

Chapter Tax 11

SALES AND USE TAX

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Tax 11.01 Concessionaires (sections 77.52 (7), (19) and 77.61 (2), Wis. Stats.). (1) Each person desiring to engage in or conduct business as a concessionaire at a fair, carnival, circus or other temporary location shall file with the department of revenue an application for a temporary seller's permit for each concession on a form prescribed by the department. At the time of filing such application he shall pay to the department a security deposit to protect the revenue of the state, which deposit for each concession shall be \$10, regardless of the number of days a particular concession is operated at the event. At such time he shall also furnish the department with the name and address of his agent in this state upon whom any process, notice or demand required or permitted by law to be served upon him may be served.

(2) A temporary seller's permit shall be valid only for the duration of the event for which it is issued.

(3) Each person granted one or more temporary seller's permits in a calendar year shall, on or before January 31 of the succeeding year, file a concessionaire's annual sales tax return. On such return the security deposited during the calendar year may be claimed as a credit against the tax due.

(4) Examples of "concessionaires" are persons conducting the following businesses at such events: nickel pitch, pop in, ring toss, short range, basketball, guess your weight, jewelry stand, fish pond, photo stand and

tip the bottle. Further examples include persons selling ice cream, cotton candy, candy apples, sno cones, popcorn, or frozen delight from stands at such events.

(5) For purposes of this rule, "concessionaire" does not include:

(a) A person who holds a permanent seller's permit for operating amusement rides, traveling vaudeville performances, menageries or object of curiosity shows;

(b) A person selling meals (including lunches or sandwiches).

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

History: Cr. Register, 1965, No. 114, eff. 7-1-65; am. Register, May, 1966, No. 125, eff. 6-1-66; am. (1), Register, June, 1975, No. 234, eff. 7-1-75.

Tax 11.02 Temporary amusement, entertainment or recreational events or places (sections 77.51 (7) (c), 77.52 (7), (19) and 77.61 (2), Wis. Stats.). (1) "Admission" for the purpose of this rule means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions are subject to sales tax.

(2) "Places of amusement, entertainment or recreation" for the purpose of this rule include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(3) Pursuant to section 77.51 (3), Wis. Stats., and as used in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of section 77.51 (7) (c), Wis. Stats., if said entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(5) As retailers such entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to section 77.52 (7), Wis. Stats., and may be required to post security as provided in section 77.61 (2), Wis. Stats. Such retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax. Further, it does not apply to churches or other nonprofit groups which operate within the occasional sale limitations of section 77.51 (10) (c), Wis. Stats.

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

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76.

Tax 11.03 Elementary and secondary schools and related organizations. (section 77.54 (4), (9) and (9a), Wis. Stats.) (1) DEFINITIONS. (a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in section 119.30, Wis. Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in paragraph (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.
2. School lunches and library and book fines.
3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.
4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, film or other exhibits, lectures and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as

a collection agent for the seller, whether or not the school receives a commission for such collection. The retailer (e.g., a photographer) is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS. Under section 77.54, Wis. Stats., gross receipts from sales to the following organizations are exempt: (a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status. Such organizations include parent-teacher associations and student organizations.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972 through October 3, 1973.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.05 Governmental units. (section 77.51 (3) and 77.54 (9a), Wis. Stats.) (1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following: (a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).

(b) Food and gift stand sales (e.g., sales of tangible personal property such as sandwiches, beverages, candy, cigarettes (effective September 1, 1975), ice cream, confections, tobacco products, postcards, books and novelties). Newspapers and periodicals regularly issued at average intervals not exceeding 3 months are exempt.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.

(e) Sales of electricity, gas and steam by municipal utilities. However, water sold through mains is exempt.

(f) Sales of maps, plat books, photocopies or other printed material.

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units shall not collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.

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(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month.

(j) Vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer, including sales of such items by hospitals, sanitoriums and nursing homes to patients, employes or guests.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies. Such sales by vocational, technical and adult education schools are taxable, except for the period from July 1, 1972 through October 3, 1973. Such sales by elementary and secondary schools are exempt.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles (see par (g) above).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

(3) NONTAXABLE RECEIPTS. Gross receipts of governmental units from the following are not taxable: (a) Fees for licenses and permits (e.g., tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits).

(b) Charges for parking motor vehicles and aircraft and docking and storage of boats.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines or charges for a duplicate library card when no charge is made for the original cards.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction, but not any amount reasonably allocable to the use of a facility for recreational purposes.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.

(k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(l) Meals, food, food products or beverages (except soda water beverages and beer) sold by hospitals, sanitoriums and nursing homes to patients, employees or guests; dormitory meals furnished in accordance with any contract or agreement by a public or private institution of higher education; and meals sold to the elderly or handicapped by "mobile meals on wheels" on and after October 4, 1973.

(m) Service charges for snow removal, weed cutting, police officers at social gatherings, service of legal papers (e.g., summons, complaints and civil process) and ushers and door guards.

(n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.

(o) Fees charged for admission to a university student union building.

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officers and clerk of court under sections 59.42, 59.57, 69.24, Wis. Stats., or by a filing officer under section 409.407 (2), Wis. Stats., and fees charged by a register in probate pursuant to section 253.34, Wis. Stats.

(4) PURCHASES. Section 77.54 (9a), Wis. Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under section 66.47, Wis. Stats., sewerage commission organized under section 144.07 (4), Wis. Stats., metropolitan sewerage district organized under sections 66.20 to 66.26, Wis. Stats., or any other unit of government, or any agency or instrumentality of 2 or more units of government within this state. However, the exemption does not apply to governmental units of other states. (a) A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

(b) A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;
2. The seller bills the governmental unit directly; and
3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

(c) Purchases by federal and state chartered credit unions are subject to the sales tax. The use tax shall apply to state chartered credit unions, but not to federally chartered credit unions due to constitutional restrictions.

