

CR 92-46

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 taxes was duly approved and adopted by this department on March 26, 1993.

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 26th day of March, 1993.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1233

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Revisor of Statutes
Bureau

6-1-93

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

The Wisconsin Department of Revenue adopts an order to repeal Tax 11.08(1)(d); to renumber Tax 11.08(1)(e), (f), (g), (h) and (i); to renumber and amend Tax 11.17(4)(b)5; to amend Tax 11.08(1)(intro.), (2)(intro.), (3), (4), (5), (6), (8) and (9), 11.17(1)(a), (3) and (4)(a)2 and (b)4, 11.18(1) and (2)(a)3 and 11.45(1), (2)(a), (b)(intro.) and (c)(intro.), (3)(intro.), (a), (b), (c), (d) and (e) and (4); to repeal and recreate 11.45(3)(h); and to create 11.17(4)(b)5, 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(13)(e) and (f) and (14)(L), 77.52(2)(a)1, 9 and 10 and (2m) and 77.54(9a), (14), (14g), (14m), (14r), (14s), (20)(c)4, (22) and (28), Stats.

SECTION 1. Tax 11.08(1)(intro.) is revised to include parts and accessories in the exemption for handicap devices pursuant to 1991 Wis. Act 39 (s. 77.54(22)(intro.), Stats.).

SECTION 2. Tax 11.08(1)(d) is repealed as a result of the exemption for adaptive equipment pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359.

SECTION 3. Tax 11.08(1)(e), (f), (g), (h) and (i) are renumbered since 11.08(1)(d) is being repealed.

SECTION 4. Tax 11.08(2)(intro.), (3), (4), (5), (6), (8) and (9) are revised to exempt parts and accessories pursuant to 1991 Wis. Act 39 (s. 77.54(22)(intro.), Stats.).

SECTION 5. Tax 11.17(1)(a) is revised to update the style per Legislative Council Rules Clearinghouse standards. Tax 11.17(3) is revised to include parts and accessories in the exemption pursuant to 1991 Wis. Act 39 (s. 77.54(22)(intro.), Stats.). Tax 11.17(4)(a)2 is revised to reflect the taxability of meals sold off premises pursuant to 1991 Wis. Act 39 (s. 77.54(20)(c)4, Stats.). Tax 11.17(4)(b)4 is revised to clarify that this provision applies to taxable services.

SECTION 6. Tax 11.17(4)(b)5 is renumbered Tax 11.17(4)(b)6 and revised to update style per Legislative Council Rules Clearinghouse standards.

SECTION 7. Tax 11.17(4)(b)5 is created to reflect the taxability of meals sold by hospitals off premises pursuant to 1991 Wis. Act 39 (s. 77.54(20)(c)4, Stats.).

SECTION 8. Tax 11.18(1) and (2)(a)3 are revised to include parts and accessories in the exemption pursuant to 1991 Wis. Act 39 (s. 77.54(22)(intro.), Stats.).

SECTION 9. Tax 11.45(1), (2)(a), (b)(intro), (c)(intro.) and (3)(intro.) are revised to update style per Legislative Council Rules Clearinghouse standards. Tax 11.45(3)(a) through (e) are revised to include parts and accessories in the exemption pursuant to 1991 Wis. Act 39(s. 77.54(22)(intro.), Stats.).

SECTION 10. Tax 11.45(3)(h) is repealed and recreated to correctly reflect s. 77.52(2)(a)10, Stats.

SECTION 11. Tax 11.45(4) is revised to update style per Legislative Council Rules Clearinghouse standards.

SECTION 1. Tax 11.08(1)(intro.) is amended to read:

Tax 11.08(1)(intro.) DEVICES FOR HANDICAPPED PERSONS. Section 77.54(22)(a), Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled 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 parts and accessories and trusses, supports, shoes, and braces 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. The following items normally are not designed for use by a particular person, and if that is the case, do not qualify for the exemption:

Note to Revisor: The statutory language quoted in Tax 11.08(1)(intro.) should be italicized.

