

**Tax 11.66 Telecommunications and CATV services.****(1) DEFINITIONS.** In this section:

(a) "Private line" means a dedicated local or interexchange channel provided for communication between 2 points without use of the local or toll switching network, for the exclusive use of one or several customers.

(b) "Service address" has the same meaning as in s. 77.51 (17m), Stats.

Note: Service address as defined in s. 77.51 (17m), Stats., is "the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location ... 'service address' means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent."

**(2) GENERAL.** The sale of telecommunications services is subject to Wisconsin sales or use tax if both of the following occur:

(a) The service originates in Wisconsin.

(b) The service is charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid. These charges include:

1. Telephone calls or transmissions placed via dial 1 equal access systems in which the service provider identifies the telephone number of the line from which the call originates and the charge for that call is added to the account of the person responsible to pay that charge.

Note: "Dial 1" and "equal access" are different terms which describe the same thing, namely the procedure by which a customer accesses the system or network of a long distance telecommunications service provider. Prior to the breakup of AT&T and the entrance of other common carriers into the competitive market, a customer wanting to make a long distance call dialed 1 + area code + local exchange telephone number. Thus, the term "dial 1" access applies. The Court, in part of the proceedings concerning the breakup of AT&T, ordered that other common carriers be allowed to provide this same "dial 1" access procedure as AT&T. Thus, this procedure is also called "equal access."

Examples: 1) An employee of Corporation A located in Milwaukee, Wisconsin, places a telephone call to Corporation B in Minneapolis, Minnesota. The telephone bill does not identify the originating telephone number of Corporation A; however, the telephone company's backup records identify the call as originating in Corporation A. In this circumstance, the call is charged to a service address in Wisconsin.

2) Corporation C has offices in Milwaukee, Wisconsin, and Chicago, Illinois. Employees at Corporation C's Milwaukee office originate telephone calls to customers and others at various locations outside Wisconsin. The telephone calls are identifiable in the telephone service provider's records as originating in Milwaukee. Because Corporation C's accounting office is in Chicago, Illinois, the telephone bill is mailed by the service provider to Corporation C's Chicago office. The service originated in Wisconsin and was charged to a service address in Wisconsin since the calls were identifiable as originating at Corporation C's Milwaukee office.

3) An employee of Corporation D initiates the transmission of data from Corporation D's office in Wisconsin to Corporation D's office in another state via a telecommunications service provider's facilities. The service provider's records and equipment identify the transmission as originating in Corporation D's office in Wisconsin. The service originated in and was charged to a service address in Wisconsin since the calls were identifiable as originating at Corporation D's Wisconsin office.

2. Telephone calls made from a location in Wisconsin other than the caller's own telephone for which the caller instructs the operator to charge the call to the caller's own telephone located in Wisconsin.

Example: A customer is away from her home telephone but wishes to place a long distance call from another location in Wisconsin. The customer requests that the charge for that call be included with other calls made from the caller's home or business phone in Wisconsin rather than appear on the bill of the person from whose telephone the call was placed.

3. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is also the dial 1 equal access service provider for the customer's telephone in Wisconsin and the charge for the call is made to the customer's account.

Example: Tom Edwards has a credit card from DEF Corporation, which is his dial 1 equal access telecommunications service provider. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, regardless of whether the telephone number or credit card account number appear on the bill and regardless of where the bill is mailed.

4. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is not the cardholder's dial 1 equal access service provider, but where the cardholder's telephone is in Wisconsin.

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. All long distance calls he

makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, regardless of whether the telephone number or account number appear on the bill and regardless of where the bill is mailed.

5. Service which originates in a local exchange in Wisconsin that does not provide dial 1 equal access.

Example: Jill Green has chosen GHI Corporation as her inter-LATA long distance telecommunications service provider for her law office. Jill's office is in an area where the local exchange does not yet provide dial 1 equal access service to long distance carriers other than AT&T. When Jill wants to send data to an out-of-state client she 1) dials the access number called Point of Presence or POP number, of GHI Corporation's system, 2) enters her account number, to identify herself as the party paying for the call, and 3) enters the area code and telephone number of her out-of-state client. All long distance service which originates in Wisconsin and which Jill charges to her account is considered to be charged to a service address in Wisconsin, regardless of whether the account number or her telephone number appear on the bill and regardless of where the bill is mailed.

**(3) TAXABLE TELECOMMUNICATIONS SERVICES.** Telecommunications services which are subject to Wisconsin sales or use tax include:

(a) Local and toll service and Wide-Area Telecommunications Service, or WATS, including intrastate private line service.

Example: Company JKL, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company JKL contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company for private line service between the Milwaukee and Madison offices and between the Milwaukee and Green Bay offices are subject to Wisconsin sales or use tax because the charges are for intrastate private line service. Also see sub. (4) (d).

(b) Channel services.

(c) Telegraph services.

(d) Cable television system services, including installation charges.

(e) Teletypewriter services.

(f) Computer exchange services.

(g) Cellular mobile telecommunications services.

(h) Specialized mobile radio services and any other form of mobile one-way or two-way communications service.

(i) Stationary two-way radio services.

(j) Paging services.

(k) Facsimile, or FAX, transmission services.

(l) Teleconferencing services.

(m) Any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.

**(4) NONTAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are not taxable:

(a) Interstate or international telecommunications service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a service address in another state or country.

(b) Basic or sophisticated emergency telephone system services provided by a telecommunications utility for which charges are levied pursuant to a county ordinance under s. 146.70 (3), Stats.

(c) Access services, Measured Toll Service, or MTS, and Wide-Area Telecommunications Service, or WATS, services resellers purchase, repack, and resell to customers.

(d) Interstate private line service, including tie lines and foreign exchange service, charged on a flat rate periodic basis.

Example: Company MNO, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company MNO contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company for private line service between the Milwaukee and Chicago offices and between the Milwaukee and Minneapolis offices are not subject to Wisconsin sales or use tax, because the charges are for interstate private line services. Also see sub. (3) (a).

(e) Nonmechanical telephone answering services.

(f) Transfers of services, commonly called "access services" to an interexchange carrier which permit the origination or ter-

mination of telephone messages between a customer in this state and one or more points in another telephone exchange.

**(5) PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing telecommunications services are consumers, not retailers, of the tangible personal property used by them or transferred incidentally by them in providing those services. The tax applies to the sale of property to them.