(d) Purchases (such as for lodging, meals or uniforms) by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for such purchases by the governmental unit.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

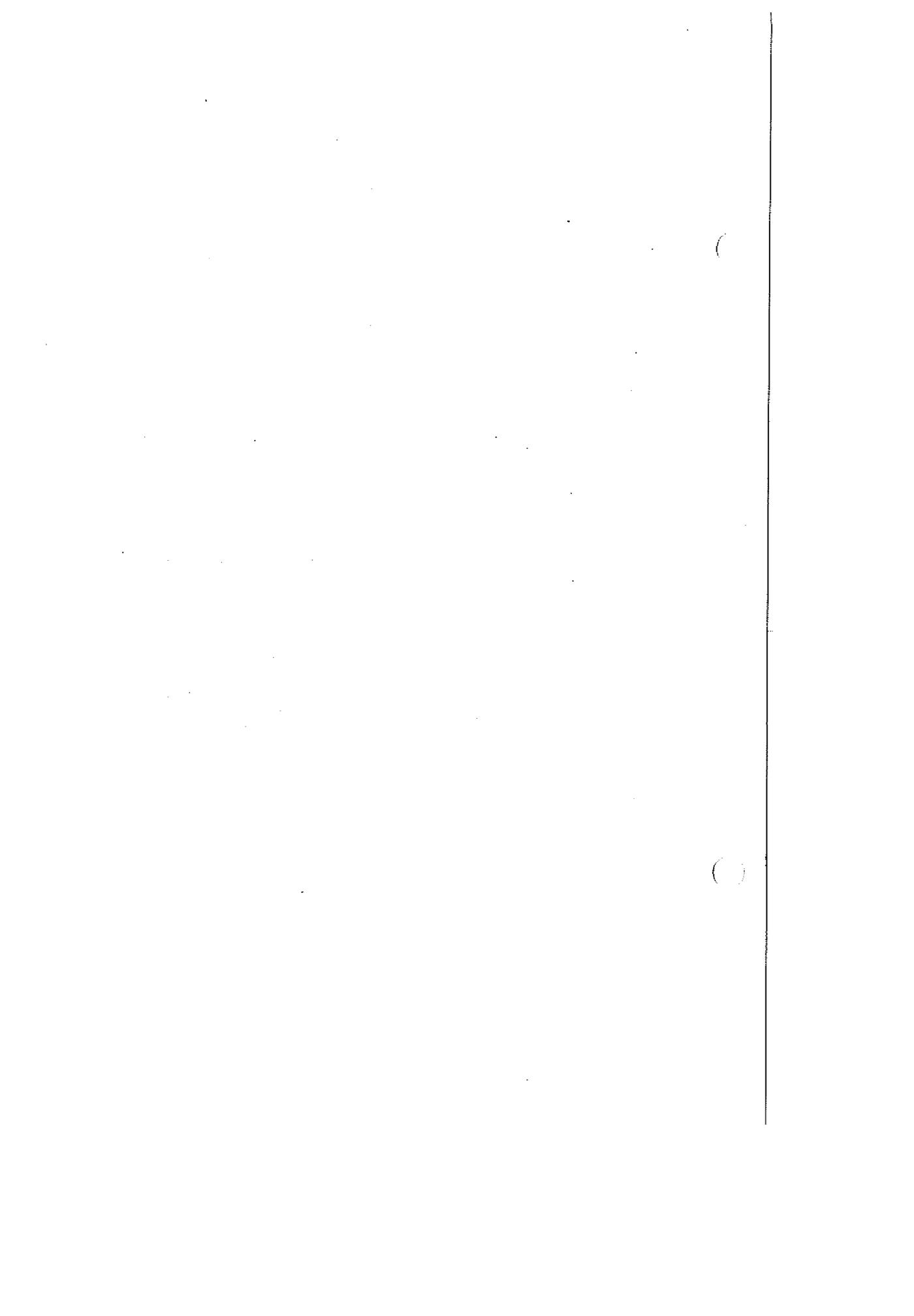
Tax 11.08 Medical appliances, prosthetic devices and aids. (section 77.54 (22), Wis. Stats.) (1) **DEVICES FOR HANDICAPPED PERSONS.** Section 77.54 (22) (a), Wis. Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays.

(2) **PROSTHETIC DEVICES, APPLIANCES AND AIDS.** Section 77.54 (22) (b), Wis. Stats., exempts gross receipts from the sale of "Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body." "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to garments designed to restrict or enhance the body's shape for cosmetic purposes, or to wigs or hair pieces.

(3) **EYE GLASSES.** Section 77.54 (22) (d), Wis. Stats., exempts gross receipts from the sale of "Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser." This exemption does not include tools and supplies, eyeglass cases, eye shields, chains, clips or other accessories associated with eye glasses. Frames for prescription glasses are exempt.

(4) **CRUTCHES AND WHEELCHAIRS.** Section 77.54 (22) (e), Wis. Stats., exempts gross receipts from the sale of "Crutches and wheelchairs for the use of invalids and crippled persons." This exemption includes open and closed end walkers (with or without casters) and canes

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each to the total contract balance (after allocation of the down payment). The contract balances are shown on line 6 and the percentages thereof are shown on line 13.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.32 "Gross receipts" and "sales price". (sections 77.51 (11) (a) (intro.) and 4, (b) 1 and (c) 2, and (12) (a) (intro.) and 4, (b) 1 and (c) 1, and 77.61 (3), Wis. Stats.) (1) GENERAL. The amount to which the sales and use tax rate is applied is "gross receipts" for sales tax and "sales price" for use tax. Both "gross receipts" and "sales price" mean the total amount of the sale, lease or rental from retail sales of tangible personal property or taxable services, valued in money, whether received in money or otherwise.

(2) HANDLING AND SERVICE CHARGES. A retailer's gross receipts from charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments and similar charges for services related to retail sales shall be included in gross receipts derived from the sale of taxable personal property or taxable services. However, cancelled order charges are not taxable if there is no transfer of merchandise to a customer.

(3) CASH DISCOUNTS OR PRICE REBATES. (a) Cash discounts allowed by a retailer directly to customers reduce the gross receipts subject to the tax. The customer must receive the discount for the retailer to exclude it from gross receipts. For example, a payment made to a nonprofit organization based on a percentage of the purchases made by the group's members is not a cash discount for sales and use tax purposes.

(b) A retail cooperative's rebates to members, which are made after the net profit is determined at the end of a year, are patronage dividends rather than cash discounts, and are not deductible from the cooperative's gross receipts.

(c) Effective June 1, 1975, a manufacturer's cash rebate to a person who purchases tangible personal property from a retailer is not a reduction in the retailer's gross receipts or sales price for the item.

