

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-026

AN ORDER to renumber Tax 11.83 (8) (b) 3.; to renumber and amend Tax 11.83 (1) and (8) (b) 2.; to amend Tax 11.26 (2) (c) and (d), 11.41 (1) (b) 2. b. and (3) (b) and (h) and 11.83 (8) (b) 1., (c) (intro.) and 2. and (d); and to create Tax 11.26 (2) (h) and (3) (c), 11.32 (9) and 11.83 (1) (title), (intro.) and (a) and (8) (b) 2., relating to the sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles.

Submitted by **DEPARTMENT OF REVENUE**

02-11-99 RECEIVED BY LEGISLATIVE COUNCIL.
03-11-99 REPORT SENT TO AGENCY.

RNS:WF:kjf;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-026

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

The second occurrence of the phrase "par. (a)" should be deleted from s. Tax 11.32 (9) (c).



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

June 4, 1999

Honorable Fred Risser
President, State Senate
Rm 220 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Scott Jensen
Speaker State Assembly
Rm 211 W State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 99-026

Dear Senator Risser and Representative Jensen:

Pursuant to s. 227.19(2), Stats., this is to notify you that the proposed rule order relating to sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles is in final draft form. The proposed rule order was published in the **Wisconsin Administrative Register** on April 30, 1999. A public hearing was not required under the exception provided in s. 227.16(2)(e), Stats.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows:

Summary of Proposed Rule Order

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(4)(a)4. and (b)3. and 7. and (15)(a)4. and (b)4. and 6., 77.53(1m)(a) and 77.54(2), Stats.

SECTIONS 1 AND 3. Tax 11.26(2)(c) is amended and Tax 11.26(3)(c) is created, to reflect the amendment to s. 77.51(4)(a)4. and (15)(a)4., Stats., by 1997 Wis. Act 27, which excludes from gross receipts and sales price motor fuel taxes refunded.

Tax 11.26(2)(d) is amended, to reflect current terminology relating to alternate fuels tax.

SECTION 2. Tax 11.26(2)(h) is created, to add the federal gas guzzler tax not previously listed in the rule.

SECTION 4. Tax 11.32(9) is created, to provide the tax treatment of sales of manufactured buildings, as a result of amendments to s. 77.51(4)(b)3. and (15)(b)4., Stats., and the creation of s. 77.51(4)(b)7. and (15)(b)6., Stats., by 1997 Wis. Act 27.

SECTION 5. Tax 11.41(1)(b)2.b. is amended, to clarify that the property manufactured must be destined for sale as tangible personal property to qualify for the manufacturing exemption in s. 77.54(2), Stats.

Tax 11.41(3)(b) and (h) are amended, to reflect proper punctuation per Legislative Council Rules Clearinghouse standards.

SECTIONS 6 THROUGH 11. The following changes are made to reflect the amendment to s. 77.53(1m)(a), Stats., by 1997 Wis. Act 27, allowing the use of an amount per plate per month as the measure of use tax for vehicles assigned to owners of a dealership, and to reflect the increase from \$96 to \$104 per plate per month as the measure of use tax.

Tax 11.83(1) is renumbered Tax 11.83(1)(b) and amended, and Tax 11.83(1)(title), (intro.) and (a) are created, to add a definition of "actively participates."

Tax 11.83(8)(b)1. is amended, subds. 2. and 3. are renumbered 3. and 4. and as renumbered subd. 3.(intro.) is amended, and new subd. 2. is created.

Tax 11.83(8)(c)(intro.) and 2. and (d) are amended.

Sincerely,



Cate Zeuske
Secretary of Revenue

CZ:MPW:cil
e:rules1126 Committees - President Speaker

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 99-026
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to:

- Reflect law changes and new legislation relating to sales of manufactured buildings, the exclusion for motor vehicle excise taxes refunded, and the measure of use tax for vehicles assigned to owners of a dealership.
- Update the dollar amount of the measure of use tax on dealer plates.
- Clarify the manufacturing exemption relating to property manufactured and destined for sale.
- Update lists of various taxes not previously included in rules and examples.
- Reflect current terminology relating to alternate fuels tax.
- Reflect proper punctuation per Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was not required, pursuant to s. 227.17(2)(e), Stats.