**Note:** Section Tax 11.66 interprets ss. 77.51 (17m) and (21m) and 77.52 (2) (a) 5. and 12. and (am) and (2m), Stats.

**Note:** The Dane County Circuit Court's decision of May 22, 1981 in Wisconsin Department of Revenue v. North-West Services Corporation and North-West Telephone Company held that a telephone company may purchase without tax tangible personal property leased or rented to customers in conjunction with an activity open to competition with others who are not public utilities.

**Note:** The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (d) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (e) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; (f) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31; (g) The repeal of the exemption for equipment in central offices of telephone companies became effective September 1, 1995, pursuant to 1995 Wis. Act 27; and (h) Telecommunications services paid for by the insertion of coins in a coin-operated telephone became taxable August 1, 1996, pursuant to 1995 Wis. Act 351.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (a), (b), (d) and (e), (2), Register, January, 1983, No. 325, eff. 2-1-83; cr. (1) (f), Register, July, 1987, No. 379, eff. 8-1-87; emerg. r. and recr. (1) (a) and (b), eff. 10-1-89; r. and recr. Register, April, 1990, No. 412, eff. 5-1-90; renun. (3) (d) and (e) to be (4) (f) and (3) (d), Register, March, 1991, No. 423, eff. 4-1-91; r. and recr., Register, September, 1993, No. 453, eff. 10-1-93; am. (2) (Intro.) and (5), Register, September, 1997, No. 501, eff. 10-1-97.

**Tax 11.67 Service enterprises. (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 shall determine whether 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.

**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) RECEIPTS AND PURCHASES OF PERSONS PROVIDING SERVICES.**

(a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to the sale, and the tax applies to the total gross receipts 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. 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) SPECIAL SITUATIONS. (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 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 these sales.

**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.

**Note:** Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject to the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) *Artistic expressions.* Sales of works of art, such as paintings and sculptures, are taxable.

(d) *Interior decorator's fee.* 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. 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 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) *Research and development.* 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 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 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.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's

customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(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.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by architects, engineers, or other business firms. These charges are taxable if the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing, which is tangible personal property, for use by the customer. When the person performing drafting services uses his or her own concepts and ideas in producing detailed drawings for a customer, the sale of the drawings is not a sale of tangible personal property.

(i) *Enuresis alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(L) *Taxidermists.* Gross receipts from services taxidermists perform on tangible personal property 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. 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 these operators.

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

**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:** Section Tax 11.67 interprets ss. 77.51 (4), (12), (13), (14) (intro.), (h) and (L), (15), (20) and (22) (a) and (b) and 77.52 (1), (2) (a) and (2m) (a) and (b), Stats.

**Note:** The interpretations in 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.

**History:** Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (n), Register, June, 1983, No. 330, eff. 7-1-83; r. (3) (k) and am. (3) (n), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (h), Register, April 1990, No. 412, eff. 5-1-90; am.

(1), (2) (b) and (c), (3) (a), (d) 1. and 2., (e) 1. and 2., (g), (L), (m) and (n), Register, November, 1993, No. 455, eff. 12-1-93.

### Tax 11.68 Construction contractors. (1) GENERAL.

(a) Construction contractors may be retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

**Note:** Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(b) Contractors are retailers of:

1. Property which retains its character as personal property after sale and installation.

**Note:** Refer to subs. (4) and (6) for the classification of property.

2. Labor or services furnished in installing tangible property which retains its character as personal property after installation.

**Note:** Refer to subs. (4) and (6) for the classification of property.

3. Labor and material furnished in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of items of real property which retain their character as tangible personal property for repair purposes.

**Note:** Refer to sub. (10) for a description of real property which retains its character as tangible personal property for repair purposes.

4. Tangible personal property sold.

(c) Contractors are consumers of tangible personal property they use when engaged in real property construction activities, such as altering, repairing or improving real property.

(2) **REAL PROPERTY CONSTRUCTION CONTRACTORS.** (a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in activities such as building, electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry and cement work, plastering and tile and terrazzo work.

(b) A retailer may also be a real property contractor, such as a department store which sells and installs tangible personal property which becomes a part of real property after installation.

**Example:** A hot water heater or water softener sold and installed in a purchaser's residence by a retailer becomes real property after installation. The retailer is considered to be a real property contractor.

(c) Real property construction activities include the fabrication of modular units designed and fabricated for a specific pre-fabricated 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) **PURCHASES BY CONTRACTORS.** (a) Under s. 77.51 (2), Stats., contractors who perform real property construction activities are the consumers of building materials which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax. This includes raw materials purchased outside Wisconsin that are used by a contractor in manufacturing tangible personal property outside Wisconsin, or that are fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and are subsequently stored, used or consumed in Wisconsin by that contractor.

**Note:** Prior to August 12, 1993, raw materials purchased outside Wisconsin that were used by a contractor in manufacturing tangible personal property outside Wisconsin or that were fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and were subsequently stored, used or consumed in Wisconsin by that contractor were not subject to tax pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(b) Property which a construction contractor will resell as personal property may be purchased without tax for resale. This property includes personal property furnished as part of a real property construction activity when the personal property retains its character as personal property after installation. This property also includes personal property furnished as part of a real property construction activity when provided as part of a taxable landscaping service.

Note: Refer to subs. (4) and (6) for the classification of property.

(c) Machinery and equipment, including road building equipment, tunnel shields, construction machines, and cement mixers, tools, including power saws and hand tools, and supplies, including machine lubricating and fuel oils, form lumber and industrial gases, purchased by a construction contractor for the contractor's use are generally either consumed in the process of construction or are removed when the project is completed. The contractor is the consumer of the personal property and shall pay the tax on its purchases of the property. However, an exemption is provided in s. 77.54 (5) (d), Stats., for mobile cement mixers used for mixing and processing and the motor vehicle or trailer on which a mobile mixing unit is mounted, including accessories, attachments, parts, supplies and materials for the vehicles, trailers and units.

(d) Under s. 77.54 (26), Stats., contractors may purchase without sales or use tax tangible personal property which becomes a component part of an industrial waste treatment facility that would be exempt under s. 70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., or a municipal waste treatment facility, even though they are the consumers of the property.

Note: Refer to s. Tax 11.11 regarding industrial and municipal waste treatment facilities.

(e) Under s. 77.54 (26m), Stats., contractors may purchase without sales or use tax waste reduction and recycling machinery and equipment, including parts, which are exclusively and directly used for waste reduction and recycling activities which reduce the amount of solid waste generated, reuse, recycle or compost solid waste or recover energy from solid waste, even though they are the consumers of the property.

Examples: 1) Equipment used in a foundry to clean sand so that the sand can be reused qualifies for exemption.

