

CR 92-178

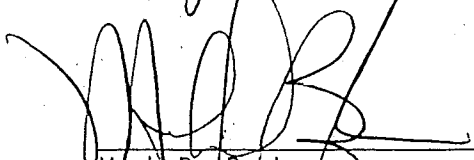
CERTIFICATE

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 the taxation of services for sales and use tax purposes, was duly approved and adopted by this department on September 16, 1993.

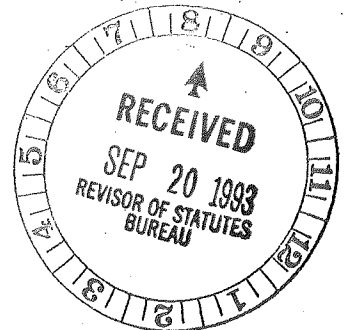
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 16th day of Sept, 1993.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1389



ORDER OF THE DEPARTMENT OF REVENUE
AMENDING RULES

The Wisconsin Department of Revenue adopts an order to amend Tax 11.67(title), (1), (2)(b) and (c) and (3)(a), (d)1 and 2, (e)1 and 2, (g), (1), (m) and (n), relating to the taxation of services for sales and use tax purposes.

Analysis by the Department

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

Statutes interpreted: ss. 77.51(4), (11), (12), (13), (14)(intro.), (h) and (1), (15), (20) and (22)(a) and (b) and 77.52(1), (2)(a) and (2m)(a) and (b), Stats.

SECTION 1. Tax 11.67, relating to service enterprises, is revised for the following reasons:

a. The title is revised to add statutory reference to ss. 77.51(11) and 77.52(2)(a), Stats., not previously mentioned.

b. Subsections (1), (2)(b) and (3)(a), (d)1 and 2, (e)1 and 2, (1) and (m) are revised to update language and style per Legislative Council Rules Clearinghouse standards.

c. Subsection (2)(c) is revised to reflect the department's and court's position that other methods may be used to determine if all or a portion of a charge that relates to both taxable and nontaxable services is subject to sales or use tax as long as they accurately reflect the tax liability.

d. Subsection (3)(a) is also revised to clarify that if a hospital or clinic sells taxable services, it shall obtain a seller's permit.

e. Subsection (3)(e)2 is also revised to clarify that if a prototype is sold to customers for use in their business or for resale, no tax is imposed on the materials.

f. Subsection (3)(g) is revised due to the creation of s. 77.52(2)(a)20, Stats., by Chapter 317, Laws of 1981.

g. Subsection (3)(m) is also revised to clarify what tangible personal property is subject to tax and list additional items that are physically transferred to a vehicle which may be purchased without tax as property for resale.

h. Subsection (3)(n) is revised to reflect the Wisconsin Supreme Court decision in Wisconsin Department of Revenue vs. Horne Directory, Inc., dated December 1, 1981. An example is added.

SECTION 1. Tax 11.67(title), (1), (2)(b) and (c) and (3)(a), (d)1 and 2, (e)1 and 2, (g), (1), (m) and (n) are amended to read:

Tax 11.67(title) SERVICE ENTERPRISES. (ss. 77.51(4), (11), (12), (13), (14)(intro.), (h) and (1), (15), (20) and (22)(a) and (b) and 77.52(1), (2)(a) and (2m)(a) and (b), Stats.) (1) GENERAL. When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser ~~must be considered to~~ shall determine whether such the transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. ~~Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which are furnished without separate charge as an incidence to the service.~~

Example: A person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service, even though this person may provide forms and binders without charge as part of the service. The person is the consumer, not the seller, of tangible personal property furnished as an incidence to the service.

(2)(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales the sale, and the tax applies to the total gross receipts ~~therefrom~~ from the sale without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. However, ~~if~~ If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

(3)(a) Hospitals and clinics. Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such the services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property or taxable services are retailers which shall obtain a seller's permit and report the tax on such these sales. ~~For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.~~

Examples: 1) Sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

2) Sales of parking by a hospital or clinic are taxable.

(d)1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. ~~For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost plus arrangement.~~ Also, if If a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

Example: A decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement.

2. A decorator's fee is not taxable if the fee is solely for services rendered ~~(such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply)~~ and there is no sale of tangible personal property involved with the transaction.

Example: Designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands or sources of supply are nontaxable services.

(e)1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide ~~such things as~~ plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the researcher owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided to the customer. The measure of the tax is the cost of the materials going into the production ~~for~~ of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes, is deemed not a sale of tangible personal property. However, if the prototype is transferred to a customer for use in its business or for the purpose of reselling it, the researcher may purchase the materials used to construct the prototype without tax as property for resale.

Examples: 1) A prototype is developed by Company A for a manufacturer who will use it in its manufacturing activities. The materials used in producing the prototype may be purchased by Company A without tax as property for resale. The manufacturer may purchase the prototype from Company A without tax as property used exclusively and directly in manufacturing by providing Company A with a properly completed exemption certificate.

2) A prototype is developed by Company B for an organization who intends to sell it to one of its members. The materials used in producing the prototype may be purchased by Company B without tax as property for resale. The organization may purchase the prototype from Company B without tax as property for resale by providing Company B with a properly completed exemption certificate.

(g) Architects. Fees paid to architects, except fees paid to architects for landscaping planning, to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(l) Taxidermists. ~~Taxidermists~~ Gross receipts from services taxidermists perform service on tangible personal property. ~~Gross receipts from such service~~ are subject to the tax.