Legislative Council Staff Recommendations

All Legislative Council staff recommendations have been incorporated into the proposed rule.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
RENUMBERING, RENUMBERING AND AMENDING,
AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: renumber Tax 11.83(8)(b)3.; renumber and amend Tax 11.83(1) and (8)(b)2.; amend Tax 11.26(2)(c) and (d), 11.41(1)(b)2.b. and (3)(b) and (h) and 11.83(8)(b)1., (c)(intro.) and 2. and (d); and create Tax 11.26(2)(h) and (3)(c), 11.32(9) and 11.83(1)(title), (intro.) and (a) and (8)(b)2., relating to the sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(4)(a)4. and (b)3. and 7. and (15)(a)4. and (b)4. and 6., 77.53(1m)(a) and 77.54(2), Stats.

SECTIONS 1 AND 3. Tax 11.26(2)(c) is amended and Tax 11.26(3)(c) is created, to reflect the amendment to s. 77.51(4)(a)4. and (15)(a)4., Stats., by 1997 Wis. Act 27, which excludes from gross receipts and sales price motor fuel taxes refunded.

Tax 11.26(2)(d) is amended, to reflect current terminology relating to alternate fuels tax.

SECTION 2. Tax 11.26(2)(h) is created, to add the federal gas guzzler tax not previously listed in the rule.

SECTION 4. Tax 11.32(9) is created, to provide the tax treatment of sales of manufactured buildings, as a result of amendments to s. 77.51(4)(b)3. and (15)(b)4., Stats., and the creation of s. 77.51(4)(b)7. and (15)(b)6., Stats., by 1997 Wis. Act 27.

SECTION 5. Tax 11.41(1)(b)2.b. is amended, to clarify that the property manufactured must be destined for sale as tangible personal property to qualify for the manufacturing exemption in s. 77.54(2), Stats.

Tax 11.41(3)(b) and (h) are amended, to reflect proper punctuation per Legislative Council Rules Clearinghouse standards.

SECTIONS 6 THROUGH 11. The following changes are made to reflect the amendment to s. 77.53(1m)(a), Stats., by 1997 Wis. Act 27, allowing the use of an amount per plate per month as the measure of use tax for vehicles assigned to owners of a dealership, and to reflect the increase from \$96 to \$104 per plate per month as the measure of use tax.

Tax 11.83(1) is renumbered Tax 11.83(1)(b) and amended, and Tax 11.83(1)(title), (intro.) and (a) are created, to add a definition of "actively participates."

Tax 11.83(8)(b)1. is amended, subds. 2. and 3. are renumbered 3. and 4. and as renumbered subd. 3.(intro.) is amended, and new subd. 2. is created.

Tax 11.83(8)(c)(intro.) and 2. and (d) are amended.

SECTION 1. Tax 11.26(2)(c) and (d) are amended to read:

Tax 11.26(2)(c) Any federal stamp tax and manufacturer's or importer's excise tax. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel except motor fuel taxes refunded, tires, firearms, sporting goods and air or ship transportation.

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

SECTION 2. Tax 11.26(2)(h) is created to read:

Tax 11.26(2)(h) The federal gas guzzler tax imposed under s. 4064 of the internal revenue code.

Note to Revisor: Replace the examples following sub. (3)(b) with the following:

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

1) The room taxes imposed under s. 66.75, Stats., which municipalities or local exposition districts impose on persons furnishing lodging to transients.

2) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the internal revenue code.

3) The county and stadium sales and use taxes imposed under s. 77.71, Stats.

4) The local exposition district food and beverage and rental car taxes imposed under ss. 77.98 and 77.99, Stats.

5) The premier resort area taxes imposed under s. 77.994, Stats.

6) The state rental vehicle fee imposed under s. 77.995, Stats.

7) The federal luxury tax imposed under ss. 4001 through 4007 of the internal revenue code.