SECTION 2. Tax 11.08(1)(d) is repealed.

SECTION 3. Tax 11.08(1)(e), (f), (g), (h) and (i) are renumbered Tax 11.08(1)(d), (e), (f), (g) and (h).

SECTION 4. Tax 11.08(2)(intro.), (3), (4), (5), (6), (8) and (9) are amended to read:

Tax 11.08(2)(intro.) PROSTHETIC DEVICES, APPLIANCES AND AIDS. Section 77.54(22)(b), 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." This exemption includes parts and accessories. "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to:

Note to Revisor: The statutory language quoted in Tax 11.08(2)(intro.) should be italicized.

Note to Revisor: Insert the following note after Tax 11.08(2)(b):

Note: Gross receipts from the sale of adult cloth diapers are exempt from tax under s. 77.54(40), Stats.

(3) EYE GLASSES. Section 77.54(22)(d), 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,~~ and thermal and chemical care units for contact lenses, ~~chains, clips or other accessories~~ associated with eye glasses. Frames, parts and accessories for prescription glasses are exempt.

(4) CRUTCHES AND WHEELCHAIRS. Section 77.54(22)(e), Stats., exempts gross receipts from the sale of "Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled." This exemption includes parts and accessories and 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.

(5) ELASTIC HOSE AND STOCKINGS. Section 77.54(22)(f), Stats., exempts gross receipts from the sale of "~~antiembolism~~ Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer." This exemption includes parts and accessories.

(6) OXYGEN EQUIPMENT. Section 77.54(14s), Stats., exempts the gross receipts from the sale of "~~Equipment~~ equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a

person authorized to prescribe oxygen." The exemption applies to oxygen carts acquired for use by patients with a prescription for oxygen.

(8) ADAPTIVE EQUIPMENT FOR MOTOR VEHICLES. Section 77.54(22)(g), Stats., exempts gross receipts from the sale of adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle, as defined in s. 27.01(7)(a)2, Stats., if that equipment is purchased by the handicapped person who will use it, a person acting directly on behalf of that handicapped person or a nonprofit organization.

(9)(title) PARTS, ACCESSORIES AND SERVICE. Gross receipts from the sale of repair parts and service for exempt property are exempt. In addition, gross receipts from the sale of parts and accessories for items exempt under s. 77.54(22), Stats., are exempt.

Note to Revisor: Change the Note at the end of 11.08 to read:

Note: The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a handicapped person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; and (f) The exemption for parts and accessories became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 5. Tax 11.17(1)(a), (3) and (4)(a)2 and (b)4 are amended to read:

Tax 11.17(1)(a) Although professional personnel in hospitals and clinics and other members of medical professions including physicians, surgeons, oculists, optometrists and podiatrists regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such that property is an incident of a service rather than a retail sale of such the property.

The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

(3) PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSION. Purchases made by medical clinics and physicians are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list shall be furnished to patients at the direction of a physician, surgeon or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of the health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	Antiembolism elastic hose and stockings, <u>including parts and accessories</u>
Alcoholic beverages	*Apparatus and equipment for treatment of diabetes
Bandages, gauze and cotton	*Artificial eyes and limbs, <u>including parts and accessories</u>
Bed pans	*Blood sugar level testing supplies
Beds and linens	Bone pins and plates, <u>including parts and accessories</u>
Compresses and dressings	*Crutches and wheel chairs, including motorized wheelchairs and scooters, <u>including parts and accessories</u>
Cosmetics	Diaphragms
Deodorants and disinfectants	*Dietary foods
Distilled water	*Disposable syringes containing insulin
Enema kits	Dye
Instruments	*Hearing aids and parts, <u>including parts and accessories</u>
Laboratory equipment and supplies	Medical oxygen and equipment to administer oxygen

Medical equipment	Medicines
Office equipment and supplies	*Needles and syringes used by diabetics
Paper products	Oral contraceptives
Printed material	Pacemakers, <u>including parts and accessories</u>
Rib belts and supports	Prescription drugs
Soda water beverages	Prophylactics
Soap	Rubbing alcohol
Splints and cast materials	Suppositories
Uniforms and gowns	Sutures
X-ray film and machines	Vaccines
	Vaginal creams and jellies
	Vitamins

(4)(a)2 Hospitals' sales of meals, food, food products and beverages to patients, staff or visitors served on the hospitals' premises.

