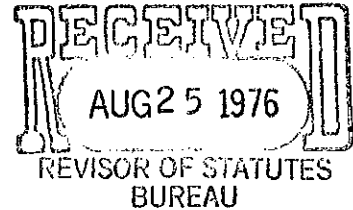


TAX 2, 3, 11

CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN )  
DEPARTMENT OF REVENUE )



TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, David W. Adamany, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on August 23, 1976. These rules relate to the following:

1. Claim for refund on behalf of a deceased taxpayer.
2. Mobile home monthly parking permit fees.
3. Fabricating and processing.
4. Sales by pharmacies and drug stores.
5. Successor's liability for sales and use tax.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 201 East Washington Avenue in the city of Madison, this 23rd day of August, 1976.

A handwritten signature in cursive script that reads "David Adamany".

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David W. Adamany

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a) and 227.014(2), Wis. Stats., the Department hereby adopts the following five rules as shown on the attached copy:

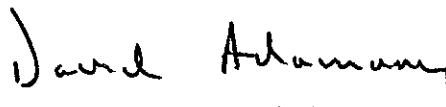
1. Section Tax 2.085, "Claim for refund on behalf of a deceased taxpayer".
2. Section Tax 3.61, "Mobile home monthly parking permit fees".
3. Section Tax 11.38, "Fabricating and processing".
4. Section Tax 11.45, "Sales by pharmacies and drug stores".
5. Section Tax 11.91, "Successor's liability".

The rules contained herein shall take effect on November 1, 1976.

Date this 23rd day of August, 1976.

DEPARTMENT OF REVENUE

By:



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David W. Adamany  
Secretary of Revenue

Section Tax 2.085 of the Wis. Adm. Code is adopted to read:

2.085 Claim for refund on behalf of a deceased taxpayer.

[Section 71.10(10), Wis. Stats.] (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the refund exceeds \$50, the claimant shall file, with the income tax return, a completed form I-804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) Forms required to be filed under sub. (1) shall be mailed to the Department of Revenue, P.O. Box 80, Madison, Wisconsin 53701.

Section Tax 3.61 of the Wis. Adm. Code is adopted to read:

Tax 3.61 Mobile home monthly parking permit fees.

[Section 71.02(2)(f), Wis. Stats.] Mobile home monthly parking permit fees imposed under s. 66.058(3)(c), Wis. Stats., shall be deductible by individuals as an itemized deduction in computing the Wisconsin income tax.

NOTE: The mobile home monthly parking permit fee is an itemized deduction to individuals for the federal income tax under s. 164(a)(2) of the Internal Revenue Code.

Section Tax 11.38 of the Wis. Adm. Code is adopted to read:

Tax 11.38 Fabricating and processing. [Sections 77.61(4)(f)

and (h) and 77.52(2)(a)10 and 11, Wis. Stats.] (1) TAXABLE

FABRICATION. Except for sales for resale described in ss. 77.52(13) to (15), Wis. Stats., types of fabrication charges which are taxable, regardless of whether the customer or fabricator furnishes the materials, include charges for the following:

(a) Printing and imprinting.

(b) Tailoring a suit.

(c) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job. The end result of the fabrication is a modification of a previously manufactured article.

(d) Making curtains, drapes, slip covers or other household furnishings.

(e) Making a fur coat from pelts, gloves or a jacket from a hide.

(f) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers (often referred to as "millending").

(g) Bookbinding.

(h) Heat treating or plating.

(i) Firing of ceramics or china.

(j) Assembling kits to produce a completed article.

(k) Production of a sound recording or a motion picture.

(l) Threading pipe, or welding pipe.

(m) Tanning hides.

- (n) Bending glass tubing into neon signs.
- (o) Laminating identification cards.

(2) TAXABLE PROCESSING. Except for sales for resale described in ss. 77.52(13) to (15), Wis. Stats., types of processing charges which are taxable, regardless of whether the customer or processor furnishes the materials, include charges for the following:

- (a) A caterer's preparation of food for consumption on or off the premises.
- (b) Dyeing or fireproofing fabric.
- (c) Cutting or crushing stones, gravel or other construction materials.
- (d) Retreading tires.
- (e) Drying, planing or ripping lumber.
- (f) Cleaning used oil.
- (g) Application of coating to pipe.

NOTE: Sales or use tax may not apply in many cases because the customer is a manufacturer or other business entitled to issue a valid resale certificate to the producer, fabricator or processor. Such customer purchases the service "for resale" without tax. This rule does not impose a tax in such cases.

Tax applies to charges for producing, fabricating or processing tangible personal property for a consideration for consumers, whether or not the consumers furnish, either directly or indirectly, the materials used in the producing, fabricating or processing operation. Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of tangible personal property except sales for resale. Sales or use tax applies to the entire amount charged for such services, including the charge for materials on which the service is performed.

Section Tax 11.45 of the Wis. Adm. Code is adopted to read:

Tax 11.45 Sales by pharmacies and drug stores. [Sections 77.51(21) and (22) and 77.54(14), (22) and (28), Wis. Stats.] (1) TAXABLE SALES. All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS. (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in par. (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.

14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall not include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.
3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast Materials.
5. Oxygen tanks.

(3) EXEMPT SALES; MEDICAL APPLIANCES AND PROSTHETIC DEVICES.

The exemption for medical appliances and prosthetic devices under ss. 77.54(22) and (28), Wis. Stats., shall apply to sales of the following:

A. Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

B. Trusses, supports, shoes, braces and elastic hose only when specially fitted or altered to fit a particular person. "Altered" includes the bending of metal stays but does not include adjusting straps or seams.

C. Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pacemakers, and other equipment worn as a correction or substitute for any functioning part of the body. This exemption shall not apply to wigs or hair pieces, to garments designed to restrict or



enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not "worn" by a person.

D. Crutches and wheelchairs for the use of invalids and crippled persons, open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.

E. Apparatus or equipment for the injection of insulin.

F. Parts for and services to the exempt items listed in this subsection.

(4) MEDICARE CLAIMS. The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States Treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable items bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

Section Tax 11.91 of the Wis. Adm. Code is adopted to read:

Tax 11.91 Successor's liability. [Section 77.52(18), Wis. Stats.]

(1) DESCRIPTION OF SUCCESSOR. (a) A purchaser or assignee of the business or stock of goods of any retailer liable for sales or use tax shall be personally liable for the payment of such 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 shall be created and shall acquire the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for the sales tax 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 mortgagee who forecloses on a loan to a retailer owing delinquent sales 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.

(2) EXTENT OF LIABILITY. (a) If there shall be 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.

(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. The letter requesting the certificate shall include the real name, business name and seller's permit number (if known) of the prior operator. The department shall have sales tax returns for all periods during which the predecessor operated before it can issue the certificate.

(c) By statute, the department has 60 days from the date it receives the request 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, Wis. 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.