(4) SALES TAX COLLECTED FROM CUSTOMERS. (a) Section 77.51 (11) (a) 4 provides in part that "if a retailer establishes to the satisfaction of the department that the sales tax . . . has been added to the total amount of the sales price and has not been absorbed by him, the total amount of the sales price shall be deemed to be the amount received exclusive of the sales tax imposed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies. For example, if taxable property is sold for \$100 and \$4 of tax is collected for a total of \$104, the tax payable by the retailer is determined by multiplying the tax rate times \$100.

(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible under the bracket system, no part of the retailer's gross receipts shall be treated as tax collected from customers. For example, a vending machine operator whose only receipts are from sales of 10¢ items cannot collect any sales tax from customers, and the tax applies to the total gross receipts.

(c) If a vending machine operator sells taxable property at a price such that a sales tax is collectible under the bracket system, part of the

gross receipts from such sales shall be deemed to include sales tax if customers are advised that vending machine prices include sales tax.

(5) **BRACKET SYSTEM.** (a) The following bracket system shall be used by retailers in computing the amount of tax which may be collected from the retailer's customers:

<u>Amount of Taxable Sale</u>	<u>Tax Collectible</u>
\$.01 to \$.12	\$.00
.13 to .37	.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12*	.04

*On sales exceeding \$1.00, the tax equals 4% of each full dollar plus the tax shown above for the applicable fractional part of a dollar. When more than one item is sold in a single transaction, the tax shall be computed on the aggregate sales price of the items sold.

(b) The bracket system method is designed so that the total amount of tax paid by customers shall approximate 4% of a retailer's gross receipts, if the retailer's sales fall equally throughout all the brackets.

(c) The gross sales tax payable by a retailer is 4% of the retailer's taxable gross receipts, regardless of the amount of tax collected from customers.

(d) A retailer shall conspicuously post bracket system cards (showing the tax collectible on the dollar amount of a sales transaction, as set forth in par. (a)) to establish to the satisfaction of the department of revenue that the sales tax has been added to the sales price, unless a receipt is issued separately itemizing the tax.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

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 section 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.

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

- (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 sections 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.

Note: The interpretations in this rule 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.

Tax 11.39 Manufacturing. (sections 77.51(27) and 77.54(2) and (6) (a), Wis. Stats.) (1) DEFINITION. Manufacturing means an operation at a fixed location complete in itself, or one of a series of operations each

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at a fixed location, whereby, through the application of machines to tangible personal property by a process popularly regarded as manufacturing, a new article of tangible personal property with a different form, use and name is produced.

(2) **SCOPE OF MANUFACTURING.** (a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

(b) Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities or research and development.

(3) **MANUFACTURERS.** Manufacturers ordinarily include the following:

- (a) Asphalt plants.
- (b) Bakeries
- (c) Battery makers.
- (d) Breweries and soda water bottling plants.
- (e) Candy factories.
- (f) Cement and concrete plants (but not concrete mixing units mounted on trucks).
- (g) Chemical processing plants.
- (h) Concrete block and tile producers.
- (i) Creameries and instant milk producers.
- (j) Dairies.
- (k) Electric generating companies.
- (l) Flour and feed mills (but not mobile units).
- (m) Food processing plants (canning and freezing).
- (n) Foundries.
- (o) Glass making plants.
- (p) Limestone calcination plants.
- (q) Machine and equipment producers.
- (r) Malting plants.
- (s) Meat packing and processing plants.
- (t) Motor vehicle and aircraft factories.
- (u) Oil refineries.

- (v) Paint factories.
- (w) Paper making plants.
- (x) Printers.
- (y) Sawmills.
- (z) Scrap processors.
- (za) Shoe and clothing factories.
- (zb) Smelting and steel mills.
- (zc) Tanneries.
- (zd) Tool and die making plants.
- (4) NONMANUFACTURERS. Examples of nonmanufacturers are:
 - (a) Automobile and auto parts rebuilders.
 - (b) Contractors.
 - (c) Creosoting plants.
 - (d) Dental labs.
 - (e) Farmers.
 - (f) Fish hatcheries.
 - (g) Freezer and locker plants.
 - (h) Highway truckers.
 - (i) Hotels.
 - (j) Junk and scrap dealers.
 - (k) Key shops.
 - (l) Laundries and dry cleaners.
 - (m) Repairmen.
 - (n) Restaurants.
 - (o) Television and radio stations.
 - (p) Sand and gravel pit operators.
 - (q) Tire retreaders.
 - (r) Persons engaged in:
 - 1. Corn shelling.
 - 2. Performing custom work to the individual order of household consumers.
 - 3. Experimental and development activities.
 - 4. Grain drying.
 - 5. Logging and forestry operations.
 - 6. Mining.

7. Paper recycling.
8. Photography.
9. Popping corn.
10. Quarrying and rock crushing operations.
11. The business of raising and breeding animals.
12. Real property construction activities.
13. Typesetting.
14. Vending machine operations.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.40 Exemption of machines and processing equipment. (sections 77.51 (27) and 77.54 (6) (a), Wis. Stats.) (1) **GENERAL.** (a) Section 77.54 (6) (a) exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property."

(b) Section 77.51 (27) provides "For purposes of s. 77.54 (6) (a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

(c) In determining whether a particular machine or piece of processing equipment is included in this exemption, these 2 statutes must be considered together.

(2) **CONDITIONS FOR EXEMPTION AND EXAMPLES.** This exemption shall apply if all the following conditions are met: (a) Machines and processing equipment shall be used *by a manufacturer* in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities. For example, machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor produces tangible personal property.

(b) Machines and processing equipment shall be used *exclusively in manufacturing*. The exemption shall not apply if machines and processing equipment are used partially or totally in nonmanufacturing activities. For example, a forklift truck used partially on a production line to move products from machine to machine and used in a warehouse to move and stack finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used *directly in manufacturing*. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though such machine and equipment are indirectly related to the step-by-step processes. For example, machines and equipment are not used directly in manufacturing if used for

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sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications, lighting, safety, fire protection or prevention; research; storage; delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing. Machine foundations are real property improvements rather than personal property.

(3) **OTHER EXAMPLES OF THE EXEMPTION.** Other examples of application of the exemption are as follows: (a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment." Small tools include hand tools such as drills, saws, micrometers and hammers. However, if such items are used partially or totally for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by such manufacturer to produce tangible personal property for sale. For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property destined for sale. For example, a printing press used by a manufacturer exclusively to print labels for its manufactured products is exempt. However, if the press is used partially to print advertising materials and office forms, it is not exempt.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed (e.g., machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities, research, or crating or packaging for shipment).