(b)4 Sales of meals and other tangible personal property or taxable services by an organization affiliated with a hospital.

Note to Revisor: Change the Examples after Tax 11.17(4)(b)4 to read:

Examples: 1) If a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, and holds or is required to hold a seller's permit, gross receipts from this business are taxable.

2) Sales by a hospital auxiliary, which holds or is required to hold a seller's permit, of an emergency response system that links an individual to medical attention by pushing a button which transmits to a communicator connected to a telephone and sends an automatic call for help are taxable telecommunications services.

SECTION 6. Tax 11.17(4)(b)5 is renumbered Tax 11.17(4)(b)6 and amended to read:

Tax 11.17(4)(b)6 An optometrist's sales of nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses and other types of tangible personal property ordinarily taxable when sold at retail, unless the gross receipts from ~~such~~ those sales are less than \$1,000 within a calendar year. Optometrists whose receipts from taxable items equal or exceed \$1,000 annually shall register with the department and obtain a seller's permit. Those whose receipts from taxable items are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable items.

SECTION 7. Tax 11.17(4)(b)5 is created to read:

Tax 11.17(4)(b)5 Sales of meals, food, food products and beverages by hospitals off the hospitals' premises, except when sold to the elderly or handicapped by persons providing "mobile meals on wheels."

Note to Revisor: Change Part 2 of the Note at the end of Tax 11.17 to read:

2) The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for needles and syringes used by diabetics became effective November 19, 1975, pursuant to Ch. 102, Laws of 1975; (b) The exemption for oxygen equipment became effective September 1, 1983, pursuant to 1983 Wis. Act 27; (c) The exemption for motorized scooters became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for diabetic apparatus and equipment and supplies for determining blood sugar levels became effective March 1, 1989, pursuant to 1987 Wis. Act 399; (e) The exemption for antiembolism elastic hose and stockings prescribed by a physician became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The purchases by a hospital service insurance corporation under s. 613.80 (2), Stats., became taxable effective September 1, 1985, pursuant to 1985 Wis. Act 29; (g) The exemption for parts and accessories for certain medical equipment became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (h) The sales of meals by hospitals off the hospital's premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 8. Tax 11.18(1) and (2)(a)3 are amended to read:

Tax 11.18(1) DENTISTS CHARGES. Charges by dentists for dental services are not subject to the sales tax. In addition, charges for items specifically designed for a patient which are installed in the patient's mouth, including artificial teeth, fillings, bridges, crowns, or inlays, and parts and accessories for those items, are not subject to the tax.

(2)(a)3 Crowns, bridges, bridgework, dentures, inlays, fillings and other items fabricated by a dental laboratory, including parts and accessories for those items, which the dentist installs in the patient's mouth.

Note to Revisor: Insert the following Note at the end of Tax 11.18:

Note: The interpretations in s. Tax 11.18 are effective under the general sales and use tax law on and after September 1, 1969, except that the

exemption for parts and accessories for certain items became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 9. Tax 11.45(1), (2)(a), (b)(intro.), (c)(intro.) and (3)(intro.), (a), (b), (c), (d) and (e) are amended to read:

Tax 11.45(1) TAXABLE SALES. All sales of tangible personal property by a pharmacy or drug store ~~shall-be~~ are 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)(a) Medicines ~~shall-be~~ are exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

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

(c)(intro.) This exemption ~~shall~~ does not include:

(3)(intro.) EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES. The exemption for medical appliances and prosthetic devices under s. 77.54(14s), (22) and (28), Stats., ~~shall-apply~~ applies to sales of the following:

(a) Artificial devices, including parts and accessories, individually designed, constructed or altered solely for the use of a particular physically disabled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

(b) Trusses, supports, shoes and braces, including parts and accessories, but only when specifically fitted or altered to fit a particular person. "Altered" includes the bending of metal stays but does not include adjusting straps or seams.

