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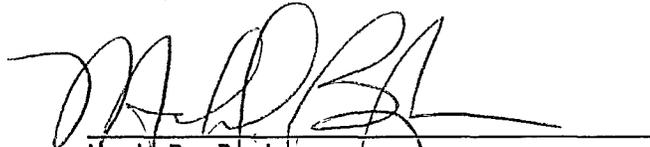
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to sales and use tax was duly approved and adopted by this department on November 5, 1992.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 5th day of November, 1992.



Mark D. Bugher
Secretary of Revenue

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

The Wisconsin Department of Revenue adopts an order to repeal Tax 11.925(3)(a)3; to renumber Tax 11.68(9)(b); to amend Tax 11.26(2)(intro.) and (c) and (3)(intro.) and (b), Tax 11.32(2), (4)(a) and (c), (5)(a), (am) and (b) and (7), Tax 11.51(2)(a) and (b), Tax 11.68(title), (6)(a)(intro.), 9 and 10, (10)(a) and (c) and (12)(c), Tax 11.87(2)(d)(intro.) and 3, (f), (i)(intro.), 1.(intro.) and 2.(intro.) and (k)2 and (3)(a), (b) and (d) and Tax 11.925(title), (1), (2)(b), (3)(b)1 and (5)(c) and (d)4 and 5; and to create Tax 11.68(2)(c), (3)(f) and (9)(b) and Tax 11.87(3)(e), relating to sales and use taxes.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.51(2), (4)(a)(intro.) and 4, (b)1 and 6 and (c)2 and 4, (14)(intro.), (b), (f), (g) and (i) and (15)(a)(intro.) and 4, (b)1 and 5 and (c)1 and 2, 77.52(1) and (2)(a)10, 11 and 20, 77.54(5)(d), (6)(a), (15), (20), (26), (26m), (31) and (41), 77.61(3), 77.71(3) and 77.77(3), Stats.

SECTION 1. Tax 11.26(2)(intro.) and (c) and (3)(intro.) and (b) are revised to conform to Clearinghouse Standards and to reflect the changes made to s. 77.51(4)(a)4 and (15)(a)4, Stats., by 1991 Wis. Act 39.

SECTION 2. Tax 11.32(2), (4)(a) and (c), (5)(a), (am) and (b) and (7) are revised to conform to Clearinghouse Standards, to correctly reflect statutory language, and to reflect the exemption of another type of mobile home (s. 77.51(4)(b)6, Stats.), due to the amendment in 1991 Wis. Act 39.

SECTION 3. Tax 11.51(2)(a) and (b) are revised to clarify the department's position that breakfast pastries are not taxable and to reflect a change in the department's position with respect to granola bars that are not candy coated to be consistent with breakfast items.

SECTION 4. Tax 11.68(title) is revised to reference s. 77.54(41), Stats., as created by 1991 Wis. Act 37.

SECTION 5. Tax 11.68(2)(c) is created due to the clarification of s. 77.51(2), Stats., by 1991 Wis. Act 39. Tax 11.68(3)(f) is created due to the creation of s. 77.54(41), Stats., by 1991 Wis. Act 37.

SECTION 6. Tax 11.68(6)(a)(intro.) is revised to conform to Clearinghouse Standards. Tax 11.68(6)(a)9 is revised due to the amendment of s. 77.51(4)(b)6, Stats., by 1991 Wis. Act 39. Tax 11.68(6)(a)10 is revised to clarify the department's position with respect to concrete foundations.

SECTION 7. Tax 11.68(9)(b) is renumbered to allow for the creation of a new Tax 11.68(9)(b).

SECTION 8. Tax 11.68(9)(b) is created due to the repeal of s. 77.51(19), Stats., and the amendment of s. 77.51(18), Stats., by 1991 Wis. Act 39.

SECTION 9. Tax 11.68(10)(a) and (c) and (12)(c) are revised to conform to Clearinghouse Standards.

SECTION 10. Tax 11.87(2)(d)(intro.) and 3, (f), (i)(intro.), 1.(intro.) and 2.(intro.) and (k)2 and (3)(a), (b) and (d) are revised to conform to Clearinghouse Standards. Tax 11.87(3)(a) is also revised to reflect the amendment to s. 77.54(20)(c)4, Stats., by 1991 Wis. Act 39. Also the term "specific charge" is replaced with the word "consideration" to more accurately reflect the statutes.

