

WISCONSIN LEGISLATIVE COUNCIL STAFF



**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 99-076**

AN ORDER to repeal Tax 11.51 (2) (c) (intro.); to renumber Tax 11.51 (2) (c) 1. and 2. and (3); to renumber and amend Tax 11.51 (2) (c) (title) and 3. to 5.; to amend Tax 11.51 (1) and (2) (a) and (b); and to create Tax 11.51 (3) (intro.), (e), (f), (g) 2. and (h), relating to taxable and exempt sales by grocers.

Submitted by **DEPARTMENT OF REVENUE**

04-23-99 RECEIVED BY LEGISLATIVE COUNCIL.  
05-20-99 REPORT SENT TO AGENCY.

RNS:WF:jal;wu

**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

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## CLEARINGHOUSE RULE 99-076

### 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**

In s. Tax 11.51 (3) (f) 1., "mean" should replace "are."



# State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson  
Governor

Cate Zeuske  
Secretary of Revenue

July 26, 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 99-076

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 taxable and exempt sales by grocers is in final draft form. The proposed rule order was published in the **Wisconsin Administrative Register** in Mid-June 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)(cm), 77.52(1) and 77.54(15) and (20), Stats.

SECTION 1. Tax 11.51(1) is revised, to reflect the renumbering of sub. (2)(c), as explained below.

Tax 11.51(2)(a) and (b) are revised, to list additional items of taxable and exempt sales by grocery stores, to reflect current Department policy relating to fruit juices, to reflect the treatment of "sandwiches" and to reference each of the paragraphs in sub. (3), as renumbered from sub. (2)(c) or as newly created. In addition, "beer making supplies" is removed from the list of taxable sales in sub. (2)(a) because it is misleading. Certain exempt food items, such as yeast, are used in making beer and could be considered "beer making supplies."

SECTIONS 2 TO 5 AND 7. Tax 11.51(2)(c)(title) and 1. to 5. are renumbered Tax 11.51(3)(title) and (a), (b), (c), (d) and (g)1., Tax 11.51(2)(c)(intro.) is repealed and Tax 11.51

Honorable Fred Risser  
Honorable Scott Jensen  
Page 2

(3)(intro.) is created, to place the contents of the paragraph in a separate subsection. The material in sub. (2)(c) is not a guidelist, as the title to sub. (2) suggests.

Tax 11.51(3)(c) as renumbered is revised, to reflect current Department policy relating to fruit juices.

Tax 11.51(3)(d) as renumbered is revised, to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.51(3)(g)1. as renumbered is revised and sub. (3)(g)2. is created, to provide separate subdivisions for taxable and exempt deli sales and to remove language relating to sandwiches and meals, due to the creation of sub.(3)(e) and (f) as explained below.

Tax 11.51(3)(e) and (f) are created, to provide definitions of "meal" and "sandwich," respectively, as a result of the creation of s. 77.54(20)(bg)1. and 2., Stats., by 1997 Wis. Act 237.

Tax 11.51(3)(h) is created, to provide that gross receipts from sales of certain prepackaged food combinations are not taxable, as a result of the creation of s. 77.51(4)(cm), Stats., by 1997 Wis. Act 237.

SECTION 6. Tax 11.51(3) is renumbered Tax 11.51(4), due to the renumbering of Tax 11.51(2)(c) to Tax 11.51(3).

Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules\1151 Committees - President Speaker

Enclosure

cc: Deputy Revisor

**DEPARTMENT OF REVENUE**  
**CLEARINGHOUSE RULE NUMBER 99-076**  
**SECTION 227.19(2) AND (3), STATS., REPORT**

**Need for Proposed Rule**

The rule is necessary to:

- List additional items of taxable and exempt sales by grocers
- Delete "beer making supplies" as a taxable sale by grocers.
- Provide additional information relating to meals and sandwiches, to reflect the creation of s. 77.54(20)(bg)1. and 2., Stats., by 1997 Wis. Act 237.
- Provide that certain prepackaged food combination sales are not taxable, as a result of the creation of s. 77.51(4)(cm), Stats., by 1997 Wis. Act 237.
- Reflect current Department policy relating to fruit juices.
- Conform style to 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 this 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  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING,  
AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.51(2)(c)(intro.); renumber Tax 11.51(2)(c)1. and 2. and (3); renumber and amend Tax 11.51(2)(c)(title) and 3. to 5.; amend Tax 11.51(1) and (2)(a) and (b); and create Tax 11.51(3)(intro.), (e), (f), (g)2. and (h), relating to taxable and exempt sales by grocers.

