

WISCONSIN LEGISLATIVE COUNCIL STAFF

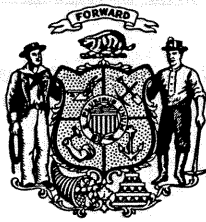
LCRC
FORM 2

APR 14 1999

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 99-054

AN ORDER to repeal Tax 11.94 (2) (d); to renumber Tax 11.05 (3) (m) to (u) and 11.87 (1) (e) and (f); to amend Tax 11.05 (2) (a), (d), (f) and (i), (3) (d) and (L) and (4) (a) and (b) 2., 11.87 (1) (b), (2) (c) and (3) (a) and 11.94 (1) (d) and (2) (a) and (c); to repeal and recreate Tax 11.87 (3) (c); and to create Tax 11.05 (3) (m), (w) and (x) and (4) (b) 3., relating to governmental units; meals, food, food products and beverages; and Wisconsin sales and taxable transportation charges.

Submitted by **DEPARTMENT OF REVENUE**

03-16-99 RECEIVED BY LEGISLATIVE COUNCIL.

04-09-99 REPORT SENT TO AGENCY.

RNS:WF:kjf

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

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

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.94(2)(d); renumber Tax 11.05(3)(m) to (u) and Tax 11.87(1)(e) and (f); amend Tax 11.05(2)(a), (d), (f) and (i), (3)(d) and (L) and (4)(a) and (b)2., Tax 11.87(1)(b), (2)(c) and (3)(a) and Tax 11.94(1)(d) and (2)(a) and (c); repeal and recreate Tax 11.87(3)(c); and create Tax 11.05(3)(m), (w) and (x) and (4)(b)3., relating to governmental units; meals, food, food products and beverages; and Wisconsin sales and taxable transportation charges.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.51(4)(a)3., (14r) and (15)(a)3., 77.52(2)(a) and 77.54(9a), (20)(c) and (20m), Stats.

SECTION 1. Tax 11.05(2)(a) and the example following, sub. (2)(d) and sub. (3)(d) are revised, to provide additional information regarding the facilities to which admissions are taxable.

A note is added at the end of Tax 11.05(2)(b), to reference Tax 11.51 for a list of taxable food products.

Tax 11.05(2)(d) is further revised, to update style per Legislative Council Rules Clearinghouse (Clearinghouse) standards.

Tax 11.05(2)(f) is revised, to reflect the renumbering of sub. (3)(p) as explained in section 2.

Tax 11.05(2)(i) is revised, to clarify that the paragraph applies to the rental of lodging facilities that are available to the public.

Tax 11.05(3)(L) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 2 AND 3. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v) and new Tax 11.05(3)(m) is created, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

Tax 11.05(3)(w) and (x) are created, to list additional items which are not taxable.

SECTION 4. Tax 11.05(4)(a) is revised, to reflect the exemption for purchases of joint local water authorities, as a result of the creation of s. 77.54(9a)(em), Stats., by 1997 Wis. Act 184.

Tax 11.05(4)(b)2. and the note following are revised, to reflect the creation of a new multipurpose exemption certificate, Form S-211, which replaces various other exemption

certificates.

SECTION 5. Tax 11.05(4)(b)3. is created, to reflect that a Wisconsin governmental unit may provide its certificate of exempt status number to a retailer to document that its purchases are exempt.

SECTION 6. Tax 11.87(1)(b) is revised, to include a reference to s. 77.54(20m), Stats., as created by 1997 Wis. Act 237.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e), to alphabetize definitions per Clearinghouse standards.

A note is added at the end of Tax 11.87(1)(h), to reference Tax 11.51 for lists of taxable and exempt items.

SECTION 8. Tax 11.87(2)(c) and the example are revised and a note is added, to clarify the taxability of meals.

Tax 11.87(3)(a) is revised, to clarify the exemption for food and beverages sold by health care facilities.

SECTION 9. Tax 11.87(3)(c) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 10 AND 11. Tax 11.94(1)(d) and (2)(a) are revised, to update style per Clearinghouse standards.

Tax 11.94(2)(c) is revised, to reflect two Circuit Court decisions, *Rhineland Paper Company, Inc. vs. Wisconsin Department of Revenue* (97CV 1051, December 18, 1997) and *Trierweiler Construction and Supply Co., Inc. vs. Wisconsin Department of Revenue* (97CV 1444, December 12, 1997). The Circuit Court held that sales price does not include transportation costs separately incurred by the buyer from a carrier independent of the retailer.

