or after January 1, 1997, pursuant to 1995 Wis. Act 280.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. Register, September, 1984, No. 345, eff. 10-1-84; emerg. am. (1), eff. 3-24-86; am. (1) Register, October, 1986, No. 370, eff. 11-1-86; am. (1), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), Register, April, 1993, No. 448, eff. 5-1-93; r. and recr. Register, December, 1996, No. 492, eff. 1-1-97.

### Tax 11.97 "Engaged in business" in Wisconsin.

(1) **GENERAL.** (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14th Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established, the out-of-state seller is required to register and collect the state's use tax.

**Note:** Retailers having nexus in Wisconsin for use tax purposes do not necessarily have nexus in Wisconsin for franchise or income tax purposes. Refer to s. Tax 2.82 for nexus standards with respect to franchise and income taxes.

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

- Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)
- Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)
- General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)
- Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)
- Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)
- National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967)
- National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977)

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

(b) Section 77.51 (13g), Stats., defines the term "retailer engaged in business in this state" and s. 77.51 (13h), Stats., provides an exception for foreign publishers.

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

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

- Any retailer owning any real property in this state.
- Any retailer leasing or renting out any tangible personal property located in this state.
- Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.
- Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.
- Any person servicing, repairing or installing equipment or other tangible personal property in Wisconsin.
- Any person delivering goods into this state in company operated vehicles.

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

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

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

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

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

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

(e) A foreign corporation obtaining a certificate of authority from the Wisconsin secretary of state to transact business in Wisconsin.

**(5) EXCEPTION FOR FOREIGN PUBLISHERS.** (a) Under s. 77.51 (13g) and (13h), Stats., a foreign corporation that is a publisher of printed materials does not have nexus in Wisconsin if its only activities in Wisconsin are:

1. Storage of its raw materials for any length of time in Wisconsin in or on property owned by a person, other than the foreign corporation, if the materials are for printing by that person.

2. Delivery of its raw materials to another person in Wisconsin, if the delivery is for printing by that other person.

3. Purchase from a printer of a printing service or of printed materials in Wisconsin for the foreign corporation and the storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation.

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

(b) In this subsection, "raw materials" 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.

**(6) REGISTRATION.** (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Permit", Form A-101. There is no fee for registration.

*Note:* Form A-101 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b) Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate, and the 15-day time period within which the department is required to act on certificate applications.

**(7) OUT-OF-STATE RETAILERS NOT ENGAGED IN BUSINESS IN THIS STATE.** Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may apply for a use tax registration certificate with the department in the manner described in sub. (6). Holders of the use tax registration certificates shall collect the use tax from Wisconsin customers, give receipts therefor and report and pay

the use tax to the Wisconsin department of revenue in the same manner as retailers engaged in business in this state.

**(8) ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES.** The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a county which has adopted the tax. The activities in sub. (4) which do not create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

*Note:* Section Tax 11.97 interprets ss. 77.51 (13) (c) and (k), (13g), (13b) and (14) (j), 77.53 (3), (5), (7), (9) and (9m) and 77.73, Stats.

*Note:* The interpretations in s. Tax 11.97 are effective under the general sales tax law on and after September 1, 1969, except that the provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wis. Act 336.

*History:* Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; cr. (5) (c), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (6), eff. 3-24-86; cr. (6), Register, October, 1986, No. 370, eff. 11-1-86; cr. (4) (c) and (5), r. and recr. (2) (b), am. (1) and (3) (d) and (e), renum. (5) (a) to (c) and (6) to be (6) (a), (7), (6) (b) and (8) and am. (6) (a), (b) and (7), Register, March, 1991, No. 423, eff. 4-1-91.

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

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

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

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

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

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

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

(b) The taxpayer's financial condition.

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

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

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

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

*Note:* Section Tax 11.98 interprets ss. 71.82 (2) (b), 77.60 (2) and 77.62 (1), Stats.

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

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

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