(c) Antiembolism elastic hose and stockings, including parts and accessories, prescribed by a physician and sold to the ultimate consumer.

(d) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pacemakers, and other equipment, including parts and accessories, worn as a correction or substitute for any functioning part of the body. This exemption ~~shall~~ does 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.

(e) Crutches and wheelchairs including motorized wheelchairs and scooters for use by persons who are ill or disabled, 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, including parts and accessories.

SECTION 10. Tax 11.45(3)(h) is repealed and recreated to read:

11.45(3)(h) The repair, service, alteration, fitting, cleaning and maintenance of items in this subsection.

SECTION 11. Tax 11.45(4) is amended to read:

Tax 11.45(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 the administrator directly in full or in part, the ~~sale shall be~~ portion paid by the administrator is a tax exempt sale to the United States. If the provider of a taxable item bills an individual in full or in part who then seeks reimbursement from Medicare, the ~~sale shall~~ portion paid by the administrator to the individual is not be an exempt sale to the United States.

Note to Revisor: Change the Note at the end of Tax 11.45 to read:

Note: The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or

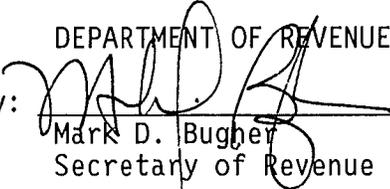
equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; and (e) sales of parts and accessories for certain medical items became exempt effective October 1, 1991, pursuant to 1991 Wis. Act 39.

The rules contained in this order shall take effect on the first date of the month following publication 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: April 26, 1993

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

CKLEG/1236

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FISCAL ESTIMATE

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

DOA-2048 (R11/90)

Subject

Sales and Use Tax Exemptions for Medical Equipment and Supplies

Fiscal Effect

State: No State Fiscal Effect

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

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

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

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

Most of the changes in this rule reflect changes made by 1991 Wisconsin Act 39, which exempted parts and accessories for exempt medical equipment and supplies from the sales tax, and by 1989 Wisconsin Act 238, which created an exemption for adaptive equipment allowing handicapped persons to operate motor vehicles. The other changes clarify the Department of Revenue's existing interpretations of sales tax law and update style to Legislative Council Clearinghouse standards. None of the changes have any fiscal effect.

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

2/13/92



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6468 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 29, 1993

Gary L. Poulson
Assistant Revisor
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

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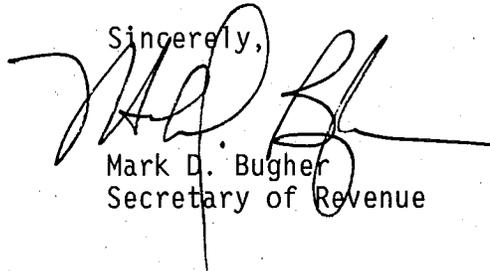
Re: Clearinghouse Rule 92-46

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 taxes.

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

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1232

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

March 29, 1993

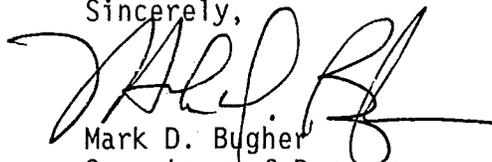
Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 92-46.

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

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1231

Enclosure

cc: Revisor of Statutes

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MAR 30 1993

Revisor of Statutes
Bureau