2) Equipment used to remove impurities from lubricating oil used in manufacturing machines so that the oil can continue to be used by the manufacturer qualifies for exemption.

3) Equipment used to produce fuel cubes qualifies for exemption. This equipment shreds waste paper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary and then compresses the materials into fuel cubes which are burned by homeowners or others to replace wood.

4) A roto-mill machine that mines old pavement and grinds up the mined materials to be reused in construction activities qualifies for exemption.

5) Large steel waste collection containers, including dumpsters, which may be picked up and dumped into waste collection trucks or hauled away on flatbed trucks, or which may mechanically compact the waste in the container do not qualify for exemption.

(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., 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.

(4) CLASSIFICATION OF PROPERTY AFTER INSTALLATION. (a) Contractors shall determine whether a particular contract or transaction results in an improvement to real property or in the sale and installation of personal property. In determining whether personal property becomes a part of real property, the following criteria shall be considered:

1. Actual physical annexation to the real property.

2. Application or adaptation to the use or purpose to which the real property is devoted; and

3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

Note: See *Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc.* (1976), 72 Wis. 2d 60, regarding determining whether personal property becomes a part of real property.

(b) Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others, including boilers, furnaces, stand-by generators, pumps, substations and transformers. When this property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

(5) PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY. A construction contractor is the consumer of personal property, such as building materials, which is incorporated into or becomes a part of real property, and sales of this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

(a) Boilers and furnaces for space heating.

(b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems and incinerators.

(c) Cemetery monuments.

(d) Buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors, including computer room floors, partitions and movable walls attached in any way to realty, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, and heating, cooling and ventilation systems.

(e) Fixed or year-around wharves and docks.

(f) Improvements to land, including retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems except systems sold to and for use by farmers, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection.

(g) Planted nursery stock. However the sale of nursery stock to a landscape contractor, who uses the nursery stock in providing taxable landscaping services, is not subject to the tax.

(h) Residential water heaters, water softeners, intercoms, incinerators and garage door opening equipment, except portable equipment.

(i) Silos and grain elevators.

(j) Swimming pools, wholly or partially underground.

(k) Storage tanks constructed on the site.

(l) Traffic signals, and street and parking lot lighting.

(m) Truck platform scale foundations.

(n) Walk-in cold storage units becoming a component part of a building.

(6) PROPERTY PROVIDED UNDER A CONSTRUCTION CONTRACT WHICH REMAINS PERSONAL PROPERTY. (a) 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, such as:

1. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.

2. Communication equipment, including intercoms, pneumatic tube systems, satellite dishes, roof mounted antennas,

CATV wiring and music and sound equipment in business, industrial or commercial buildings, schools and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

3. Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment, and related easily movable property attached to the structure in schools, laboratories and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

4. Machinery, including safety attachments, equipment, tools, appliances, process piping and wiring used exclusively by manufacturers, industrial processors and others performing a processing function with the items.

5. Office, bank and savings and loan association furniture and equipment, including office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, camera security equipment and vault doors.

6. Personal property used to carry on a trade or business, including fixtures and equipment installed in stores, taverns, night clubs, restaurants, ice arenas, bowling alleys, hotels and motels, barber and beauty shops, figure salons, theaters and gasoline service stations. Underground storage tanks at gasoline service stations are real property.

7. Shades, curtains, drapes, venetian blinds and associated hardware.

8. Radio, television and cable television station equipment, but not broadcasting towers installed on their owner's land.

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.

11. Buildings and standing timber sold for removal.

12. Utility transmission and distribution lines installed above ground on land owned by others as provided in s. Tax 11.86 (1), and oil and gas pipeline pumping station equipment.

13. Commercial and industrial incinerators which do not become an integral part of the building.

14. Seating in auditoriums and theaters, and theater stage lights and projection equipment.

(b) If a few items of tangible personal property, minor in cost in relation to the total amount of a contract, are sold as part of a contract which includes construction of a building or other structure and no separate charge is made for the personal property, the cost of the property to the construction contractor shall be used as the measure of gross receipts subject to sales tax. If a separate charge is made for any of the items, they are subject to the tax, but not less than on their cost.

**Example:** A refrigerator or drapes are included in the contract to construct a new house. The cost of the refrigerator and drapes to the construction contractor are included in the measure of gross receipts subject to sales tax.

**(7) PROPERTY PURCHASED BY A PERSON WHO PERFORMS BOTH CONSTRUCTION CONTRACTING AND RETAIL SELLING, WHEN DESTINATION OF PROPERTY PURCHASED IS UNKNOWN AT TIME OF PURCHASE.** Section 77.51 (2), Stats., provides in part that "A contractor engaged primarily in real property construction activities may

use resale certificates only with respect to purchases of property which the contractor has sound reason to believe the contractor will sell to customers for whom the contractor will not perform real property construction activities involving the use of such property." However, some construction contractors who also sell construction supplies at retail do not know when they purchase these supplies whether they will be consumed in construction contracts or resold to others. In these instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give a resale certificate to suppliers and purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and collect and remit the tax on the sales price to customers. If the property is used in fulfillment of a construction contract, the contractor shall pay a use tax on its purchase price.

(b) Pay sales tax to suppliers on all property purchased. If the property is later consumed in fulfilling a construction contract, the tax obligation is taken care of. If the property is resold at retail, the contractor shall collect and remit sales tax on these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

**(8) PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY.** (a) The sales tax exemption provided to governmental units and other exempt entities, such as churches and non-profit hospitals, does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair or improve real property for the exempt entity. Gross receipts from sales of these building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation.

**Examples:** 1) A contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or governmental building, since the property becomes a part of realty after installation.

2) A contractor shall pay tax on its purchases of pumps and other equipment for use at a municipal well or pumping station, since the property becomes a part of realty after installation.

(b) A contractor may purchase without tax as property for resale tangible personal property which retains its character as personal property after installation as described in sub. (6), even though the resale of the property by the contractor is exempt when the property is sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. This property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. This exemption does not apply to property which becomes a part of real property as described in sub. (5) and par. (a).

**(9) USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN.** (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax, 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.

(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.

(c) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

**Note:** The use tax as provided in sub. (9) does not apply prior to August 12, 1993, to raw materials purchased outside Wisconsin that are, prior to being stored, used or consumed in Wisconsin, manufactured into tangible personal property by that contractor outside Wisconsin, or that are fabricated or altered outside Wisconsin by that contractor so as to become different or distinct items of tangible personal prop-

erty from the constituent materials pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(10) CONSTRUCTION AND REPAIR SERVICES. (a) A contractor who performs real property construction activities 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.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on this service, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of any items listed in par. (c) or other items of tangible personal property shall register as a retailer and pay the tax on gross receipts from the performance of these services.