SECTION 3. Tax 11.26(3)(c) is created to read:

Tax 11.26(3)(c) Federal and Wisconsin motor vehicle excise taxes refunded.

Note to Revisor: Replace the second note at the end of Tax 11.26 with the following:

Note: The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969, except: The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

SECTION 4. Tax 11.32(9) is created to read:

Tax 11.32(9) MANUFACTURED BUILDINGS. (a) Gross receipts and sales price from the sale of a "manufactured building," as defined in s. 101.71(6), Stats., that is tangible personal property when sold, may be reduced by one of the following:

1. 35% of the sales price.

2. An amount equal to the sales price minus the cost of the materials that become an ingredient or component part of the manufactured building.

(b) No credit is allowed for trade-ins if gross receipts or sales price are reduced under par. (a).

(c) Once a retailer reduces gross receipts or sales price by the amount in par. (a)1. or 2., the retailer shall continue to use that method of reduction for all sales of manufactured buildings, that are tangible personal property when sold, until such time as the department approves in writing the use of the other method.

Example: Building Manufacturer sells a manufactured building, as defined in s. 101.71(6), Stats., in Wisconsin to Dealer. Dealer will affix the manufactured building to real property in Wisconsin for Customer under a contract between Dealer and Customer. This is the first manufactured building, as defined in s. 101.71(6), Stats., sold by Building Manufacturer pursuant to a contract entered into on or after December 1, 1997. Additional facts are as follows:

- \$40,000 is the cost of materials purchased by Building Manufacturer that become an ingredient or component part of the manufactured building.

- \$65,000 is the sales price of the manufactured building by Building Manufacturer to Dealer.

The amount subject to sales tax on the sale of the manufactured building to Dealer is one of the following:

(1) \$42,250, which is the \$65,000 sales price reduced by \$22,750 (35% of the sales price).

(2) \$40,000, which is the \$65,000 sales price reduced by \$25,000 (the sales price minus the cost of materials).

If Building Manufacturer chooses the method under (1) for computing gross receipts from the sale of this manufactured building, it must use the method under (1) for computing gross receipts from all future sales of manufactured buildings, until the department approves in writing the use of the method under (2).

Note to Revisor: Replace the first note at the end of Tax 11.32 with the following:

Note: Section Tax 11.32 interprets ss. 77.51(4)(a)(intro.) and 4., (b)1., 3., 6. and 7. and (c) 2. and (15)(a)(intro.) and 4., (b)1., 4., 5. and 6. and (c)1. and 77.61(3), Stats.

Note to Revisor: In the second note at the end of Tax 11.32, remove the word "and" before part (c) and add the following at the end of the note:

; and (d) The reduction of gross receipts and sales price for sales of manufactured buildings, as defined in s. 101.71(6), Stats., became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27.

SECTION 5. Tax 11.41(1)(b)2.b. and (3)(b) and (h) are amended to read:

Tax 11.41(1)(b)2.b. The property manufactured is not destined for sale as tangible personal property.

Note to Revisor: Replace example 2 following sub. (2)(b) with the following:

2) A manufacturer-contractor is not entitled to the exemption when purchasing tangible personal property consumed, destroyed or losing its identity in the manufacture of building components which it, as a contractor, will affix to real property in a real property construction activity.

(3)(b) Milling cutters.

(h) Wearing apparel for the comfort or welfare of the employe or for the protection of the employe's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants,

coats, and fur-lined boots and jackets.

Note to Revisor: In the third note at the end of Tax 11.41, delete the words "in sub. (5)."

SECTION 6. Tax 11.83(1) is renumbered Tax 11.83(1)(b) and amended to read:

Tax 11.83(1)(b) ~~DEFINITION. In this section, "motor~~ "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.

SECTION 7. Tax 11.83(1)(title), (intro.) and (a) are created to read:

Tax 11.83(1)(title) DEFINITIONS.

(intro.) In this section:

(a) "Actively participates" means the person performs services for the dealership, including selling, accounting, managing and consulting, for more than 500 hours in a taxable year for which the person receives compensation. "Actively participates" does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use or monitoring the finances or operations of the activity in a nonmanagerial capacity.