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant. For example, sweeping compounds are factory supplies rather than processing equipment. Gloves, shoes, coveralls and similar items are personal apparel rather than processing equipment.

(4) **REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT.** The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.41 Exemption of property consumed or destroyed in manufacturing. (sections 77.54 (2) and 77.54 (6) (a), Wis. Stats.) (1) **GENERAL.** (a) Section 77.54 provides in part: "There are exempted from the

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taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."

(b) As used in section 77.54 (2), Wis. Stats., "manufacture" shall conform to the definition of "manufacturing" in section 77.51 (27), Wis. Stats.

(2) RELATIONSHIP OF SECTIONS 77.54 (2) AND 77.54 (6) (a). In construing the exemption provided in section 77.54 (2), it is necessary to refer to another exemption provided in section 77.54 (6) (a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Sections 77.54 (2) and 77.54 (6) (a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by section 77.54 (6) (a) and if they are not, cannot be within the exemption provided by section 77.54 (2).

(3) EXAMPLES OF PERSONAL PROPERTY WITHIN SECTION 77.54 (2) EXEMPTION. (a) The following property is within the exemption provided by section 77.54 (2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining manufacturing machinery during the manufacturing process.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real

property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) **EXAMPLES OF PERSONAL PROPERTY NOT WITHIN SECTION 77.54(2) EXEMPTION.** (a) The following property is not within the exemption provided by section 77.54(2), although such property may be exempt under section 77.54(6) (a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in rule Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by section 77.54(2) even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. Since "fuel" is not defined in section 77.54(2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

- (a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.
- (b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

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 paragraph (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 item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

Note: The interpretations in this rule 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.

Tax 11.46 Summer camps. (sections 77.52(1) and (2) (a) 1, Wis. Stats.) (1) **DEFINITIONS.** In this rule:

(a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual (e.g., the YMCA and Boy Scouts of America).

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) **TAXABLE RECEIPTS.** Receipts from the following are taxable:

(a) Meals or other tangible personal property sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(3) **EXEMPT RECEIPTS.** Receipts from the following are exempt: (a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Groceries sold to campers, such as for cookouts.

(4) **COMBINED CHARGE.** An allocation between taxable and exempt receipts must be made when a single (combined) charge is made for all the privileges extended by a camp. Adequate records must be kept and maintained to enable the proper allocation; otherwise, the total charge shall be taxable.

(a) If there is no separate charge for meals, gross receipts from the sale of meals may be determined by adding 10% (to cover overhead costs) to the cost of the food and labor for food preparation.

(b) If there is no separate charge for lodging; gross receipts from lodging furnished by private camps to any person residing for a continuous period of less than one month shall be presumed to be \$3 per person per night.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that the amount shown in sub. (4) (b) became effective September 15, 1970. Prior to that date the tax was based on \$2 per person per night.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.47 Commercial photographers and photographic services. (sections 77.52(2) (a) 7 and 77.54(2), Wis. Stats.) (1) **TAXABLE GROSS RECEIPTS.** Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services include gross receipts from:

- (a) Taking, reproducing and selling photographs.
- (b) Processing, developing, printing and enlarging film.
- (c) Enlarging, retouching, tinting or coloring photographs.
- (d) Processing exposed film into color transparencies, mounted or unmounted.
- (e) Reproducing copies of documents, drawings, photographs, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.
- (f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) **AMOUNTS INCLUDED IN GROSS RECEIPTS.** (a) Gross receipts subject to the tax include charges for photographic materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from gross receipts subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) **PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES.** (a) Commercial photographers and others providing photographic services may purchase, without paying sales or use tax, any item which becomes a component part of an article destined for sale if a properly completed exemption certificate is given the seller. Such items include:

1. Mounts, frames and sensitized paper used in the finished photograph and transferred to the customer.
2. Film (i.e., colored transparencies and movie film) in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.
3. Containers, labels or other packaging and shipping materials used to transfer merchandise to customers.

(b) Photographers and others providing photographic services are required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. Such items include:

1. Chemicals.

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2. Trays.
3. Film (other than noted in subsection (3) (a) 2).
4. Plates.
5. Proof paper.
6. Cameras.
7. Other photographic equipment.

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

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.48 Landlords, hotels and motels. (sections 77.51 (7) (n) and (24) and 77.52 (2) (a) 1 and 9, Wis. Stats.) (1) **LANDLORDS.** (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales or use tax applies to a landlord's purchases of all such items. The gross receipts from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for such parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking or storage.

(2) **HOTELS AND MOTELS.** The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business (such as a trucking company, railway or airline) to be used by its employees for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the use to which the room is put. For example, the rental of a motel sleeping room by a salesman from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all such items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the

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amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department of revenue for reasonableness.

(b) In computing the ratio in paragraph (a), tangible personal property includes property subject to the sales tax, such as furniture, furnishings equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment. For example, if the investment (valued at undepreciated original cost) on the effective date of a lease is \$100,000 for tangible personal property and \$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ($\$100,000 \div \$500,000$) to the gross lease receipts for each sales tax reporting period.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.51 Grocers' guidelist. (section 77.54(20), Wis. Stats.) (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 necessary for the home preparation of meals. 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 following lists shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

(2) **GUIDELISTS.** (a) *Taxable sales by grocers.* Gross receipts from the sale of the following are taxable:

Adhesive tape.	Batteries.	Bubble bath.
Albums.	Beauty aids.	Cameras and supplies.
Amonia.	Beer.	Cake decorations (non-edible).
Anti-acid products.	Beer making supplies.	Calcium tablets.
Anti-freeze.	Binders (notebook).	Candied fruits.
Appliances.	Bird food and supplies.	Candy.
Ash trays.	Bleach.	Candy apples.
Aspirin.	Blueing.	Canning and freezer supplies.
Auto supplies.	Bobby pins and rollers.	Can openers.
Baby needs (except food).	Books.	Carbonated beverages.
Bags (all kinds).	Bowl cleaner.	Cat food.
Bakeware.	Breath mints.	
Baskets.	Brooms.	
Barbeque supplies.	Brushes.	