SECTION 11. Tax 11.87(3)(e) is created to reflect the department's position regarding supervised boarding facilities.

SECTION 12. Tax 11.925(title) is revised to reference s. 77.61(2), Stats. Tax 11.925(1) and (2)(b) are revised to conform to Clearinghouse Standards.

SECTION 13. Tax 11.925(3)(a)3 is repealed to reflect the department's position with respect to third party guarantees.

SECTION 14. Tax 11.925(3)(b)1 and (5)(c) and (d)4 and 5 are revised to conform to Clearinghouse Standards.

SECTION 1. Tax 11.26(2)(intro.) and (c) and (3)(intro.) and (b) are amended to read:

Tax 11.26(2)(intro.) TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE. The following taxes ~~shall-be~~ are included in a retailer's gross receipts and sales price, except as provided in sub. (3):

(c) Any federal stamp tax and manufacturer's or importer's excise tax. ~~Presently there are federal excise taxes on tires, inner tubes, tread rubber, firearms, ammunition, lubricating oils, fishing equipment, cigarettes, beer and intoxicating liquor, including wine.~~ Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel, tires, firearms, sporting goods and air or ship transportation.

(3)(intro.) TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE. The following taxes ~~shall-be~~ are excluded from a retailer's gross receipts or sales price:

(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if that federal, state or municipal tax is measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax.

SECTION 2. Tax 11.32(2), (4)(a) and (c), (5)(a), (am) and (b) and (7) are amended to read:

Tax 11.32(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~~ are included in gross receipts derived from the sale of taxable tangible personal property or taxable services. Cancelled order charges are not taxable if there is no transfer of merchandise to a customer.

(4)(a) Section 77.51(4)(a)4, Stats., 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 the retailer, 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.

(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 these sales shall ~~be deemed to~~ include sales tax if customers are advised that vending machine prices include sales tax.

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

<u>Amount of Taxable Sale</u>	<u>5% Tax Collectible</u>
\$.01 to \$.09	\$.00
.10 to .29	.01
.30 to .49	.02
.50 to .69	.03
.70 to .89	.04
.90 to 1.09	.05

On sales exceeding \$1.00, the state tax equals 5% of each full dollar plus the tax shown above for the applicable fractional part of a dollar.

Note to Revisor: The last line of Tax 11.32(5)(a) should be moved to line up with the left margin.

(am) In counties having a county tax, the following bracket system is used.

<u>Amount of Taxable Sale</u>	<u>Combined State and County Tax of 5½%</u>
\$.01 - \$.09	0¢
.10 - .27	1¢
.28 - .45	2¢
.46 - .63	3¢
.64 - .81	4¢
.82 - .99	5¢
1.00 - 1.18	6¢
1.19 - 1.36	7¢
1.37 - 1.54	8¢
1.55 - 1.72	9¢
1.73 - 1.90	10¢
1.91 - 2.09	11¢

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2. Example: ~~For a sale of \$11.50, the 5% tax is 63¢ (55¢ for \$10 sale plus 8¢ for \$1.50 sale).~~

Note to Revisor: Move the last two lines of Tax 11.32(5)(am) to line up with the left margin.

Note to Revisor: Add the following example after Tax 11.32(5)(am):

Example: For a sale of \$11.50, the 5% tax is 63¢, consisting of 55¢ for \$10 of sales plus 8¢ for \$1.50 of sales.

(b) The bracket system method is designed so that the total amount of tax paid by customers approximates the tax payable by the retailer on the retailer's taxable gross receipts, if the retailer's sales fall equally throughout all the brackets. When more than one taxable item is sold in a single transaction, the tax ~~shall be~~ is computed on the aggregate sales price of the taxable items sold.