(m) Car washes. The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. Such These persons are the consumers of the tangible personal property, such as soap, brushes, and towels, they purchase, except for the wax, air freshener and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax, air freshener and protectants sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to such these operators.

(n) Soliciting advertising for telephone directories. Persons who solicit advertising for telephone books and who, as an incident of such the

service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin ~~or have shipped into Wisconsin by an out-of-state~~ supplier.

Example: Company B located in Wisconsin solicits advertising for telephone books yellow pages and compiles, publishes and delivers the directories to the subscribers of telephone companies. Company B contracts with an out-of-state corporation to print the directories. The printer delivers a portion of the directories to the U.S. Postal Service for delivery directly to telephone subscribers in Wisconsin. The remaining directories are delivered to Company B who in turn distributes them to subscribers in Wisconsin. Company B is not subject to use tax on the directories delivered by the U.S. Postal Service. However, Company B is subject to use tax on the directories delivered to it which it distributes to subscribers.

Note to Revisor: Replace the note at the end of s. Tax 11.67 with the following note:

Note: The interpretations s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969, except that fees paid to architects performing landscaping planning became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981.

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.

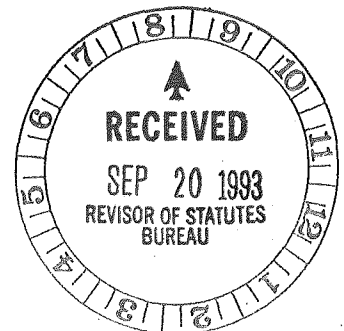
Final Regulatory Flexibility Analysis

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

Dated: Sept 16, 1993

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

CKLEG/1332



FISCAL ESTIMATE

DOA-2048 (R11/90)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Janitorial and Other Services

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

This rule would change Department of Revenue policy by interpreting sec. 77.52 (2)(a)10 as imposing the sales tax on janitorial and cleaning services performed on tangible personal property or on real property that retains its character as tangible personal property after installation. Janitorial and cleaning services on other real property would not be taxable.

Based on data in the 1987 Census of Service Industries for Wisconsin, it is estimated that receipts of firms providing building cleaning services, other than window washing, will be approximately \$200 million in FY 1993. It is assumed that 30% to 50% of these receipts are for services to tangible personal property, based on information from the Department's audit staff. Thus, the revenue gain associated with this rule change would range from \$3 million to \$5 million. County sales tax revenues would increase by \$170,000 to \$285,000.

Other changes in this rule clarify current Department policy, reflect changes in statutory language and a court decision, and conform language and style to Legislative Council Rules Clearinghouse standards. These other changes have no 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

Date
 5/24/92

Margaret M. Derus

FISCAL ESTIMATE WORKSHEET

1991 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
Tax 11.67 and 11.675	

Subject

Sales and Use Tax Treatment of Janitorial and Other Services

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		3 million to \$ 5 million	\$ -
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues		3 million to \$ 5 million	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u> </u>	\$ <u> </u>
	+3 million to	+170,000 to
NET CHANGE IN REVENUES	\$ <u>5 million</u>	\$ <u>285,000</u>

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

Authorized Signature/Telephone No. 266-2700

W. August M. Davis 5/26/92

Date



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

September 17, 1993

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

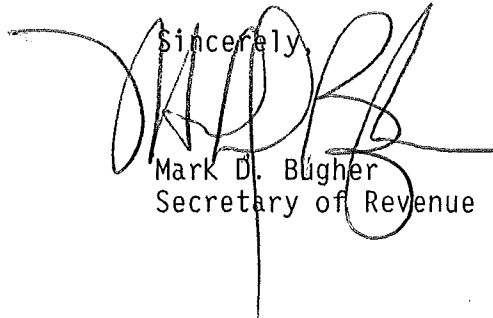
Re: Clearinghouse Rule 92-178

Dear Mr. Poulson:

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

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

Sincerely,

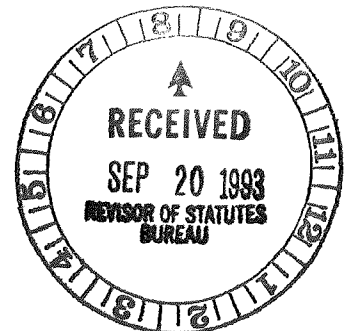


Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1388

Enclosure

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





State of Wisconsin • DEPARTMENT OF REVENUE

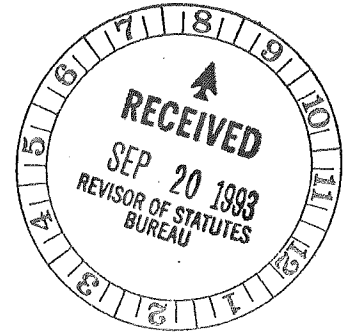
125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6468 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

September 17, 1993

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

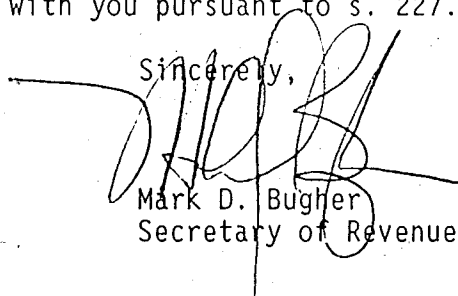


Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 92-178.

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

Sincerely,


Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1387

Enclosure

cc: Revisor of Statutes