

## Chapter Tax 11

## SALES AND USE TAX

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**Tax 11.001 Definitions and use of terms.** In this chapter, unless otherwise specified:

(3) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

(5) "Department" means the Wisconsin department of revenue.

(8) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and
- (d) Keeping proper records. (See Tax 11.92)

(12) "Tax" means the 4% Wisconsin sales or use tax.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "\_\_\_\_\_ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of \_\_\_\_\_ (specific tangible personal property or a specific service) is taxable", means that:

(a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

(b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

**Tax 11.01 Sales and use tax return forms.** (s. 77.58, Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

- (a) Form S-010. For occasional sales of motor vehicles.
- (b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.
- (c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (d) Form S-012A (also called "ST-12A"). The annual information return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (e) Form S-013. For concessionaires. (Annual return).
- (f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).

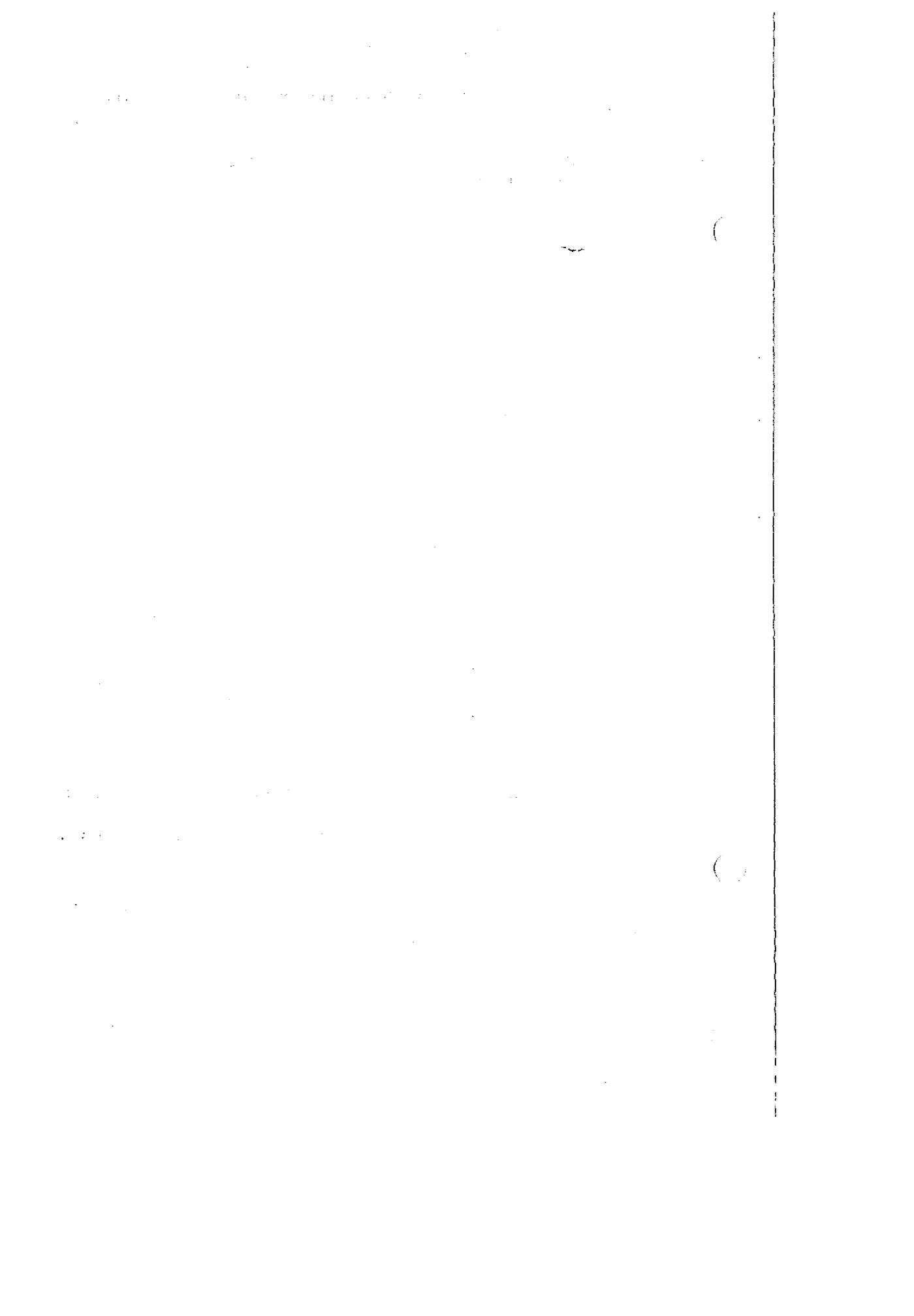
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(g) Form S-015. For occasional bingo sales.

(h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.



property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices (which shall contain a posting reference), cash register tapes, credit memoranda (which shall carry a reference to the document evidencing the original transaction) or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. Such records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property (including any services that are a part of the sale or lease) made within Wisconsin irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order. Sales to organizations holding a certificate of exempt status (e.g., religious or charitable organizations) can be shown to be exempt by recording the exemption certificate number on the seller's copy of the bill of sale. All other exempt sales must be supported by an exemption certificate signed by the purchaser and retained by the seller, unless the merchandise sold is specifically exempted by statute regardless of use (such as groceries). Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in a manner in which they readily can be related to the transactions for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in this state.