(7) MOBILE HOMES. Gross receipts and sales price ~~shall do~~ do not include 35% of the amount from the sale of a new mobile home, not including leases and rentals, that is a:

(a) A primary housing unit under s. 340.01(29), Stats. ~~This reduction does not apply to leases or rentals.~~

(b) Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

Note to Revisor: Change the Note at the end of Tax 11.32 to read:

Note: The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; and (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 3. Tax 11.51(2)(a) and (b) are amended to read:

Tax 11.51(2)(a) Taxable sales by grocers. Taxable gross receipts include gross receipts from sales of the following items:

Adhesive tape.	Books.	Cigars.
Air fresheners.	Bottles.	Cleaning equipment and supplies.
Albums.	Bowl cleaner.	Cleansers.
Ammonia.	Breath mints.	Clocks.
Anti-acid products.	Brooms.	Clothes lines.
Anti-freeze.	Brushes.	Clothespins.
Appliances.	Bubble bath.	Clothing.
Ash trays.		Cocktail mixes.
Aspirin.	Cake decorations, non-edible.	Cod liver oil.
Auto supplies.	Calcium tablets.	Cold remedies.
Baby needs, except food.	Cameras and supplies.	Coloring extracts.
Bags of all kinds.	Candied fruits.	Combs and brushes.
Bakeware.	Candy.	Confections.
Barbecue supplies.	Candy apples.	Cough drops.
Baskets.	Canning and freezer supplies.	Crayons.
Batteries.		
Beauty aids.	Can openers.	Deli items, see par. (c)5.
Beer.	Carbonated beverages.	Dental aids.
Beer making supplies.	Cat food and supplies.	Deodorants.
Binders.	Charcoal and starter.	Deodorizers.
Bird food and supplies.	Chewing gum.	Detergents.
Bleach.	Cigarette lighter fluid, wicks, flints.	Dinnerware.
Blueing.		Disinfectants.
Bobby pins and rollers.	Cigarettes.	

Distilled spirits.	Frames.	Hosiery.
Dog food and supplies.	Fruit drinks, liquid	Household equipment and
Dolls.	and powdered, see	supplies.
Drain cleaners.	par. (c)2.	
Drug sundries.	Fuel and lubricants.	Ice, cube and block.
Dry cleaners.	Furniture polish.	Ice cream bars and
Dye.		similar products.
	Games.	Ice cream in cones.
Electrical supplies.	Garbage bags and cans.	Insect and pest control
	Garden needs.	products.
Facial tissues.	Gifts, non-food and	Insulated containers.
Farm and garden	nonexempt food.	Internal remedies.
implements.	Ginseng.	Intoxicating liquor.
Feminine hygiene needs	Glassware.	Iron tablets.
including napkins and	Gloves.	
tampons.	Glue.	Jewelry.
Fermented malt beverages.	Granola bars, <u>candy or</u>	
Fertilizers.	<u>yogurt coated.</u>	Laundry products.
Film.	Greeting cards.	Lawn furniture.
First aid products.	Grooming aids.	Light bulbs and fuses.
Flash bulbs.	Gum.	Lozenges.
Flatware.		Lunch boxes.
Floor care products.	Hair care products.	Lye.
Flowers and seeds.	Hardware.	
Foil, aluminum and	Health and beauty aids.	Magazines.
similar products.	Heated foods and	Manicure needs.
Food coloring.	beverages, see par.	Mason jars.
Foot care products.	(c)1.	Matches.

Medicinal preparations.	Powder, face and body.	Sponges.
Milk of magnesia.	Powdered fruit drinks,	Starch.
Mineral tablets.	see par. (c)2.	Stationery.
		Steel wool.
Nail polish and remover.	Raisins, candy or yogurt	Stockings.
Nails.	coated.	Sun glasses.
Napkins.	Razors and blades.	Sun tan lotion.
Notebooks.	Records.	
Nursery stock.	Root beer and extracts.	Tableware.
Nuts, candy or yogurt	Rotisseries.	Taffy apples.
coated.	Rubber bands.	Tape.
		Thread.
Pails.	Salt, water softener.	Tobacco products.
Paint and paint supplies.	Sandwiches, hot or cold.	Toilet tissue.
Paper products, including	Sanitary goods.	Tonics.
tissues, plates, cups,	School supplies.	Tools.
towels, napkins and	Scissors.	Tooth brushes.
writing paper.	Sewing aids.	Toothpaste and powders.
Peanuts, candy or yogurt	Shampoo and rinse.	Toothpicks.
coated.	Shaving supplies.	Toys.
Pens and pencils.	Shelf coverings.	
Periodicals.	Shoe laces and polishes.	Utensils.
Pet food and supplies.	Soaps.	
Plastic utensils.	Soda water beverages,	Vitamins.
Polishes.	see par. (c)2.	
Popcorn, raw or popped.	Soft drinks, see	Wash cloths.
Pots and pans.	par. (c)2.	Waste baskets.

