

CR 93-47

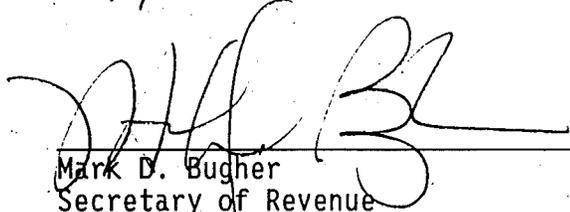
CERTIFICATE

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 November 16, 1993.

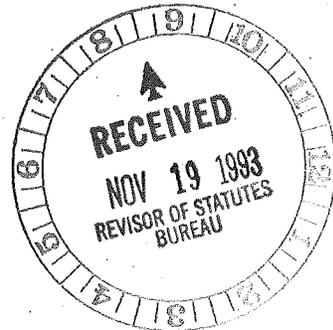
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

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

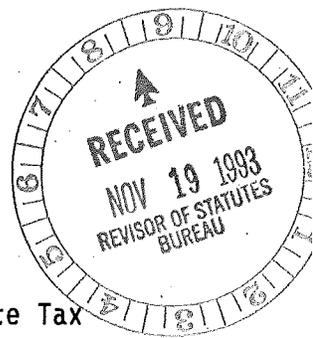


Mark D. Bugher
Secretary of Revenue

MDB:MPW:eem
CKLEG/1436



ORDER OF THE DEPARTMENT OF REVENUE
AMENDING AND REPEALING AND RECREATING RULES



The Wisconsin Department of Revenue adopts an order to amend Tax 11.82(1)(b) and (c) and (2)(a), (b) and (c) and to repeal and recreate Tax 11.27, 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(4)(a), (14)(intro.) and (20), 77.52(1) and (2)(a)10, 77.53(1) and 77.54(2) and (8), Stats.

SECTION 1. Tax 11.27 is repealed and recreated to reflect the department's position regarding sales of insurance and warranties. Sales of insurance and repairs under insurance plans were not previously addressed. The position is that the sale of a warranty is subject to tax if the property sold to which the warranty relates is subject to tax. Insurance and warranty are defined by this section. In addition, the rule now reflects the treatment of insurance as provided in sec. 77.54(8), Stats.

Language is also updated to reflect Legislative Council Rules Clearinghouse standards.

The department has revised its position with respect to "goodwill work" to provide that parts supplied without charge under an implied warranty may be purchased without sales or use tax as property for resale.

The department now provides by rule that a person providing tangible personal property under an insurance or warranty plan in connection with repair to real property is the consumer of the tangible personal property and is subject to tax on its purchase of the tangible personal property.

SECTION 2. Tax 11.82(1)(b) is revised to reflect the Wisconsin Tax Appeals Commission decision in A-K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue, which held that mailing lists on magnetic tape are not tangible personal property and to update language and style per Legislative Council Rules Clearinghouse standards. Tax 11.82(1)(c) and (2)(a), (b) and (c) are revised to update language per Clearinghouse standards.

SECTION 1. Tax 11.27 is repealed and recreated to read:

Tax 11.27 INSURANCE AND WARRANTIES. (ss.77.51(4)(a) and (14)(intro.), 77.52(2)(a)10 and 77.54(8), Stats.) (1) DEFINITIONS. In this section:

(a) "Insurance" means a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property.

(b) "Warranty" means a contract or agreement which promises indemnity against defects in tangible personal property sold.

(2) RECEIPTS FROM INSURANCE. Gross receipts from the sale of insurance are not subject to Wisconsin sales or use tax when separately stated on the invoice.

Examples: 1) Company A rents a vehicle to Customer A for \$200 which includes insurance. The entire charge of \$200 is subject to Wisconsin sales or use tax because the charge for insurance is not separately stated.

2) Company A rents a vehicle to Customer B for \$200. On the invoice, Company A shows a charge for vehicle rental of \$175 and a charge for insurance of \$25. The charge of \$175 is subject to Wisconsin sales or use tax.

(3) RECEIPTS FROM WARRANTIES. Gross receipts from the sale of warranties are subject to Wisconsin sales or use tax provided the tangible personal property to which the warranty relates is or was subject to Wisconsin sales or use tax.