(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, 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."

(d) Charges for tangible personal property, such as a repair part, incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible personal property incorporated into it is deemed purchased by the contractor for resale and, therefore, may be purchased without tax.

**Example:** If a contractor is engaged to repair a refrigerator, whether free-standing personal property or built-in so as to be a part of real property, in a home, the repair service and any charge for parts are taxable.

(11) REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES. Section 77.51 (4) (c) 4., Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52 (2) (a) 10., Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless of the extent to which fastened to, connected with or built into real property. Among these items are furnaces and boilers used for space heating. In view of these statutes, charges for services and repair parts for repair of tangible personal property covered by both statutes, such as a furnace

boiler, are taxable, but charges for services in totally replacing the property are not taxable. In the nontaxable situation, the replacement personal property is taxable when sold to the contractor installing it, but the contractor's charge for the replacement service is not taxable.

(12) COUNTY TAX ON BUILDING MATERIALS. (a) Section 77.71 (3), Stats., imposes an excise tax upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county which has adopted the county tax. The tax is measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county, unless the contractor has paid the county tax of a county in this state or a similar local sales tax in another state on the purchase of that property.

(b) Building materials which become a component part of real property are used and consumed at the job site.

(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 the taxable services, and the county excise tax imposed under s. 77.71 (3), Stats., does not apply to those purchases.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the excise tax under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The excise tax under s. 77.71 (3), Stats., on building materials used in real property construction activities is not imposed if the contractor purchased the building materials before the effective date of the county tax of that county or has paid the sales tax of another county in this state in purchasing the building materials.

**Note:** Section Tax 11.68 interprets 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, 77.53 (1), 77.54 (5) (d), (6) (a), (26), (26m), (31) and (41), 77.71 (3) and 77.77 (3), Stats.

**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; (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; and (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (d), (6) (a) 2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337, emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86; am. (9) (a), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (g) and (12) (a), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (b) 1., 2. and 3., (2) (a) and (b), (3) (b) and (c), (4) (a) (intro.) and (b), (5) (intro.), (b), (c), (f), (h) and (j), (6) (a) 2., 4., 5., 6., 9. and 10. and (b), (7), (8), (9) (a), (10) (a), (b) and (c) and (11), cr. (3) (d) and (e), Register, June, 1991, No. 426, eff. 7-1-91; renum. (9) (b) to be (c); cr. (2) (c), (3) (f) and (9) (b), am. (6) (a) (intro.),

9., 10., (10) (a), (c), and (12) (c), Register, December, 1992, No. 444, eff. 1-1-93; am. (3) (a), Register, April, 1994, No. 460, eff. 5-1-94.

**Tax 11.69 Financial institutions.** (1) **DEFINITION.** In this section, "financial institution" includes a bank, savings and loan association, savings bank or credit union.

(2) **EXEMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Those services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(3) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Charges for providing parking space for motor vehicles.
- (b) Coin savings banks.
- (c) Collectors' coins or currency sold above face value.
- (d) Commemorative medals.
- (e) Gold and silver bullion.
- (f) Meals and beverages in the institution's cafeteria.

(g) Personalized imprinted checks, except where the check printer is the retailer of the checks to customers. A check printer is the retailer of checks where it sets the price for the checks, provides the order forms for the checks and invoices or bills the customer for the checks, even though the financial institution collects the order from the customer, charges the customer's account on behalf of the check printer and remits the amount due from the account to the check printer.

(h) Repossessed merchandise.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(4) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment, such as desks, chairs, couches, writing tables and office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided to customers free of charge are also subject to the tax.

(c) Purchases of tangible personal property that the financial institution will resell, rather than give away, may be purchased without tax by giving its supplier a properly completed resale certificate.

(d) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration certificate and report the tax on the purchases.

(5) **SPECIAL PROVISIONS.** (a) Sales to state chartered credit unions and to federal and state chartered banks, savings and loan associations and savings banks are taxable, unless resold by the credit union, bank, savings and loan association or savings bank.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

Note: Section Tax 11.69 interprets ss. 77.51 (13) (a), (14) (intro.) and (k) and (20) and 77.52 (1) and (2) (a) 9., Stats.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83; renum. (1) to be (2), renum. (2) (title), (intro.), (a), (b), (c), (d), (e), (f), (g) and (h) to be (3) (title), (intro.), (b), (d), (c), (e), (h), (f), (a) and (g), renum. (3) (title), (a), (b) and (c) to be (4) (title), (a), (b) and (d), renum. (4) to be (1), am. (1), (2), (3) (g), (4) (a), (b) and (d) and (5) (a), cr. (4) (c), Register, October, 1996, No. 490, eff. 11-1-96.

**Tax 11.70 Advertising agencies.** (1) **DEFINITIONS.** In this section:

(a) "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes. Finished art includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs and illustrative material not reproduced.

(b) "Preliminary art" means art prepared solely for presenting an idea to a client or prospective client. Preliminary art includes roughs, visualizations, sketches, layouts and comprehensives.

(2) **TAXABLE SALES.** The following sales are subject to Wisconsin sales or use tax, unless an exemption in sub. (3) applies:

(a) Charges for finished art. Finished art is tangible personal property.

(b) Charges for preliminary art all or any part of which results in the production of finished art or other tangible personal property by the advertising agency. This preliminary art is tangible personal property.

Example: 1) Company A contracts with an advertising agency to produce an advertising campaign for Company A's product. The advertising agency develops 10 ideas or suggestions, in the form of preliminary art, for an advertising flyer. Company A selects one of the ideas, and it is developed into finished art, which is used to produce flyers.

The charges by the advertising agency for the production of preliminary art for all 10 ideas are subject to tax, provided an exemption does not apply to the sale of the finished art, because one idea was selected and was used to produce finished art.

2) Company B contracts with an advertising agency to produce a radio commercial. The agency produces a demonstration tape (demo) which contains several different jingles which could be used in the commercial. Company B selects one of the jingles, and the commercial is produced.

The charge by the agency for the demo is subject to tax. The demo is preliminary art. Since finished art was produced from the preliminary art, the charge is subject to tax, unless an exemption applies to the sale of the finished art.

(c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

Examples: 1) Company C contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company C decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company C. Company C mails the flyers to its Wisconsin customers.

The entire charge to Company C by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is subject to tax.