Watches.	Waxing.	Writing supplies.
Water, bottled, sparkling, spring and distilled.	Wax paper.	Yogurt bars, cones and sundaes.
Water conditioners.	Wearing apparel.	
	Wine making supplies.	
	Wrap, foil, plastic and waxed paper.	Zippers.

(b) Exempt sales by grocers. Exempt gross receipts include gross receipts from sales of the following items:

Apple cider, sweet.	Cereal and cereal products.	Dietary foods, see par. (c)4.
Baby food.	Cheese.	Dinners, frozen.
Bakery goods.	Chicken.	Doughnuts.
Baking chocolate.	Chip dip.	Dressings.
Baking powder and soda.	Chips, potato, corn and similar items.	Dried fruits.
Barbecue sauces.	Chocolate, instant and baking.	Dried milk products.
Berries.		Eggs.
Biscuit mix.	Citrus fruits.	
Bouillon cubes.	Cocoa.	Fish and fish products.
Bread and rolls.	Coffee and coffee substitutes.	Flavoring extracts.
<u>Breakfast pastries.</u>	Condiments.	Flour.
Brownies.	Cones, ice cream cups.	Frozen desserts.
Butter.	Cookies and crackers.	Frozen fruit juices, see par. (c)3.
Cake mixes and flour.	Cooking oils.	Frozen fruits and vegetables.
Cakes, prepared, mixes and snack type.	Cream.	Frozen pizza.
Canned foods.	Desserts and toppings.	Frozen TV dinners.
Catsup.		

Fruit.	Margarine.	Pickles.
Garlic.	Marshmallows.	Pie and pie fillings.
Gelatin.	Mayonnaise.	Pie crust and mixes.
<u>Granola bars, see</u>	Meal.	Potato chips.
<u>par. (a).</u>	Meat and meat products.	Potato salad, see
Gravy extracts and mixes.	Meat extracts and	<u>par. (c)5.</u>
Grits.	tenderizers.	Poultry and poultry
Hash.	Melons.	products.
Honey.	Milk and milk products.	Preserves.
	Mustard.	Pretzels.
	Newspapers.	Puddings.
Ice cream, pints or	Noodles.	<u>Raisins, see par. (a).</u>
larger.	Nuts, except candy or	Ravioli.
Jams.	yogurt coated.	Relishes.
Jellies.	Oil, cooking, salad.	Rice.
Juices, pure fruit, see	Oleomargarine.	Rolls and biscuits.
<u>par (c)3.</u>	Olives.	Salad dressing.
Ketchup.	Pancake mix.	Salt and salt
Lobster.	Pasta.	substitutes.
Luncheon meats.	Peanuts, in shell or	Salted nuts.
Macaroni.	canned, salted or not,	Sardines.
Malted milk powder.	<u>see par. (a).</u>	Seafood.
Maraschino cherries.	Peanut butter.	Seasonings.
	Pectins.	Sherbet.
	Pepper.	Shortening.
		Soup.

Spaghetti products.	Tea and ice tea.	Vinegar.
Spices.	Turkey.	
Spreads.		Waffle mix.
Sugar.	Vanilla and vanilla	
Sweeteners.	extract.	Yeast.
Syrup.	Vegetable juices.	Yogurt, other than
	Vegetables.	par. (a) items.

SECTION 4. Tax 11.68(title) is amended to read:

Tax 11.68(title) CONSTRUCTION CONTRACTORS. (ss. 77.51(2), (4)(b)6 and (c)4, (14)(intro.), (g) and (i) and (15)(b)5 and (c)2, 77.52(2)(a)10, 11 and 20, 77.54(5)(d), (6)(a), (26), (26m), (31) and (41), 77.71(3) and 77.77(3), Stats.)

SECTION 5. Tax 11.68(2)(c) and (3)(f) are created to read:

Tax 11.68(2)(c) Real property construction activities include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modular units. The modular units must have a realty function and must become a permanent accession to realty.