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Charcoal and starter.	Food coloring.	Manicure needs.
Chewing gum.	Foot care products.	Mason jars.
Cigarettes	Foil (aluminum and	Matches.
(Effective 9-1-75).	similar products).	Medicinal
Cigarette lighter	Frames.	preparations.
fluid, wicks, flints.	Fuel and lubricants.	Milk of magnesia.
Cigars.	Fudgesicles.	Mineral tablets.
Cleaning equipment	Furniture polish.	Nail polish and re-
and supplies.	Games.	mover.
Cleansers.	Garden needs.	Nails.
Clocks.	Garbage bags and	Napkins.
Clothes lines.	cans.	Notebooks.
Clothespins.	Gifts (non-food).	Nursery stock.
Clothing.	Ginseng.	Nuts (chocolate
Cocktail mixes.	Glassware.	coated).
Cod liver oil.	Gloves.	Pails.
Cold remedies.	Glue.	Paint and paint sup-
Coloring extracts.	Greeting cards.	plies.
Combs and brushes.	Grooming aids.	Paper products (tis-
Confections.	Gum.	sues, plates, cups,
Cough drops.	Hair care products.	towels, napkins and
Cracker jacks.	Hardware.	writing paper).
Crayons.	Heated foods and	Peanuts (candy
Dental aids.	beverages (1).	coated).
Deodorants.	Health and beauty	Pens and pencils.
Detergents.	aids.	Pepto bismol.
Dinnerware.	Hosiery.	Pet food and sup-
Disinfectants.	Household	plies.
Distilled spirits.	equipment and	Plastic utensils.
Dixie cups.	supplies.	Polishes.
Dog food and sup-	Ice (cube and	Popcorn (raw or pop-
plies.	block).	ped).
Dolls.	Ice cream bars.	Popsicles.
Drain cleaners.	Ice cream in cones.	Pots and pans.
Drug sundries.	Internal remedies.	Powder (face and
Dry cleaners.	Intoxicating liquor.	body).
Dye.	Insect and pest con-	Raisins (candy
Electrical supplies.	trol products.	coated).
Eskimo pies.	Iron tablets.	Razors and blades.
Facial tissues.	Jewelry.	Records.
Farm and garden im-	Kool aid and similar	Roloids.
plements.	items.	Root beer and ex-
Feminine hygiene	Kotex and similar	tracts.
needs.	items.	Rotisseries.
Fermented malt bev-	Laundry products.	Rubber bands.
erages.	Lawn furniture.	Salt (water softener).
Fertilizers.	Life savers.	Sandwiches (hot or
Fiddle faddle.	Light bulbs and	cold).
Film.	fuses.	Sanitary goods.
First aid products.	Lozenges.	School supplies.
Fizzies.	Lunch boxes.	Scissors.
Flash bulbs.	Lye.	Sewing aids.
Flatware.	Lysol.	Shampoo and rinse.
Floor care products.		Shaving supplies.
Flowers and seeds.		

Shelf coverings.	Thread.	Watches.
Shoe laces and polishes.	Tobacco products.	Water (spring and distilled).
Soaps.	Toilet tissue.	Water conditioners.
Soda water beverages (2).	Tonics.	Waxes.
Soft drinks (2).	Tools.	Wax paper.
Sponges.	Tooth brushes.	Wearing apparel.
Starch.	Toothpaste and powders.	Wine making supplies.
Stationery.	Toothpicks.	Wrap (foil and waxed paper).
Steel wool.	Toys.	Writing supplies.
Stockings.	Tums.	Yogurt bars, cones and sundaes.
Sun glasses.	Utensils.	Zippers.
Sun tan lotion.	Vitamins.	
Tableware.	Wash cloths.	
Taffy apples.	Waste baskets.	
Tape.		
Thermos bottles.		

(b) *Exempt sales by grocers.* Gross receipts from the sale of the following are exempt:

Apple cider (sweet).	Condiments.	Gravy extracts and mixes.
Baby food.	Cones (ice cream cups).	Grits.
Bakery goods.	Cookies and crackers.	Hash.
Baking chocolate.	Cooking oils.	Honey.
Baking powder and soda.	Cream.	Ice cream (pints or larger).
Barbeque sauces.	Desserts and toppings.	Jams.
Berries.	Dietary foods (4).	Jellies.
Biscuit mix.	Dinners (frozen).	Jello.
Boullion cubes.	Doughnuts.	Juices (pure fruit) (3).
Bread and rolls.	Dressing.	Lobster.
Brownies.	Dried fruits.	Luncheon meats.
Butter.	Dried milk products.	Macaroni.
Cake mixes and flour.	Eggs.	Magazines.
Cakes (Hostess and similar items).	Federal food stamp receipts.	Malted milk powder.
Canned foods.	Fish and fish products.	Maraschino cherries.
Catsup.	Flavoring extracts.	Marshmallows.
Cereal and cereal products.	Flour.	Mayonnaise.
Certo and other pectins.	Fritos.	Meal.
Cheese.	Frozen desserts.	Meat and meat products.
Chicken.	Frozen fruit juices (3).	Meat extracts and tenderizers.
Chinese food.	Frozen fruits and vegetables.	Melons.
Chip dip.	Frozen pizza.	Meritene.
Chips (potato, corn and similar items).	Frozen TV dinners.	Milk and milk products.
Chocolate (instant and baking).	Fruit.	Mustard.
Citrus fruits.	Garlic.	Newspapers.
Cocoa.	Gelatin.	
Coffee and coffee substitutes.		

Noodles.	Preserves.	Spaghetti products.
Nuts (except candy coated).	Pretzels.	Spices.
	Puddings.	Spreads.
Oil (cooking, salad).	Raisins.	Sugar.
Oleomargarine.	Ravioli.	Sweeteners.
Olives.	Relishes.	Syrup.
Pancake mix.	Rice.	Tea and ice tea.
Peanuts (in shell or canned, salted or not).	Rolls and biscuits.	Turkey.
Peanut butter.	Saccharin.	Vanilla and vanilla extract.
Pepper.	Salad dressing.	Vegetable juices.
Pickles.	Salt and salt substitutes.	Vegetables.
Pie and pie fillings.	Salted nuts.	Vinegar.
Pie crust and mixes.	Sardines.	Waffle mix.
Potato chips.	Seafoods.	Yeast.
Potato salad.	Seasonings.	Yogurt (pints or larger).
Poultry and poultry products.	Sherbet.	
	Shortening.	
	Soup.	

(c) *Explanations of some items noted above.* As indicated in (a) and (b) above:

1. "Heated Food" means those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

2. Sales of soda water beverages, bases, concentrates and powders which may be reconstituted into soft drinks, and fruit juice drinks, punches and nectars which have additives known as extenders are taxable. Extenders commonly used are citric acid, peel oil and artificial color.