Consequently, Tax 11.94(2)(d) and the example following are repealed, because the answer may vary, depending on the facts. Taxability must be determined on a case-by-case basis.

SECTION 1. Tax 11.05(2)(a), (d), (f) and (i) and (3)(d) and (L) are amended to read:

Tax 11.05(2)(a) Admissions to recreational facilities if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

Note to Revisor: Replace the example at the end of sub. (2)(a) with the following:

Example: Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

*OK beyond
the line*

Note to Revisor: Add the following note at the end of Tax 11.05(2)(b):

Note: See s. Tax 11.51 for a list of food products subject to tax.

(d) Charges for access to or use of athletic facilities, such as baseball and softball diamonds, stadiums and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature.

(f) Sales of maps, plat books, photocopies or other printed material, except as provided in sub. (3)(p)(g).

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

(3)(d) Rental of buildings or space, such as offices, warehouses and meeting rooms, not used for activities which are amusement, athletic, entertainment or recreational in nature.

(L) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employees, residents or guests; meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals; and meals sold to the elderly or handicapped by "mobile meals on wheels."

SECTION 2. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v).

SECTION 3. Tax 11.05(3)(m), (w) and (x) are created to read:

Tax 11.05(3)(m) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.

2. The meals, food, food products or beverages are furnished to a national football league team.

(w) Parking tickets.

(x) Charges for lessons.

SECTION 4. Tax 11.05(4)(a) and (b)2. are amended to read:

Tax 11.05(4)(a) Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof of Wisconsin, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 281.43(4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., local exposition district under subch. II of ch. 229, Stats., joint local water authority created under s. 66.0735, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

(b)2. An A Wisconsin sales and use tax exemption certificate, form ~~S-207~~ or ~~S-209~~

S-211.

Note to Revisor: Replace the note at the end of sub. (4)(b)2. with the following:

Note: Form S-211 is available from any department of revenue office.

SECTION 5. Tax 11.05(4)(b)3. is created to read:

Tax 11.05(4)(b)3. Its certificate of exempt status number that the retailer should record on the invoice or other document it keeps as part of its records.

Note to Revisor: In the second note at the end of Tax 11.05, remove the word "and" before part (t) and add the following at the end of the note:

; and (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41.

SECTION 6. Tax 11.87(1)(b) is amended to read:

Tax 11.87(1)(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20) and (20m), Stats.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e).

Note to Revisor: Add the following note at the end of Tax 11.87(1)(h):

Note: See s. Tax 11.51 to determine which items are exempt food and which items are taxable food.

SECTION 8. Tax 11.87(2)(c) and (3)(a) are amended to read:

Tax 11.87(2)(c)(title) ~~Food components of meals~~ 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 for

consumption either on or off the seller's premises.

Note to Revisor: 1) Replace the example at the end of sub. (2)(c) with the following:

Example: A basket of chicken with cole slaw and french fries sold "to go" is a taxable meal.

2) Add the following note after the example at the end of sub. (2)(c):

Note: See s. Tax 11.51 for a definition of meal.

(3)(a) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., or day care centers registered under ch. 48, Stats., and served on their premises. However, if an affiliated organization sells the items, the exemption does not apply.

Note to Revisor: Do not change the example at the end of sub. (3)(a).

SECTION 9. Tax 11.87(3)(c) is repealed and recreated to read:

Tax 11.87(3)(c) *Institutions of higher education.* Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.
2. The meals, food, food products or beverages are furnished to a national football league team.

Note to Revisor: 1) Replace the first note at the end of Tax 11.87 with the following:

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

2) In the second note at the end of Tax 11.87, remove the word "on" in parts (a) and (c), remove the word "and" before part (c), and add the following at the end of the note:

; (d) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; and (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237.

SECTION 10. Tax 11.94(1)(d) and (2)(a) and (c) are amended to read:

Tax 11.94(1)(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~~ are not subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of the sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(2)(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.

Note to Revisor: Do not change the example at the end of sub. (2)(a).

(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. The "sales price" does not include transportation charges paid by the Wisconsin purchaser to a carrier independent of the seller when the purchaser arranges for the transportation.

SECTION 11. Tax 11.94(2)(d) is repealed.

Note to Revisor: Replace the first note at the end of Tax 11.94 with the following:

Note: Section Tax 11.94 interprets ss. 71.51(4)(a)3., (14)(intro.) and (d), (14r) and (15)(a) and 77.52(1), Stats.

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: 3.15.99

By: 

Cate Zeuske
Secretary of Revenue

i:rules/1105 Proposed Order