(3)(f) Under s. 77.54(41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11(36), Stats. Section 70.11(36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being

built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

SECTION 6. Tax 11.68(6)(a)(intro.), 9 and 10 are amended to read:

Tax 11.68(6)(a)(intro.) Contractors shall obtain a seller's permit and report for taxation gross receipts from the sale and installation of personal property, furnished under a construction contract, which retains its character as personal property after installation. ~~---Examples of such property are, such~~ as:

9. Except as provided in ss. 77.51(4)(b)6 and (15)(b)5 and 77.54(31), Stats., mobile homes located in a mobile home park on land owned by a person other than the mobile home owner. Exemptions are provided by ss. 77.51(4)(b)6 and (15)(b)5 and 77.54(31), Stats., for 35% of the total amount for which a new mobile home that is a primary housing unit, or that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation, is sold and the full amount for which a used mobile home that is a primary housing unit is sold or purchased. No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental.

10. Advertising signs, except their underground concrete foundations. A foundation is underground even though a portion of the foundation extends above the grade.

SECTION 7. Tax 11.68(9)(b) is renumbered Tax 11.68(9)(c).

SECTION 8. Tax 11.68(9)(b) is created to read:

Tax 11.68(9)(b) If a construction contractor purchases property outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made or property was used prior to being stored in Wisconsin.

SECTION 9. Tax 11.68(10)(a) and (c) and (12)(c) are amended to read:

Tax 11.68(10)(a) A contractor who performs real property construction activities shall may not add tax to any charge for labor or material, since gross receipts from these activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of the materials and becomes a cost of doing business.

(c) Section 77.52(2)(a)10, Stats., provides in part that " ... the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, ~~juke-boxes~~ jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration, but not of

limitation, bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation, lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

(12)(c) In providing repair services to real property subject to taxation under s. 77.52(2)(a)10, Stats., a contractor may purchase without county tax for resale the building materials used in providing such the taxable services, and the county excise tax imposed under s. 77.71(3), Stats., does not apply to such those purchases.

Note to Revisor: Change the Note at the end of Tax 11.68 to read:

Note: The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) Thirty-five percent of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 10. Tax 11.87(2)(d)(intro.) and 3, (f), (i)(intro.), 1.(intro.) and 2.(intro.) and (k)2 and (3)(a), (b) and (d) are amended to read:

Tax 11.87(2)(d)(intro.) Caterers. Meals, food, food products and beverages sold by caterers shall be taxable. For purposes of this paragraph:

3. The tax shall apply to items purchased by caterers, including dishes, silverware, linen napkins, tablecloths, punch fountains, coffee silver service and glassware, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering service. However, ~~the following~~ items such as tents, public address systems, portable dance floors, portable bars, chairs and tables may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for ~~such~~ their use: ~~tents, public address systems, portable dance floors, portable bars, chairs and tables~~. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placemats and toothpicks also may be purchased without tax for resale.

(f) Cover and minimum charges. Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for ~~such~~ the service, the entire amount shall be taxable.

(i)(intro.) Meals to employes. Sales of meals to employes by an employer for a ~~specific charge~~ consideration shall be taxable. For purposes of this paragraph:

1.(intro.) A ~~specific charge~~ consideration shall be deemed made for meals if any one of the following conditions is met:

2.(intro.) In the absence of any of the conditions in subd. 1 a specific charge-~~shall~~ consideration is not be deemed made when:

(k)2. When an exempt organization as described in s. 77.54(9a)(f), Stats., pays for food and beverages out of its own funds, and provides the items to members or others without charge, the sale of the items by a retailer to the organization ~~shall~~ is not be subject to the tax. If the exempt organization holds a certificate of exempt status issued by the department, it shall give the retailer the certificate number to claim the exemption.

(3)(a) Health care facilities. Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption ~~shall~~ does not apply.

(b) "Meals on wheels". Meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(d) Groceries. Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of prepackaged ice cream, ice milk or sherbet in pint, ~~quart,~~ ~~gallon~~ or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

SECTION 11. Tax 11.87(3)(e) is created to read:

Tax 11.87(3)(e) Supervised boarding facilities. The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental social security, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

Note to Revisor: Change the Note at the end of Tax 11.87 to read:

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chapter 250, Laws of 1977; and (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 12. Tax 11.925(title), (1) and (2)(b) are amended to read:

Tax 11.925(title) SALES AND USE TAX SECURITY DEPOSITS. (s. 77.61(2), Stats.)

(1) GENERAL. Under s. 77.61(2), Stats., the department may require a person liable for sales and use taxes to make a security deposit before or after a seller's permit is issued. The amount of the security deposit determined by the department shall ~~shall~~ may not exceed \$15,000. If a person fails or refuses to make a security deposit as requested, the department may refuse to issue a permit or revoke the permit.