3. Sales of pure fruit juices as defined in Chapter 97 (Statutes of 1967) 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.

4. "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, 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. For example, a protein concentrate used by persons engaged in athletic activities is an exempt food. 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 such items are taxable.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.61 Veterinarians and their suppliers. (sections 77.51 (7) (m) and (o) and 77.52 (2) (a) 10, Wis. Stats.) (1) VETERINARIANS. (a)

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Charges made by veterinarians which shall be exempt from the sales tax include charges for the following professional services for animals:

1. Medical services.
2. Hospitalization services.

(b) Charges made by veterinarians which shall be subject to the sales tax include charges for the following activities for animals:

1. Boarding.
2. Grooming.
3. Clipping.

(c) Sales of tangible personal property by veterinarians which shall be taxable include the following:

1. Leashes, collars and other pet equipment.
2. Pets.
3. Pet food.

(2) SUPPLIERS. (a) Sales to veterinarians of medicines and items to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax.

(b) If the tax on sales to veterinarians is not collected by a supplier (for example, because the supplier is located out-of-state and is not required to be registered with the department), the veterinarian shall be responsible for and shall report and pay a use tax on such purchases directly to the department.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 11.62 Barbers and beauty shop operators. (section 77.51 (7) (i) and 77.52 (2) (a) 10, Wis. Stats.) (1) NONTAXABLE SALES AND SERVICES. (a) Barbers and beauty shop operators are engaged primarily in a service occupation and charges for services on human beings shall be exempt from the sales tax.

(b) Barbers and beauty shop operators shall *not* be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt as such occasional sellers shall pay sales or use tax to their suppliers on all purchases, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property (such as hair pieces) for resale without paying tax by issuing to their supplier a properly completed resale certificate.

(2) TAXABLE SALES AND SERVICES. (a) Barbers and beauty shop operators are the consumers of the materials and supplies which are used in performing their services and shall pay sales tax to their suppliers on such purchases.

(b) Over the counter sales by barbers or beauty shop operators of packaged cosmetics, hair tonics, lotions, wigs, falls, toupees or other merchandise and their charges for servicing wigs, hair pieces or other

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tangible personal property shall be subject to the sales tax. Unless a barber or beauty shop operator falls within the occasional sales standard set forth in subsection (1) (b), the person shall be responsible for collecting and remitting to the department the tax on all such sales or charges.

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

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 11.63 Radio and television stations. (sections 77.51 (4), 77.52 (2) (a) 11 and 77.54 (23m), Wis. Stats.) (1) **NONTAXABLE SERVICES.** Gross receipts from the sale of the following services are not subject to the sales and use tax.

- (a) Air time.
- (b) Advertising.

(2) **TAXABLE SALES.** (a) Gross receipts from charges imposed by a radio or television station for art work, slides, films, tapes or other tangible personal property which such station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. Such gross receipts are taxable even though a station may retain possession of the tangible personal property because "sale" is defined to include the transfer of not only title to and possession of tangible personal property, but also the transfer of enjoyment of tangible personal property. If an advertiser maintains any control over the tangible personal property prepared or produced such as the right to determine when the property will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property.

(b) Gross receipts from a radio or television auction are subject to the sales and use tax.

(c) If a radio or television station advertises on behalf of out-of-state persons to sell merchandise (such as records or books), the station is the retailer of such merchandise and must pay sales tax on such sales if:

1. The advertising message does not clearly identify the out-of-state source of the merchandise; or
2. The merchandise orders are sent directly to the station which accounts for the gross receipts.

(3) **NONTAXABLE PURCHASES.** The gross receipts from the sale, lease or rental of motion picture films or tape, and advertising materials related thereto, to a motion picture theater or radio or television station are exempt from the sales and use tax under section 77.54 (23m). Sales of sound tapes to radio stations are included in this exemption.

(4) **TAXABLE PURCHASES.** Radio and television stations are consumers of equipment, materials and supplies used to conduct their businesses and shall pay sales or use tax on purchases of such tangible personal property except as provided in subsection (3).

(5) **BROADCASTING TOWERS.** Commercial broadcasting towers constituting the transmission antenna system of a radio or television station are deemed real estate improvements for sales and use tax purposes if installed on land owned by the station. Contractors engaged in construction of such broadcasting towers are the consumers of building materials

used by them in constructing, altering or repairing such towers and must pay tax on the cost of such materials.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.64 Background music. (section 77.51 (4) (intro) and (j), Wis. Stats.) (1) **GENERAL.** Persons in the business of providing background music commonly utilize one or both of the methods set forth below. The sales and use tax consequences depend upon the method used.

(2) **MUSIC PLAYED AT CENTRAL STUDIO.** The gross receipts from the furnishing of background music to business, industry and others from a central studio over telephone circuits or by FM radio are not subject to the sales or use tax. The persons who provide such service are the consumers of the tapes, tape players, transmitters and other tangible personal property used to provide the service, and their purchases of these items, as well as telephone services from the telephone company, are taxable. However, the gross receipts from equipment leased or rented to the customer as part of providing this service are taxable, and an exemption for resale may be claimed on the purchase of such leased or rented equipment, if the equipment is used exclusively for lease or rental.

(3) **MUSIC PLAYED BY CUSTOMER.** The gross receipts from the lease, rental, hire or license to use all tangible personal property comprising a background music system are taxable when the system is located on a customer's (e.g., lessee's or licensee's) premises and is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment and other tangible personal property to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, since rental is the equivalent of a resale.

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

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.66 Communication and CATV services. (sections 77.51 (28), 77.52 (2) (a) 4 and 12 and 77.54 (24), Wis. Stats.) (1) **TAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are taxable: (a) Intrastate telegraph service.

(b) Telephone services, except interstate service, directory advertising and coin-operated telephone service. All intrastate toll services provided on or after July 31, 1975 and billings for exchange service made on or after that date are taxable.

(c) Two-way voice communication services over telephone or radio (commonly referred to as mobile telephone service). Nonmechanical telephone answering services are not taxable.

(d) One-way paging service effective July 31, 1975.

(e) Cable television system service, including installation charges, effective October 1, 1975.