SECTION 8. Tax 11.83(8)(b)1. is amended to read:

Tax 11.83(8)(b)1. Motor vehicles held for sale which are assigned to and used by a specific dealer employe subject to withholding from federal income tax on wages are subject to

Wisconsin use tax on ~~\$96~~ \$104 per motor vehicle registration plate per month. The \$104 amount is effective January 1, 1999 and is subject to change annually as explained in the notes following sub. (8)(b).

Note to Revisor: Remove the note at the end of Tax 11.83(8)(b)1.

SECTION 9. Tax 11.83(8)(b)2. and 3. are renumbered Tax 11.83(8)(b)3. and 4. and as renumbered Tax 11.83(8)(b)3.(intro.) is amended to read:

Tax 11.83(8)(b)3.(intro.) Motor vehicles held for sale and not assigned to and used by 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 regulations~~ 26 CFR 1.61-21(d)(2). In the lease value table, the "automobile fair market value" is one of the following:

SECTION 10. Tax 11.83(8)(b)2. is created to read:

Tax 11.83(8)(b)2. Motor vehicles held for sale which are assigned to and used by persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, are subject to Wisconsin use tax on \$104 per motor vehicle registration plate per month. The \$104 amount is effective January 1, 1999 and is subject to change annually as explained in the notes below.

Note: As provided in s. 77.53(1m), Stats., the department will annually adjust the

amount per plate 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.

Note: The amount per plate subject to use tax under par. (b)1. and 2. was \$96 for the period September 1, 1995 through December 31, 1996, \$99 for the period January 1, 1997 through December 31, 1997, and \$102 for the period January 1, 1998 through December 31, 1998.

SECTION 11. Tax 11.83(8)(c)(intro.) and 2. and (d) are amended to read:

Tax 11.83(8)(c)(intro.) 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 employees subject to withholding for federal income tax purposes or owners who actively participate in the day-to-day operations of the dealership for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par. (b)1. and 2., unless one of the following applies:

2. The motor vehicle to which the dealer plate is assigned is subject to use tax as computed in par.(b)~~2.~~ or 3. or 4.

(d) Transitional provision. For motor vehicles, not assigned to employees or salespersons subject to federal withholding on wages or owners who actively participate in the day-to-day operations of the dealership, 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.~~3. does not apply.

Note to Revisor: In the second note at the end of Tax 11.83, replace the portion of the note beginning with the word "and" before part (h), with the following:

(h) The measure of use tax on motor vehicles as described in sub. (8)(b)1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; and (i) The use of the amount per plate rather than the lease value, as described in sub. (8)(b)2., as the measure of

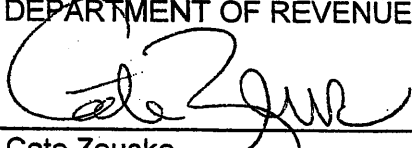
use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: April 6, 1999

DEPARTMENT OF REVENUE

By: _____
Cate Zeuske
Secretary of Revenue

1126 Proposed Order

LRB or Bill No./Adm. Rule No.

TAX 11.26, 11.32, 11.41, 11.83

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Refunded Motor Fuels, Manufactured Buildings and Motor Vehicles

Fiscal Effect

State: No State Fiscal Effect

Check columns below, only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns
- Villages
- Cities
- Counties
- Others _____
- School Districts
- WTCS Districts

Fund Sources Affected

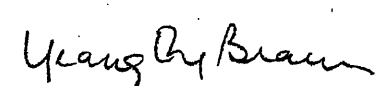
- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule reflects changes made in the sales and use tax treatment of refunded motor fuel taxes, manufactured buildings, and motor vehicles used by motor vehicle dealers by 1997 Wisconsin Act 27. It also clarifies existing rules and makes stylistic changes to conform to Legislative Council Rules Clearinghouse standards. It has no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) Wisconsin Department Of Revenue Dennis Collier, (608) 266-5773	Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 	Date 9/23/98
---	---	-----------------