Examples: 1) Company A sells a machine to Customer C which will be used exclusively and directly in manufacturing. Customer C purchases an extended warranty with the machine. Customer C provides Company A with a properly completed manufacturer's exemption certificate. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the machine to which it relates is not subject to Wisconsin sales or use tax.

2) Customer D, a resident of Minnesota, purchases an automobile from a dealership in Wisconsin. Customer D makes no use of the automobile in Wisconsin other than to drive it to his home in Minnesota. Customer D purchases an extended warranty with the automobile. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the sale of the automobile is not subject to Wisconsin sales or use tax.

3) Assume the same facts as in Example 2, except that Customer D does not purchase the extended warranty at the time of sale of the automobile. Instead, six weeks after the sale, Customer D purchases the extended warranty from the dealer. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the automobile to which the sale relates was not subject to Wisconsin sales or use tax.

4) Customer E, a resident of Wisconsin, purchases an appliance from a store in Wisconsin. Customer E purchases an extended warranty with the appliance. The sale of the extended warranty is subject to Wisconsin sales tax because the sale of the appliance is subject to Wisconsin sales tax.

5) Assume the same facts as in Example 4, except that Customer E does not purchase the extended warranty at the time of sale of the appliance. Instead, 2 months after the sale, Customer E purchases the extended warranty from the store. The sale of the extended warranty is subject to Wisconsin sales tax because the appliance to which the sale relates was subject to Wisconsin sales tax.

(4) REPAIRS BY RETAILERS UNDER INSURANCE PLANS. (a) Gross receipts from charges by a retailer to a customer or an insurer for taxable repair parts or taxable services performed under an insurance plan are subject to Wisconsin sales or use tax.

Examples: 1) Company A sold an appliance to Customer E. Company A also sold an insurance plan for the appliance to Customer E. The appliance is later repaired by Company A under the insurance plan. Company A bills the insurance company for the repair. The charge to the insurance company is subject to Wisconsin sales or use tax.

2) Company A sold an appliance to Customer F. Company A also sold an insurance plan for the appliance to Customer F. The appliance is later repaired by Company A under the insurance plan. Company A bills the customer for the repair. Customer F submits the bill to the insurance company and receives reimbursement from the insurance company. The charge to Customer F for the repair is subject to Wisconsin sales tax.

(b)1. A retailer who provides parts or performs taxable repair services to tangible personal property under an insurance plan may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under an insurance plan is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property.

(5) REPAIRS BY RETAILERS UNDER WARRANTIES. (a) Gross receipts from charges by a retailer to a customer for taxable repair parts or taxable services performed under a warranty are subject to Wisconsin sales or use tax.

Example: Customer A purchased an automobile from a dealership in Wisconsin. Customer A purchased an extended warranty from the dealership which was subject to Wisconsin sales or use tax. Customer A brings the automobile to the dealership for repair under the warranty. Under the terms of the warranty, Customer A must pay a deductible of \$100. The \$100 charge to Customer A is subject to Wisconsin sales or use tax.

(b) Reimbursement to a retailer from a manufacturer or other person, whether in the form of money or replacement of parts used to perform repair services under a warranty is not subject to Wisconsin sales or use tax.

Example: Customer B purchased a television with an extended warranty from an appliance store. Customer B has the television repaired under the warranty. The appliance store is reimbursed \$200 by the warranty company for the repair of the television. The \$200 reimbursement is not subject to Wisconsin sales or use tax.

(c)1. A retailer who provides parts or performs taxable repair services to tangible personal property under a warranty may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under a warranty is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property.

(6) REPAIRS NOT BY RETAILERS. If a retailer does not repair tangible personal property under a warranty or insurance plan, but instead has another person perform the repairs covered under the warranty or insurance plan, the person's gross receipts from the sale of the repair to the retailer are not subject to Wisconsin sales or use tax provided the retailer gives the person a properly completed resale certificate. The charge for repairs by the other person is exempt as a sale for resale whether or not the original sale of the property to which the warranty or insurance plan relates occurred in Wisconsin. The sales and use tax treatment of the charge by the retailer to the customer or plan provider is the same as provided in subs. (4) and (5).

Note: Refer to s. Tax 11.14 for information regarding exemption certificates, including resale certificates.