---

***Analysis by the Department of Revenue***

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

Statutes interpreted: ss. 77.51(4)(cm), 77.52(1) and 77.54(15) and (20), Stats.

SECTION 1. Tax 11.51(1) is revised, to reflect the renumbering of sub. (2)(c), as explained below.

Tax 11.51(2)(a) and (b) are revised, to list additional items of taxable and exempt sales by grocery stores, to reflect current Department policy relating to fruit juices, to reflect the treatment of "sandwiches" and to reference each of the paragraphs in sub. (3), as renumbered from sub. (2)(c) or as newly created. In addition, "beer making supplies" is removed from the list of taxable sales in sub. (2)(a) because it is misleading. Certain exempt food items, such as yeast, are used in making beer and could be considered "beer making supplies."

SECTIONS 2 TO 5 AND 7. Tax 11.51(2)(c)(title) and 1. to 5. are renumbered Tax 11.51(3)(title) and (a), (b), (c), (d) and (g)1., Tax 11.51(2)(c)(intro.) is repealed and Tax 11.51(3)(intro.) is created, to place the contents of the paragraph in a separate subsection. The material in sub. (2)(c) is not a guidelist, as the title to sub. (2) suggests.

Tax 11.51(3)(c) as renumbered is revised, to reflect current Department policy relating to fruit juices.

Tax 11.51(3)(d) as renumbered is revised, to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.51(3)(g)1. as renumbered is revised and sub. (3)(g)2. is created, to provide separate subdivisions for taxable and exempt deli sales and to remove language relating to sandwiches and meals, due to the creation of sub.(3)(e) and (f) as explained below.

Tax 11.51(3)(e) and (f) are created, to provide definitions of "meal" and "sandwich," respectively, as a result of the creation of s. 77.54(20)(bg)1. and 2., Stats., by 1997 Wis. Act 237.

Tax 11.51(3)(h) is created, to provide that gross receipts from sales of certain prepackaged food combinations are not taxable, as a result of the creation of s. 77.51(4)(cm), Stats., by 1997 Wis. Act 237.

SECTION 6. Tax 11.51(3) is renumbered Tax 11.51(4), due to the renumbering of Tax 11.51(2)(c) to Tax 11.51(3).

---

SECTION 1. Tax 11.51(1) and (2)(a) and (b) are amended to read:

Tax 11.51(1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages," which generally exempts all basic food items for human consumption off the premises of the grocer. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages, including bases or concentrates to produce soft drinks and fruit drinks, beer, intoxicating liquors, candy, paper products and detergents. The lists in sub. (2)(a) and (b) shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

**Note to Revisor:** Amend only the following portions of the alphabetical lists in sub. (2)(a) and (b):

(2)(a) ...

~~Beer making supplies.~~

...

~~Deli items, see par. (e)5. as explained in sub. (3)(g)2.~~

...

~~Fruit drinks, liquid and powdered, see par. (e)2. if not pure fruit juice, as explained in sub. (3)(b).~~

...

Greeting cards.

Grilling supplies.

Grooming aids.

...

~~Heated foods and beverages, see par. (e)1. as explained in sub. (3)(a).~~

...

Household equipment and supplies.

Hygiene products.



Ice, cube and block.

...

Matches.

Meals, as explained in sub. (3)(e).

Medicinal preparations.

...

Powdered fruit drinks, ~~see par. (e)2.~~ as explained in sub. (3)(b).

...

Sandwiches, hot or cold, but not frozen, as explained in sub. (3)(f).

...

Soaps.

Soda fountain items.

Soda water beverages, ~~see par. (e)2.~~ as explained in sub. (3)(b).

Soft drinks, ~~see par. (e)2.~~ as explained in sub. (3)(b).

...