2) Company D decides to have a radio advertising campaign and contracts with an advertising agency. The advertising agency produces several advertising jingles on a "demo" tape, and Company D selects one jingle. The advertising agency then produces a master tape at its Wisconsin sound production studio. The master tape remains at the studio, and 10 copies or "dubs" are produced. One dub is given to Company D, and the other 9 dubs are mailed by the advertising agency directly to various Wisconsin radio stations. The air time is arranged by Company D.

The entire charge by the advertising agency for the production of the master tape and dubs is subject to tax.

(d) Photographic services or photostats.

(e) Producing, fabricating, processing, printing or imprinting tangible personal property for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing or imprinting of the tangible personal property.

(3) **NONTAXABLE SALES.** Charges for the following are not subject to Wisconsin sales or use tax:

(a) Preliminary art that does not result in the production of finished art or other tangible personal property.

Example: Company E contracts with an advertising agency for an ongoing advertising campaign. The agency submits several suggestions, in the form of preliminary art, for a spring advertising campaign. These ideas are rejected by Company E. The charge by the advertising agency for preliminary art not chosen for further development is not subject to tax, because the preliminary art was not developed into finished art.

(b) Writing original manuscripts or news releases.

(c) Writing copy to be used in media advertising.

(d) Consultation, market research and compiling statistical or other information.

(e) Recommendations for advertising themes or merchandising plans.

(f) Obtaining media space and time.

(g) Printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of indi-

vidual business firms, which is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the client for use thereafter solely outside Wisconsin.

**Example:** Company F contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company F decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company F. Company F mails the flyers to its customers located outside Wisconsin.

The entire charge to Company F by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is exempt from tax because the printed advertising material is transported outside Wisconsin by Company F for use by Company F outside Wisconsin.

(h) Printing or imprinting tangible personal property which will be subsequently transported outside Wisconsin for use outside Wisconsin by the client for advertising purposes.

**Example:** Company G contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company G decides on one theme, and the finished art is prepared. Company G provides the finished art, paper and ink to a Wisconsin printer who prints 10,000 copies of the flyer. The flyers are mailed by Company G to addresses outside Wisconsin.

The charge to Company G by the printer for the printing of the flyers is exempt from tax because the flyers are transported outside Wisconsin for use outside Wisconsin by Company G for advertising purposes.

(i) Tangible personal property that will be resold by the client.

**Example:** Company H has an advertising agency produce specification sheets for Company H's products. The specification sheets are included with the products when sold to Company H's customers. The advertising agency produces the finished art and has the printing done. Company H receives an itemized bill from the advertising agency which shows a charge for the finished art and the printing.

The entire charge by the advertising agency to Company H is exempt from tax because the specification sheets are included with Company H's products which will be sold to customers. Company H may claim a resale exemption for the specification sheets by providing the agency with a properly completed Wisconsin resale certificate, form S-205.

(j) Tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

**Example:** Company I contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company I decides on one theme and the finished art is prepared. Company I takes the finished art to a Wisconsin printer and has 10,000 flyers printed. The printer uses its own paper and ink to print the flyers. The flyers are mailed by the printer to addresses in Wisconsin.

The charge to Company I by the advertising agency for the preliminary art and finished art is exempt from Wisconsin sales tax because the finished art is consumed in the production of flyers which are sold by the printer to Company I.

(k) Tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. This exemption does not apply to advertising supplements that are not newspapers.

**Example:** Company J contracts with an advertising agency to produce a shoppers guide advertisement. The advertising agency produces layouts and roughs for approval by Company J. Company J approves, and the finished art for the shoppers guide advertisement is produced. The preliminary art and finished art charges are billed to Company J for the job. Company J deals directly with the shoppers guide publisher to run the advertisement in a shoppers guide. The advertising agency bills Company J \$1,000 for preliminary art and \$3,000 for finished art.

The total \$4,000 charge is exempt from Wisconsin sales or use tax because the preliminary art results in finished art and the finished art becomes an ingredient or component part of a shoppers guide, or is consumed or loses its identity in the manufacture of shoppers guides.

(L) Containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property, if the items are used by the purchaser to transfer merchandise to customers. Also exempt are meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether these items are used to transfer merchandise to customers.

**Example:** An advertising agency produces finished art to be used on Company K's shipping boxes. The boxes are used by Company K to ship its products to its customers. The advertising agency delivers the finished art to a printer who uses the finished art to print and produce the boxes which the advertising agency resells to Company K.

The entire charge for the finished art and boxes is exempt from Wisconsin sales or use tax because the boxes are used by Company K in packing, packaging or shipping merchandise to customers. Company K should provide the agency with a properly completed certificate of exemption, form S-207.

(4) MEASURE OF TAX. (a) Tax applies to an advertising agency's total gross receipts from the sale of tangible personal property or taxable services without any deduction for any cost element which becomes a part of the sales price. These elements include consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though the costs are separately itemized in a billing to the client.

(b) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(5) WHEN AND WHERE SALE OCCURS. (a) The tax applies to an agency's gross receipts from the sale of or the storage, use or consumption of tangible personal property in Wisconsin regardless of whether:

1. The transfer is to the advertiser or to a third party at the direction of or on behalf of the client.
2. The client is located in or outside Wisconsin.

**Example:** An agency's billing to a client in Minnesota for finished art transferred to a business in Wisconsin is taxable.

(b) The sale of tangible personal property or taxable services occurs when the advertising agency transfers possession of the tangible personal property to the client or the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client.

(6) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee," "retainer," "service charge" or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales.

(7) PURCHASES BY AGENCIES. (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that:

1. Is resold before use by the advertising agency.

**Example:** Company L is an advertising agency. Company L purchases various art equipment such as paint brushes, easels, etc., that it uses in its operations. A portion of the art equipment is sold to the general public for use. The art equipment Company L sells to the general public may be purchased by Company L without Wisconsin sales or use tax as property for resale, provided Company L gives its supplier a properly completed Wisconsin resale certificate, form S-205.

2. Becomes physically an ingredient or component part of tangible personal property the advertising agency produces and sells.

**Example:** Company M is an advertising agency that produces displays for customers. The displays are usually framed or matted photographs or prints. Company M may purchase the frames, matting, and paper for photographs and prints without Wisconsin sales or use tax as property for resale, provided it gives its supplier a properly completed Wisconsin resale certificate, form S-205.

(b) An advertising agency is the consumer of all tangible personal property other than tangible personal property purchased for immediate sale to customers or that becomes physically an ingredient or component part of tangible personal property sold by the agency. As the consumer, the advertising agency is subject to Wisconsin sales or use tax on the tangible personal property purchased.