(7) GOODWILL WORK. A retailer who provides free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, maintenance agreement, express warranty, or insurance plan may purchase the parts without Wisconsin sales or use tax as property for resale.

Example: Customer Z, a resident of Wisconsin, purchased an automobile and extended warranty from a Wisconsin dealership. The dealership charged Wisconsin sales tax on the sale of the automobile and warranty. Customer Z brought the vehicle to the dealership for repairs that were covered under the warranty. While performing the repairs, a part is damaged. The dealership, who is not required by the terms of the warranty to provide the part, provides the part free of charge to Customer Z. The dealership may purchase the part provided free to Customer Z without Wisconsin sales or use tax as property for resale.

Note: The interpretations in s. Tax 11.27 are effective under the general sales and use tax law on and after September 1, 1969, except that the definitions in sub (1) and the provisions in subs. (4)(b)2 and (5)(c)2 became effective on the effective date of this section [revisor inserts date].

SECTION 2. Tax 11.82(1)(b) and (c) and (2)(a), (b) and (c) are amended to read:

Tax 11.82(1)(b) A mailing list is tangible personal property, except for written or typed or printed lists of names and addresses and lists stored in machine-readable form, such as microfilm and computer tapes and disks, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use such those lists. ~~Examples of taxable~~ Taxable mailing lists include, but are not limited to ~~magnetic tapes and~~ mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels and heat transfers.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing ~~such~~ these lists. However, any tangible personal property becoming a component part of mailing lists when ~~such~~ the mailing lists are physically transferred

to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2)(a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to ~~such~~ the property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for ~~such~~ the property. However, addressing does not include ~~such~~ these tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

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

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

Note to Revisor: Replace the note at the end of s. Tax 11.82 with the following note:

Note: The interpretations in s. Tax 11.82 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Written or typed lists of names and addresses are not tangible personal property effective January 1, 1979, pursuant to the Minnesota Supreme Court's decision in Fingerhut Products Company et al. vs. Commissioner of Revenue, 258 N.W.2d 606 (1977); and (b) Mailing lists stored in machine-readable form are not tangible personal property, pursuant to the Wisconsin Tax Appeals Commission

decision in A-K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue (1/15/87).

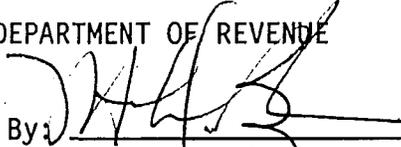
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

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

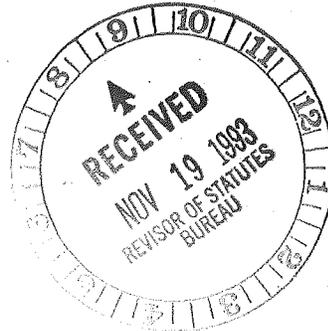
Dated: November 16, 1993

DEPARTMENT OF REVENUE

By: 

Mark D. Bugher
Secretary of Revenue

CKLEG/880



ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 TAX 11.27; 11.82
 Amendment No. if Applicable

FISCAL ESTIMATE
 DOA-2048 (R10/92)
 Subject

Sales and Use Tax Treatment of Warranties and Mailing Lists

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

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

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 imposes a tax on purchases of tangible personal property that become part of a real property improvement or repair under warranty. The fiscal effect of this revision is unknown. The rule also amends the administrative code to reflect a Wisconsin Tax Appeals Commission decision on the sales tax treatment of mailing lists and revises the code as it relates to warranties and insurance on tangible personal property to reflect the Department of Revenue's position regarding sales of those contracts. Because these revisions do not change the existing treatment of insurance, warranties or mailing lists, they have no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue
 Kathryn Carmichael 266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun
 266-2700

Yeang Eng Braun

Date

9/17/93



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. Bugar
Secretary of Revenue

November 17, 1993

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

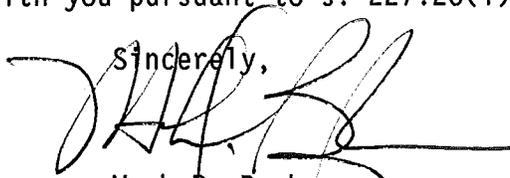
Re: Clearinghouse Rule 93-47

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. Bugar
Secretary of Revenue

MDB:MPW:eam
CKLEG/1435

Enclosure

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