(2) **PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing such services. The tax applies to the sale of such property to them. However, section 77.54 (24), Wis. Stats., exempts "apparatus, equipment and electrical

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instruments, other than station equipment, in central offices or telephone companies, used in transmitting traffic and operating signals”.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.69 Financial institutions. (section 77.51 (4) (k)) (1) **EX-EMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(2) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.

(h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

(3) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) **DEFINITION.** In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) **SPECIAL PROVISIONS.** (a) Sales to federal and state chartered credit unions, banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.70 Advertising agencies. (sections 77.51 (4) (intro.) and (h), 77.52 (1) and (2), Wis. Stats.) (1) **NONTAXABLE SERVICES.** Charges by advertising agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

- (a) Writing original manuscripts or news releases.
- (b) Writing copy to be used in media advertising.
- (c) Consultation, market research and compiling statistical or other information.
- (d) Recommendations for advertising themes or merchandising plans.
- (e) Obtaining media space and time.
- (f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.

(2) **TAXABLE SALES.** (a) Tax applies to an agency's gross receipts from the sale of tangible personal property located or used in Wisconsin whether the transfer is to the advertiser or to a third party at the direction of or on behalf of the advertiser. This applies to advertiser clients located both inside and outside Wisconsin. The sale of tangible personal property normally occurs when the advertising agency bills the client for the property and the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client. For example, an agency's billing to a client for finished art transferred to another Wisconsin business is taxable.

(b) Tax applies to an advertising agency's total retail sales price of tangible personal property, without any deduction for any cost element which becomes a part of the sales price. Such elements include preliminary art work, consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though such costs may be separately itemized in a billing to a client.

(c) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

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(d) The total sales price of the following items or services are subject to the tax:

1. Retail sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

2. Charges for photographic services or photostats.

3. Charges for producing, fabricating, processing, printing or imprinting tangible personal property for consumers for a consideration, even though the consumers may furnish the materials used in the producing, fabricating, processing, printing or imprinting of the tangible personal property.

4. Charges for "finished art". "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes and includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced. The tax applies to sales of finished art whether it is used to produce a taxable item or an exempt item (e.g., periodical), or is used to provide an advertising service by placing advertising in an advertising media (such as newspapers, magazines, other publications and radio or television stations).

(3) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee", "retainer", "service charge", or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable items is taxable in accordance with the ratio between the charges.

(4) PURCHASES BY AGENCIES. (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that it resells before use, or that becomes physically an ingredient or component part of tangible personal property which it produces and sells.

(b) An advertising agency is the consumer of all tangible personal property not purchased for resale or not becoming physically an ingredient or component part of tangible personal property sold by such agency.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.78 Stamps, coins and bullion. (section 77.51 (5), Wis. Stats.) (1) TAXABLE SALES. Retail sales of the following tangible personal property are subject to the sales and use tax:

(a) Cancelled United States and foreign postage stamps.

(b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.

(c) Uncancelled foreign postage stamps.

(d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.

(e) Foreign coins and paper currency when sold or traded as collectors' items.

(f) United States coins and paper currency when sold or traded as collectors' items above their face value.

(g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

(h) Commemorative medals.

(2) **NONTAXABLE SALES.** Retail sales of the following tangible personal property are not subject to the sales and use tax:

(a) United States postage stamps, coins and paper currency sold at face value.

(b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.

(c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.

(d) Foreign coins and paper currency in current circulation, when sold at face value and when acquired as a medium of exchange.

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

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 11.79 Leases of highway vehicles and equipment. (sections 77.51 (4) (intro.) and (j), (7) (k) and 77.58 (6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under subsection (1), the cost of the following items may be deducted if they meet the conditions in subsection (3):

(a) Motor fuel.

(b) Vehicle license fees.

(c) Federal highway use taxes.

(d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in subsection (2) may be deducted if:

(a) The charge is reasonable.

(b) The charge is separately stated in the lease agreement, billing or invoice.

(c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in subsection (2).

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(d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under subsection (1), the cost of the following may not be deducted:

(a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.

(b) Maintenance or repair charges incurred by the lessor.

(c) Interest and other financing costs incurred by the lessor.

(5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

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

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 11.80 Sales of ice. (section 77.52(1) and 77.53(1), Wis. Stats.)

(1) Ice is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale. For example, ice used for refrigeration purposes is consumed in the process of refrigeration; whereas, ice used in drinks is purchased for resale by the seller of the drink.

(2) Examples of taxable sales of ice (including dry ice) are:

(a) Sales through vending machines.

(b) Sales to restaurants, taverns, grocery stores and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(c) Sales to railroads or commercial fishermen for use in refrigerating railway cars or vessels.

(3) Examples of nontaxable sales of ice are:

(a) Sales to restaurants, taverns and soda fountains to be used exclusively in drinks (exempt as sales for resale).

(b) Sales to manufacturers, producers or food processors for use inside the shipping cases of merchandise being transferred to a customer (exempt as "shipping material" under section 77.54(6)(b), Wis. Stats.).

(c) Ice sold to manufacturers which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

(4) (a) If ice is sold to a person who will use it both for a taxable purpose (ex., refrigeration) and nontaxable purpose (ex., for resale), the total charge shall be divided between taxable and nontaxable use. The tax is then payable on the ice to be used in a taxable manner. If no division is made, the tax applies to the total sale.

(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax under section 77.53 (1), Wis. Stats.

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

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.81 Industrial gases, welding rods and fluxing materials. (section 77.54 (2), Wis. Stats.) (1) GENERAL STATEMENT. The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54 (2), Wis. Stats., exempts from the sales tax "The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity." Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

(a) Exempt if they become ingredients or components of tangible personal property destined for sale; or

(b) Exempt if they are consumed, destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or

(c) Taxable if they are sold to a person who consumes them in a non-manufacturing activity.

(2) INDUSTRIAL GASES. Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen. (a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

1. Carbon dioxide used to produce dry ice or carbonated soft drinks.
2. Gases such as neon, helium or argon used as a filler in the production of light bulbs and tubes.
3. Hydrogen used in hydrogenating vegetable oils.
4. Acetylene used as a base in the manufacture of synthetic materials.
5. Oxygen used in the chemical industry for oxidation processes, when not used as a fuel to produce heat.

(b) Taxable sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces.
2. Acetylene or other gases used in torches in the manufacture of tangible personal property.