**Example:** Company N purchases various office equipment, such as typewriters, computers, tables and cabinets which it uses in its advertising agency office. Company N purchases the equipment from an out-of-state supplier that is not required to collect Wisconsin sales or use tax. Company N is subject to Wisconsin use tax on its purchase of the office equipment.

**Note:** Forms S-205 and S-207 and their instructions may be obtained free of charge, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, or by calling (608) 266-2776.

**Note:** Section Tax 11.70 interprets ss. 77.51 (14) (intro.) and (b), 77.52 (1) and (2) and 77.54 (2), (2m), (6) (b) and (25), Stats.

**Note:** The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; and (c) The

exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.71 Computer Industry. (1) DEFINITION OF TERMS.** In this section:

(a) "Application" means the specific job performance by an automatic data processing installation.

(b) "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment as well as punched card tabulating machines. It does not include tape-controlled automatic drilling, milling or other manufacturing machinery or equipment.

(c) "Basic operational programs", commonly referred to as "systems software", means the programs that perform overall control and direction of the computer system and permit it to do the functions basic to the operation of a computer, and permit it to execute the instructions contained in utility software and applications software programs. Basic operational programs are considered an integral part of the computer hardware when these internal codes are not accessible to or modifiable by the user.

(d) "Coding" means the list, in computer code, of the successive computer instructions for successive computer operations for solving a specific problem.

(e) "Custom programs" mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon all the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system.

2. Whether the program is loaded into the customer's computer by the vendor and the extent to which the installed program must be tested against the program's specifications.

3. The extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation.

4. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.

5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.

6. Custom programs do not include basic operational programs or prewritten programs.

7. If an existing program is selected for modification, there must be a significant modification of that program by the vendor so that it may be used in the customer's specific hardware and software environment.

(f) "Data processing" means the recording and handling of information by means of mechanical or electronic equipment, commonly referred to as automatic data processing.

(g) "Enhancement" means modifications, upgrades, improvements or changes to existing programs by persons other than the purchaser of the program.

(h) "Input" means the information or data transferred, or to be transferred, from external storage media including punched cards, punched paper tape and magnetic media into the internal storage of the computer.

(i) "Keypunching" means recording information in cards, paper tapes, or magnetic tapes, disc or drum by punching holes or otherwise entering information in the cards, tapes, discs or drums, or recording data on any media to represent letters, digits and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

(j) "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a key-

board, to ensure that information punched in a punch card or transcribed on a tape during the keypunching operation has been punched properly.

(k) "Prewritten programs", often referred to as "canned programs", means programs prepared, held or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease.

(L) "Processing a client's data" means the developing of original information from raw data furnished by a client. Automatic data processing operations which develop original information include summarizing, computing, extracting, sorting, sequencing, or the updating of a continuous file of information maintained for a client by a service bureau.

(m) "Program" means the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a specific problem. It includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs. For purposes of this section a program is either a pre-written or custom program.

(n) "Program maintenance", in addition to other maintenance services, includes telephone support services to discuss and solve problems.

(o) "Reformatting of data" means the rearranging of data by mechanical or electronic equipment.

(p) "Service bureau" means a business rendering automatic data processing services.

(q) "Source document" means a document from which basic data are extracted, such as sales invoice.

**(2) TAXABLE RECEIPTS.** The following transactions involving automatic data processing equipment, programs, output and services are taxable:

(a) The retail sale, lease or rental of new or used automatic data processing equipment and charges for the installation, service and maintenance of this equipment. In this subsection, the following applies to leases:

1. Lease includes a contract by which a lessee, for a consideration, obtains the full or partial use of equipment if the lessee's employees are located on the premises where the equipment is located or operate the equipment. A lease does not include obtaining remote access to equipment by telephone or other means when that person's employees are not located on the premises where the equipment is located and they do not operate the equipment or control its operations.

2. Subleasing receipts are taxable without any deduction or credit for sales or use tax paid by the original lessee to the lessor if the original lessee uses the equipment in addition to subleasing it. If the original lessee uses the equipment solely for lease or rental to others, the lessor's charge to the original lessee is exempt as a purchase for resale.

(b) The retail sale, lease, rental or license to use computer programs, except custom programs, including the maintenance and enhancement of those programs, whether transferred in a machine readable form such as cards, tapes or discs, or transferred in any other manner to the lessee or purchaser such as by telecommunications, or written instructions on coding sheets. The tax applies to the total charge for these programs, including:

1. The consideration received for the temporary transfer of possession of a prewritten or basic operational program for the purpose of direct use or to be recorded by the customer.

2. The consideration received for a program in the form of license fees or royalty payments, present or future, whether for a minimum use or for extended periods.

3. The consideration received for designing, producing, implementing, testing or installing the program.

(c) The sale of training materials, such as books and manuals furnished to trainees for a specific charge. However, training services are not taxable.

(d) The charge for additional copies of records, reports or tabulations, including copies produced by means of photocopying, multi-lithing or by other means. "Additional copies" means all the copies in excess of copies produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program so that a program is run continuously, by using different programs to produce the same output product, or by other means.

(e) The sale of mailing lists as set forth in s. Tax 11.82, including listings in the form of mailing labels produced as result of a computer run. However, the tax does not apply to the charge for addressing material to be mailed with names and addresses furnished by a customer, or maintained by a service bureau for the customer, by the use of automatic data processing equipment.

**(3) NONTAXABLE COMPUTER AND DATA PROCESSING SERVICES.** The gross receipts from the following computer or data processing services are not taxable:

(a) Processing a client's data.

**Note:** A contract to process a client's data by the use of a computer program or through an electrical accounting machine programmed by a wired plugboard will usually include receiving the client's source documents, recording data in machine readable form such as in punch cards or on magnetic media, making corrections, rearranging or creating new information as the result of the processing and then providing tabulated listings or recording output on other media. This service is not taxable, even though the total charge is broken down into specific charges for each step.

**Note:** If a client furnishes data and computer programs for processing the data and the processing is under the direction and control of the person providing the service, the processing service is not taxable, even though charges for the service may be based on computer time. The true object of this arrangement is considered to be a service, even though some tangible personal property may be incidentally transferred to the client.

(b) Providing custom programs.

(c) Providing program technical support, error correction services and maintenance and enhancement to custom programs.

(d) Providing time-sharing services which permit persons at different locations to access the same computer through remote access by telephone lines, microwave or other means. Nontaxable time-sharing exists when a person or that person's employes, who have access to the equipment, are not located on the premises where the equipment is located and do not operate the equipment or control its operation.