(2) **MICROFILM RECORDS.** Microfilm (including microfiche) reproductions of general books of account (such as cash books, journals, voucher registers and ledgers) and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing (ADP) tax accounting system shall have the capability of producing visible and legible records which will

provide the necessary information for verification of the taxpayer's tax liability.

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents (such as sales invoices, purchase invoices, exemption certificates, credit memoranda) shall be readily available.

(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.
2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until such tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

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

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

**Tax 11.925 Sales and use tax security deposits.** (s. 77.61 (2), Stats.) (1) **GENERAL.** Under s. 77.61 (2), the department may require

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any person liable to it for sales and use taxes to place with it, before or after a permit is issued, such security as the department determines. The amount of security shall not exceed \$5,000. If any person fails or refuses to place such security, the department may refuse to issue a permit or revoke the permit.

(2) **FACTORS FOR DEPARTMENT'S CONSIDERATION.** (a) In determining whether or not security will be required and the amount of security to be required, the department may consider all relevant factors including the person's:

1 Evidence of adequate financial responsibility. Such evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.

2 Prior record of filing tax returns and paying taxes of any kind with the department.

3 Type of business (e.g., a temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location).

4 Type of entity (e.g., a sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets).

(b) Although the individual factors listed in sub. (2) (a) may be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department of revenue. Protection of the sales and use tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines that a security deposit in excess of \$50.00 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) **TYPES OF SECURITY.** Acceptable types of security include, but are not limited to:

(a) *Non interest-bearing.* 1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

3. Personal guarantee of a third party, if approved by the department.

(b) *Interest-bearing.* 1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on such certificates shall be paid to the depositor.

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A Security Assignment, Form S-127, shall be completed if this type of security is selected. (Note: Form S-127 may be obtained at any Department of Revenue office or by writing to: Wisconsin Department of Revenue, P.O. Box 8902, Madison, Wisconsin 53708).

3. Bearer bonds issued by the U.S. Government, any unit of Wisconsin municipal government or by Wisconsin schools. The depositor should clip 2 full years' coupons before depositing this type of security.

(4) DETERMINATION OF AMOUNT. (a) If a security deposit is required, the amount generally shall be equal to the depositor's average quarterly Wisconsin sales and use tax liability increased to the next highest even \$100 amount. The average quarterly sales and use tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous sales and use tax liability at the location specified on the permit.

2. The predecessor's sales and use tax liability at the location specified on the permit,

3. The estimated tax liability shown on the application for permit.

4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.

(b) If at the time of the security review the retailer has an outstanding sales and use tax delinquency, the delinquent amount shall be added to the average quarterly sales and use tax liability.

(5) RETURN OF DEPOSIT. (a) Section 77.61 (2), Stats., provides: ". . . Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter."

(b) The 24 month compliance requirement described in sub. (5) (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24 month period described in sub. (5) (a) the department shall review the taxpayer's compliance record. If the taxpayer has complied with chapter 77, subchapter III the department shall within 60 days after the expiration of the 24 month period certify the deposit for refund.

(d) Compliance with subchapter III means that:

1. Sales and use tax returns were timely filed.

2. All payments were made when due.

3. No delinquencies of sales or use tax, interest or other charges existed.

4. No penalties due to negligence or fraud were assessed for filing periods within the 24 month compliance period.

5. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.

e. If a taxpayer does not meet the compliance requirements set forth in sub. (5) (d), the deposit shall be retained by the department until the

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taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

**Note:** Except as noted below, the interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

Subsection (6) relating to return of deposit is effective on March 13, 1980, the effective date of chapter 125, Laws of 1979.

**History:** Cr. Register, July, 1981, No. 307, eff. 8-1-81.

**Tax 11.93 Annual filing of sales tax returns.** (s. 77.58 (5), Stats.)

(1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

(2) Returns and payments of retailers reporting on an annual basis shall be due and payable on the last day of the month following the close of their calendar or fiscal year.

(3) A retailer who files on an annual basis shall not be required to file a sales and use tax "annual information return" if:

(a) Deductions and exemptions are itemized on the sales tax return filed for the year, and

(b) Gross receipts reported for income tax and sales tax purposes are the same amount.

**Note:** The interpretations in this rule are effective under the general sales and use tax law effective on and after September 1, 1969, except that the \$300 standard applies to taxable years beginning on and after the date of the rule's adoption. A \$100 standard applies to taxable years prior to the date of the rule's adoption. The \$300 standard was adopted effective January 1, 1979 to apply to the 1979 taxable year and thereafter.

**History:** Cr. Register, December, 1978, No. 278, eff. 1-1-79.

**Tax 11.94 Wisconsin sales and taxable transportation charges.** (ss. 77.51 (4) (intro.) and (d) and (4r), and 77.52 (1), Stats.) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (4r), Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is not a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employees or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

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(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (4) (d), Stats., applies to a situation where tangible personal property is delivered to a purchaser in this state by an owner of the property or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a Wisconsin manufacturer ships or turns over such property to a purchaser in