(b) ...

Cream.

Deli items, as explained in sub. (3)(g)1.

Desserts and toppings.

Dietary foods, ~~see par. (e)4.~~ as explained in sub. (3)(d).

...

Frozen fruit juices, ~~see par. (e)3.~~ as explained in sub. (3)(c).

...

Juices, pure fruit, ~~see par. (e)3.~~ as explained in sub. (3)(c).

...

Potato salad, ~~see par. (e) 5.~~ as explained in sub. (3)(g)1.

Poultry and poultry products.

Prepackaged food combinations, as explained sub. (3)(h).

Preserves.

...

SECTION 2. Tax 11.51(2)(c)(title) is renumbered Tax 11.51(3)(title) and amended to read:

Tax 11.51(3)(title) EXPLANATIONS OF SOME ITEMS NOTED ABOVE TAXABLE AND EXEMPT SALES BY GROCERS.

SECTION 3. Tax 11.51(2)(c)(intro.) is repealed.

SECTION 4. Tax 11.51(2)(c)1. to 4. are renumbered Tax 11.51(3)(a) to (d), and as renumbered Tax 11.51(3)(c) and (d) are amended to read:

Tax 11.51(3)(c) Sales of pure fruit juices as defined in ch. 97, 1967 Stats., are not taxable. Fruit juices are the clean, unfermented liquid product obtained by the first pressing of fresh ripe fruits. The only permissible additives are sugar and one of the preservatives such as sodium benzoate, sorbic acid or sodium sorbate. Frozen concentrates conforming to the above description are also tax exempt. To be exempt, the title of the fruit juice on the label shall generally will contain the word juice to the exclusion of all other words such as cocktail, drink, punch, ade or nectar ~~in compliance with requirements set by the United States food and drug administration.~~ However, if a fruit juice label also contains the word cocktail, drink, punch, ade or nectar but is 100% pure fruit juice, the juice is not subject to Wisconsin sales tax.

**Note to Revisor:** In examples 2 and 3 at the end of sub. (3)(c) as renumbered, add the words "if it does not contain 100% pure fruit juice" at the end of each example.

(d) "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal, Slimfast ~~Powder Drinks and Bars~~ powder drinks and bars and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, and Ensure and Enrich nutrition supplements, and compressed or concentrated foods taken in wafer form which can be identified as food because of higher concentrated food values

of carbohydrates and proteins. Dietary foods do not include patent medicines, tonics, vitamins and medical-type preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form used for medicinal or remedial purposes. The sales of these items are taxable.

**Note to Revisor:** Move the examples at the end of sub. (2)(c)4. before renumbering to the end of sub. (3)(d) as renumbered.

SECTION 5. Tax 11.51(2)(c)5. is renumbered Tax 11.51 (3)(g)1. and amended to read:

Tax 11.51(3)(g)1. Deli sales for ~~off-premise~~ off-premise consumption sold by a weight or measure such as by the pound or the dozen, and not at a stated price for any particular combination of the separate ingredients which can be designated as either a meal or sandwich, are exempt. ~~Deli sales for off-premise consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable. Sales of sandwiches are taxable. A meal usually consists of a diversified selection of foods which are not susceptible of consumption in the absence of at least some articles of tableware and which are not conveniently consumed while one is standing or walking.~~

SECTION 6. Tax 11.51(3) is renumbered Tax 11.51(4).

SECTION 7. Tax 11.51(3)(intro.), (e) (f), (g)2. and (h) are created to read:

Tax 11.51(3)(intro.) For purposes of sub. (2):

(e)1. "Meals" include, but are not limited to, a diversified selection of food, food products or beverages that are customarily consumed as a breakfast, lunch or dinner, that may not easily be consumed without an article of tableware and that may not conveniently be consumed while standing or walking.

2. "Meals" do not include:

- a. Frozen items that are sold to a consumer.
- b. Items that are customarily heated or cooked after the retail sale and before they are consumed.
- c. A diversified selection of food, food products and beverages that is packaged together by a person other than the grocer before the sale to the consumer.

(f)1. "Sandwiches" means a food that consists of a filling, such as meat, cheese or a savory mixture, that is placed on a slice, or between two slices, of bread or something that takes the place of bread, such as a roll, croissant or bagel.