(e) Miscellaneous services which are not part of the sale of a taxable program including:

1. Designing and implementing computer systems including determining equipment and personnel required and how they will be utilized.

2. Designing storage and data retrieval systems including determining what data communications and high-speed input-output terminals are required.

3. Consulting services including study of all or part of a data processing system.

4. Feasibility studies including studies to determine what benefits would be derived if procedures were automated.

5. Evaluation of bids including studies to determine which proposal for computer equipment would be most beneficial.

(f) Key punching and keystroke verifying services, including:

1. Key punching only, key punching and keystroke verification, or key punching and providing a proof list or verification data or both. Charges for these services are not taxable, whether the cards or tapes are furnished by the customer or by a service bureau.

2. Recording data from source documents directly on magnetic tape, off-line. This operation may include keystroke verifying or proof listing of data or both and is comparable to the punch card operation.

3. Imprinting characters on a document to be used as the input medium in an optical character recognition system, whether paper tape or other media are used in the operation.

4. Reformatting of data.

**Note:** Section Tax 11.71 interprets ss. 77.51 (14) (h) and (j) and (20) and 77.52 (1) and (2) (a) 10., Stats.

**Note:** The interpretations in s. Tax 11.71 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted. However, computer and data processing services were taxable under s. 77.52 (2) (a) 13., Stats., Laws of 1977, from August 1, 1977, through June 30, 1978.

**Note:** In *Janesville Data Center, Inc. v. Department of Revenue* (1978), 84 Wis. 2d 341, the Wisconsin Supreme Court held that the transfer of customer data onto tangible personal property and the verification of customer data is not subject to the sales and use tax as a transfer of tangible personal property or a taxable service.

**History:** Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (e) 6., (2) (a) (intro.), 1. and (b) (intro.), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers.** (1) LAUNDRIES AND DRY CLEANERS. (a)

The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are taxable, except as provided in par. (b).

(b) The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are exempt from tax when:

1. The services are performed on raw materials or goods in process destined for sale.

2. The services are performed by the customer through the use of coin-operated, self-service machines. Coin-operated, self-service machines do not include machines activated by tokens or magnetic cards.

3. The services are performed on cloth diapers by a diaper service. "Cloth diaper" means a cloth diaper used for sanitary purposes. "Diaper service" means a business primarily engaged in the lease or rental, delivery or laundering of cloth diapers.

(2) LINEN AND CLOTHING SUPPLIERS. The gross receipts of lessors from leasing or renting clothing, including uniforms, towels, linens or similar items, not including cloth diapers, to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled are subject to the tax. However, the items furnished to customers under these agreements may be purchased by the lessor without paying sales or use tax.

(3) PURCHASES. (a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and shall pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. They also shall pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. The tax applies to the gross receipts on the sale of these items to laundries, dry cleaners and linen and clothing suppliers.

(b) The tax applies to gross receipts from sales, leases or rentals of machinery and equipment to persons engaged in performing or furnishing laundry, dry cleaning, pressing and dyeing services, and to persons leasing or renting linens, towels and clothing to industrial, commercial or household users.

**Note:** Section Tax 11.72 interprets ss. 77.51 (1m), (3m), (13) (e) and (f) and (14) (L), 77.52 (2) (a) 6. and (2m) (a) and 77.54 (40), Stats.

**Note:** The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; and (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wis. Act 335.

**History:** Cr. Register, December, 1979, No. 288, eff. 1-1-80; am. (3) (a) and r. (3) (c), Register, September, 1984, No. 343, eff. 10-1-84; am. (2) and (3) (a), cr. (1) (b), renum. (1) to be (1) (a) and am., Register, June, 1991, No. 426, eff. 7-1-91.

**Subchapter IX—  
Types of Tangible Personal Property**

**Tax 11.78 Stamps, coins and bullion.** (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

- (a) Cancelled United States and foreign postage stamps.
- (b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.
- (c) Uncancelled foreign postage stamps.
- (d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.
- (e) Foreign coins and paper currency when sold or traded as collectors' items.
- (f) United States coins and paper currency when sold or traded as collectors' items above their face value.

(g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

- (h) Commemorative medals.

(2) **NONTAXABLE SALES.** Retail sales of the following tangible personal property are not subject to the sales and use tax:

- (a) United States coins and paper currency sold at face value.
- (b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.
- (c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.

(d) Foreign coins and paper currency in current circulation, when sold at face value and when acquired as a medium of exchange.

(e) Uncancelled United States postage stamps intended for use as postage even if sold for an amount above face value.

*Note:* Section Tax 11.78 interprets s. 77.51 (20), Stats.

*Note:* The interpretations in s. Tax 11.78 are effective under the general sales and use tax law on and after September 1, 1969.

*History:* Cr. Register, January, 1977, No. 253, eff. 2-1-77; am. (2) (a), cr. (2) (e), Register, March, 1991, No. 423, eff. 4-1-91.

**Tax 11.79 Leases of highway vehicles and equipment.** (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under sub. (1), the cost of the following items may be deducted if they meet the conditions in sub. (3):

- (a) Motor fuel.
- (b) Vehicle license fees.
- (c) Federal highway use taxes.
- (d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in sub. (2) may be deducted if:

- (a) The charge is reasonable.
- (b) The charge is separately stated in the lease agreement, billing or invoice.
- (c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in sub. (2).
- (d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under sub. (1), the cost of the following may not be deducted:

- (a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.
- (b) Maintenance or repair charges incurred by the lessor.
- (c) Interest and other financing costs incurred by the lessor.
- (d) Dispatch service.

(5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

(6) **EXEMPT LEASES.** Gross receipts from the rental or lease of the following property shall be exempt from sales and use tax provided the lessor receives a properly completed exemption certificate as described in s. Tax 11.14:

(a) Highway vehicles, except automobiles, leased to common or contract carriers who use the vehicles exclusively in common or contract carriage, including urban mass transportation of passengers as defined in s. 71.38, Stats.

(b) Motor vehicles not licensed for highway use which are used exclusively and directly in conjunction with waste reduction or recycling activities described in s. 77.54 (5) (c), Stats.

(c) Mobile units used for mixing and processing, including the motor vehicle or trailer on which the unit is mounted. Accessories, attachments, parts, supplies and materials for the mobile unit, vehicle and trailer are also exempt.

(d) Leases of highway vehicles and equipment for resale.

*Note:* Section Tax 11.79 interprets ss. 77.51 (13) (k) and (14) (intro.) and (j), 77.54 (5) (c) and (d) and (26m) and 77.58 (6), Stats.