(2)(b) Although the individual factors listed in ~~sub--(2)~~ par. (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.

SECTION 13. Tax 11.925(3)(a)3 is repealed.

SECTION 14. Tax 11.925(3)(b)1 and (5)(c) and (d)4 and 5 are amended to read:

Tax 11.925(3)(b)1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on such ~~certificates~~ those certificates shall be paid to the depositor.

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

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

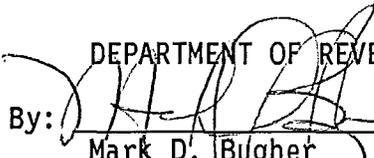
5. No assessment of additional tax, interest or other charges for filing periods within the ~~24-month~~ 24-month compliance period is unpaid at the end of the ~~24-month~~ 24-month compliance period.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

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

Dated: November 5, 1992

DEPARTMENT OF REVENUE
By: 
Mark D. Bugher
Secretary of Revenue

CKLEG/849

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Revisor of Statutes
Bureau

LRB or Bill No./Adm. Rule No.
 Tax 11.51; 11.68; 11.925
 Amendment No. if Applicable

FISCAL ESTIMATE

DOA-2048 (R11/90)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Granola Bars and Other Rule Changes

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

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

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts VTAE Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under this rule, granola bars, which are currently taxable in all forms, would be taxable only if they are candy-coated or yogurt-coated; otherwise, they would be exempt. This would reduce sale tax revenues by an unknown, but probably minimal amount; county sales tax revenues would also decline minimally.

The rule would no longer allow personal guarantees by a third party to be used as an acceptable type of security required by the Department for issuance of a seller's permit. This change would not affect state tax revenues.

Other changes in this rule do not affect state tax revenues. These revisions reflect changes to the statutes by 1991 Acts 37 and 39, clarify the Department's position or conform style to Legislative Clearinghouse standards.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
 Wisconsin Department of Revenue
 Dennis Collier, 266-9706

Authorized Signature/Telephone No. 266-2700
 Margaret M. Derus
Margaret M Derus

Date
 3/17/92

FISCAL ESTIMATE WORKSHEET

1991 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R11/90) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 Tax 11.51; 11.68; 11.925

Subject

Sales and Use Tax Treatment of Granola Bars and Other Rule Changes

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ - minimal
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ - minimal

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS \$ _____ \$ _____

NET CHANGE IN REVENUES \$ minimal - _____ \$ minimal - _____

Agency/Prepared by: (Name & Phone No.)
 Wisconsin Department of Revenue

Authorized Signature/Telephone No. 266-2700

Date
 2/17/92



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708-8933 ● FAX (608) 266-5718

November 5, 1992

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Assistant Revisor
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119 Martin Luther King, Jr. Blvd.
Madison, WI 53703

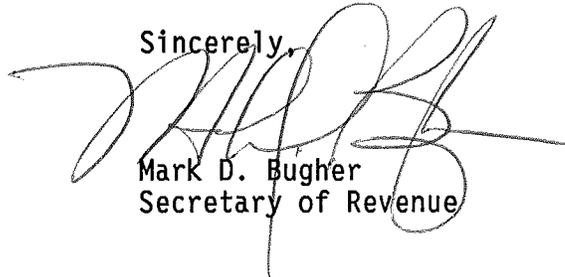
Re: Clearinghouse Rule 92-63

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use tax.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1047

Enclosure

cc: Douglas J. LaFollette, Secretary of State
Commerce Clearing House, Inc.
Research Institute of America, Inc.



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

November 5, 1992

Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

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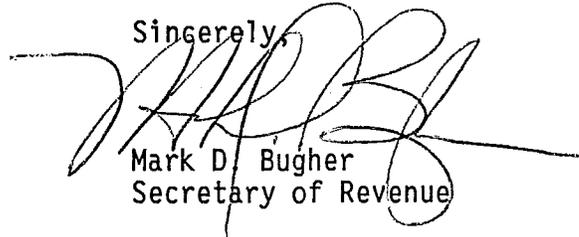
Revisor of Statutes
Bureau

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 92-63.

These materials are filed with you pursuant to s. 227.20, Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1046

Enclosure

cc: Revisor of Statutes