2. "Sandwiches" include, but are not limited to:

- a. Burritos, tacos, enchiladas or chimichangas.
- b. Pita sandwiches, gyros and pocket sandwiches.

3. "Sandwiches" do not include:

- a. Hors d'oeuvres or canapes.
- b. Egg rolls.
- c. Cookies, cakes, pies and similar desserts and pastries.
- d. Food that is sold frozen.

(g)2. Deli sales for off-premise consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable.

**Note to Revisor:** Move examples 1 and 3 at the end of sub. (2)(c)5. before renumbering to the end of sub (3)(g) as renumbered, and replace example 2 with the following:

2) A grocer's deli sells a serving of each of the following for \$3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls. Because the sale is at a stated price for a particular combination of ingredients, packaged together by the grocer, which can be considered a meal, the sale is taxable.

(h)1. A combination of food, food products and beverages packaged together with other goods by a person other than the grocer before the grocer makes the sale to the final consumer is a "prepackaged food combination."

2. If 50% or more of the sales price of a prepackaged food combination is attributable to goods that are exempt from Wisconsin sales and use tax, the total selling price of the combined package is exempt from Wisconsin sales and use tax.

**Example:** A grocery store sells to a consumer a package that contains crackers, meat, cheese, candy and a fruit drink that is not 100% pure fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the meat, cheese and crackers, which are exempt items, and \$0.50 is attributable to the candy

and fruit drink, which are taxable items. Since 50% or more of the selling price of the package is attributable to food that is exempt from Wisconsin sales and use tax, the entire \$2 selling price is exempt from Wisconsin sales and use tax.

3. If less than 50% of the sales price of a prepackaged food combination is attributable to goods that are exempt from Wisconsin sales and use tax, that portion of the selling price attributable to the taxable items is subject to Wisconsin sales or use tax.

**Example:** A grocery store sells to a consumer a package that contains a sandwich, pretzels, cookies and a fruit drink that is not 100% pure fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the sandwich and fruit drink, which are taxable items, and \$0.50 is attributable to the pretzels and cookies, which are exempt items. Since less than 50% of the selling price of the package is attributable to food that is exempt from Wisconsin sales and use tax, \$1.50 of the \$2 selling price attributable to taxable items is subject to Wisconsin sales or use tax.

**Note to Revisor:** Replace the two notes at the end of Tax 11.51 with the following:

**Note:** Section Tax 11.51 interprets ss. 77.51(4)(cm), 77.52(1) and 77.54(15) and (20), Stats.

**Note:** The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975; (b) Magazines and periodicals sold over-the-counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27; and (c) The definitions of "meals" and "sandwiches" and the tax treatment of prepackaged food combinations became effective August 1, 1997, pursuant to 1997 Wis. Act 237.

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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

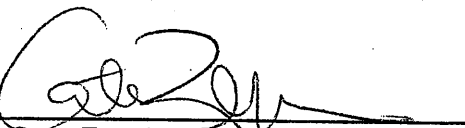
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

7/23/99

By: \_\_\_\_\_

  
Cate Zeuske  
Secretary of Revenue

FISCAL ESTIMATE

- ORIGINAL     UPDATED
- CORRECTED     SUPPLEMENTAL

DOA-2048 N(R10/98)

LRB or Bill No./Adm. Rule No.

Tax 11.51

Amendment No. if Applicable

Subject

Sales Tax Collection; Taxable and Exempt Sales by Grocers

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

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

The proposed order updates the Department of Revenue's Administrative Code relating to taxable and exempt sales by grocers.

Sections 1 and 6 of the order revise, renumber and amend the list of non-exempt grocery products. Sections 2 to 5 and 7 revise and create new sections of the tax code relating to exempt sales by grocery stores in order to reflect current Department policy. Other sections of the rule order clarify the Department's position regarding the sales tax on certain grocery items and renumber and revise the code accordingly in order to conform to Legislative Council Rules Clearinghouse standards. These rule changes will have no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue

John T. Stott, (608) 266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

*Yeang-Eng Braun*

Date

4/8/99