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(c) Taxable sales of gases to nonmanufacturers, whether or not used by the purchaser as fuel, include:

1. Acetylene or other gases used by automobile body shops or by other repair establishments.
2. Gases used in mining or quarrying.
3. Nitrogen used by telephone companies in underground cables.

(3) **WELDING RODS** (stick electrode or filler rods). Since welding rods (stick electrode or filler rods) are physically transferred and become a part of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property destined for sale or in repairing tangible personal property for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of such rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) **FLUXING MATERIALS**. Fluxing materials sold to a manufacturer for use in manufacturing tangible personal property destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own production machinery or equipment (a nonmanufacturing activity) they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

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

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.82 Mailing lists and mailing services. (sections 77.51 (5), 77.52 (1), 77.53 (1) and 77.54 (2), Wis. Stats.) (1) **MAILING LISTS.** (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists, including the rental of or the granting of a license to use such lists.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing such lists. However, any tangible personal property becoming a component part of mailing lists when such mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) **MAILING SERVICES.** (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to such property. Addressing includes the preparation of Cheshire tapes, Dick tapes,

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cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for such property. However, addressing does not include such tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax shall not apply to charges for services rendered in preparing material for mailing (including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations) if such charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

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

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.83 Motor vehicles. (sections 77.51 (7) (am), 77.53 (16) and (18), 77.54 (5) (a) and (7) and 77.61 (1), Wis. Stats.) (1) **DEFINITION.** In this rule, "motor vehicle" means a self-propelled vehicle (e.g., automobile, truck, truck-tractor and motorcycle) designed for and capable of transporting persons or property on a highway. In this rule, "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, and road machinery as defined in section 340.01 (52), Wis. Stats. "Motor vehicle" does not include a vehicle which is not self-propelled such as a trailer or semitrailer.

(2) **RETAILERS' TAXABLE GROSS RECEIPTS.** A retailer's taxable gross receipts include: (a) Gross receipts from 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 (a "trade-down").

(b) Gross receipts from charges for delivery, handling, preparation and any warranty.

(c) Gross receipts from equipment and accessories sold with a motor vehicle.

(d) Gross receipts from charges for all parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments (e.g., a radio or air conditioner).

(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 or child of the transferor; and the motor

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vehicle has been previously registered in this state in the name of the transferor; and the transferor is not a motor vehicle dealer. A son-in-law or daughter-in-law is not allowed this exemption.

(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 such 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 this state (including members of the armed forces) who will not use such vehicles or trucks (for which the truck bodies were made) in this state other than in their removal from this state are exempt. 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 is subject to the tax.

(c) A motor vehicle purchased by a nonresident of Wisconsin 90 days or more before bringing such vehicle into this state, in connection with a change of residence to this state, 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. (5).

(5) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside this state and registered in this state generally is subject to the 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 tax paid the other state or the District of Columbia shall be applied as a credit against and deducted from the Wisconsin use tax. This credit shall not apply to taxes paid to another country, to municipalities in other states or to motor vehicle registration fees.

(6) TRANSFER BY INHERITANCE, GIFT OR PRIZE. (a) The distribution of a motor vehicle to the heir (s) 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 is required to pay the tax to the department of transportation at 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.

(7) **VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS.** (a) If salespersons use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson a reasonable amount for such use and such charge is subject to the tax. In lieu of making such charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis effective January 1, 1973:

1. In the case of motor vehicles licensed in the name of the retail dealer, the tax shall be \$1.35 per month.

2. In the case of motor vehicles being operated with retail dealer plates, the tax shall be 35¢ per month for each plate issued to the dealer.

(b) Retail dealers shall not report on the basis prescribed in par. (a) for service vehicles such as wreckers or pick-up trucks, or autos used by customers when their car is being repaired. Wholesalers, distributors, brokers or manufacturers may not report on this basis.

(8) **SALES BY DEALERS TO THEIR SALESPERSONS.** Effective September 1, 1972, when a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons, the transaction is subject to the sales tax. Vehicles acquired in this type of taxable transaction after September 1, 1972 are not subject to the special method of reporting described in sub. (7). However, vehicles purchased by salespersons prior to September 1, 1972 are subject to such special provisions, and the tax is \$1 per month through December 1972 and \$1.35 per month thereafter.

(9) **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 shall 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 the state. Such heavy equipment dealers may purchase motor vehicles for resale without tax.

(10) **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. Such 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 are subject to tax. Such property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Examples of 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.

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

1. Inventories such property;
2. Certifies that the purchaser sells significant amounts of the property over-the-counter to walk-in trade; and
3. The purchaser specifies on the resale certificate each type of item the purchaser sells over-the-counter.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

From September 1, 1969 through December 31, 1972, the tax payable by motor vehicle dealers in lieu of other methods of computing the tax, as described in (7) (a) 1 and 2 of this rule, was \$1 per month in the case of motor vehicles licensed in the name of the retail dealer and 25¢ per month in the case of motor vehicles operated with dealer plates.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.84 Aircraft. (sections 77.52(2) (a) 9, 77.54(5) (a) and (7) and 77.61(1)) (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 or child of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor does not hold and is not required to hold a Wisconsin seller's permit.

(c) Section 77.61 (1) (a), Wis. Stats., provides that no aircraft shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid. 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 this state, even though such aircraft also may be used out-of-state.

(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 of aircraft jet fuel, oil, equipment, parts and supplies sold and delivered in Wisconsin for operation of aircraft, regardless of where the aircraft is flown or used. Federal fuel taxes are part of the "sales price" of jet fuel subject to the sales tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52(2) (a) 9, Wis. Stats., imposes the tax on "Parking or providing parking space for aircraft for a consideration . . ."

except when provided by a governmental unit." "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. For example, an aircraft kept in a hangar and available for normal use is parked, but an aircraft kept in a hangar with its wings off is stored rather than parked.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor (tie down) parking are taxable, except when provided directly by a governmental unit to the owner of the aircraft. The gross receipts of a nongovernmental operator of a hangar from the rental of hangar space for aircraft are subject to the sales tax whether or not such operator leases the hangar from a governmental unit.

(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.** Section 77.54 (5) (a), Wis. Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using such 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 such 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.

(4) **NONTAXABLE SERVICES.** Gross receipts from the following services or fees shall not be 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 such 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 this business may purchase weed killers, fertilizer and seed without tax for resale, if these items are separately itemized on the invoice to the farmer.

(f) Landing fees.

Note: The interpretations in this rule are effective under the general sales and use law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

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

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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.