*Note:* The interpretations in s. Tax 11.79 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for vehicles and equipment used in waste reduction or recycling activities became effective July 1, 1984, pursuant to 1983 Wis. Act 426; and (b) The exemption for mobile mixing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

*History:* Cr. Register, January, 1977, No. 253, eff. 2-1-77; cr. (4) (d), Register, September, 1984, No. 345, eff. 10-1-84; cr. (6), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.80 Sales of ice.** (1) Ice, including dry ice, is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale.

*Example:* Ice used for refrigeration purposes is consumed in the process of refrigeration. Ice used in drinks is purchased for resale by the seller of the drink.

(2) **Taxable sales of ice include:**

- (a) Sales through vending machines.
- (b) Sales to restaurants, taverns, grocery stores and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(3) **Nontaxable sales of ice include:**

- (a) Sales to restaurants, taverns and soda fountains to be used exclusively in drinks. The sales are exempt as sales for resale.
- (b) Sales to manufacturers, producers or food processors for use inside the shipping cases of merchandise being transferred to a customer. The sales are exempt as "shipping material" under s. 77.54 (6) (b), Stats.

(c) Ice sold to manufacturers which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

(4) (a) If ice is sold to a person who will use it both for a taxable purpose and nontaxable purpose, such as for refrigeration and

for resale, the total charge shall be divided between taxable and nontaxable use. The tax is then payable on the ice to be used in a taxable manner. If no division is made, the tax applies to the total sale.

(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c).

Note: Section Tax 11.80 interprets ss. 77.52 (1) and 77.53 (1), Stats.

Note: The interpretations in s. Tax 11.80 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (4) (b), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (intro.), (3) (intro.), (a) and (b) and (4) (a), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.81 Industrial gases, welding rods and fluxing materials.** (1) GENERAL STATEMENT. The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54 (2), Stats., exempts from the sales tax *"The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."* Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

(a) Exempt if they become ingredients or components of tangible personal property destined for sale; or

(b) Exempt if they are consumed, destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or

(c) Taxable if they are sold to a person who consumes them in a nonmanufacturing activity.

(2) INDUSTRIAL GASES. Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen.

(a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

1. Carbon dioxide used to produce dry ice or carbonated soft drinks.

2. Gases such as neon, helium or argon used as a filler in the production of light bulbs and tubes.

3. Hydrogen used in hydrogenating vegetable oils.

4. Acetylene used as a base in the manufacture of synthetic materials.

5. Oxygen used in the chemical industry for oxidation processes, when not used as a fuel to produce heat.

(b) Taxable sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces.

2. Acetylene or other gases used in torches in the manufacture of tangible personal property.

(c) Taxable sales of gases to nonmanufacturers, whether or not used by the purchaser as fuel, include:

1. Acetylene or other gases used by automobile body shops or by other repair establishments.

2. Gases used in mining or quarrying.

3. Nitrogen used by telephone companies in underground cables.

(3) WELDING RODS. Since welding rods, such as stick electrode and filler rods, are physically transferred and become a part

of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property destined for sale or in repairing tangible personal property for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of these rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) FLUXING MATERIALS. Fluxing materials sold to a manufacturer for use in manufacturing tangible personal property destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own production machinery or equipment, a non-manufacturing activity, they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

Note: Section Tax 11.81 interprets s. 77.54 (2), Stats.

Note: The interpretations in s. Tax 11.81 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

### Tax 11.82 Mailing lists and mailing services.

(1) MAILING LISTS. (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property, except for written, 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 those lists. Taxable mailing lists include, but are not limited to 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 these lists. However, any tangible personal property becoming a component part of mailing lists when 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) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, type-writing, printing, imprinting or affixing addresses or names and addresses to 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 the property. However, addressing does not include these tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax 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 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 these services. Consequently, they shall pay the tax when purchasing the property.

Note: Section Tax 11.82 interprets ss. 77.51 (20), 77.52 (1), 77.53 (1) and 77.54 (2), Stats.

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* (115/87).

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (b), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (b), (c) and (2), Register, January, 1994, No. 457, eff. 2-1-94.

**Tax 11.83 Motor vehicles. (1) DEFINITION.** In this section, "motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck or road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

**(2) RETAILERS' TAXABLE GROSS RECEIPTS.** Gross receipts from the following sales in Wisconsin are taxable:

(a) The sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value, called a "trade-down," unless cash or services are received by the dealer.

Examples: 1) Dealer A sells a motor vehicle to Individual B and accepts the trade-in of two motor vehicles owned by Individual B. The selling price of the new vehicle is \$20,000. The values of the two motor vehicles traded in by Individual B are \$8,000 and \$9,000. Gross receipts subject to sales tax are \$3,000, the \$20,000 selling price less \$8,000 and \$9,000 trade-ins.

2) Dealer A sells two motor vehicles to Individual C and accepts the trade-in of a motor vehicle owned by Individual C. The selling prices of the new vehicles are \$10,000 and \$12,000. The value of the motor vehicle traded in is \$15,000. Gross receipts subject to sales tax are \$7,000, the \$22,000 selling price less \$15,000 trade-in.

(b) The delivery, handling and preparation of a motor vehicle being sold and the sale of a warranty, relating to the sale of a motor vehicle that is taxable.

Note: See s. Tax 11.27 for information regarding the sales and use tax treatment of warranties.

(c) The sale of equipment and accessories with a motor vehicle. However, 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., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting directly on behalf of the handicapped person or a nonprofit organization.

(d) Sales of parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as described in par. (c).

Example: Charges for installation of a radio or air conditioner into a motor vehicle are taxable.

Note: Under s. 77.51 (14c), Stats., a sale takes place in Wisconsin if possession of the tangible personal property is transferred by the seller or the seller's agent to the buyer or the buyer's agent in Wisconsin. A common carrier or U.S. Postal Service is always an agent of the seller.

**(3) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS.** (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered in Wisconsin in the name of the transferor; and the transferor is not a motor vehicle dealer.

(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of the interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

**(4) PURCHASES BY NONRESIDENTS.** (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than in their removal from Wisconsin are exempt. Truck bodies include semi-trailers. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body are subject to tax.

(c) A motor vehicle, trailer, semi-trailer, all-terrain vehicle or mobile home purchased by a nonresident of Wisconsin 90 days or more before bringing the unit into Wisconsin, in connection with a change of residence to Wisconsin by the individual, is not subject to the Wisconsin use tax.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (6).

**(5) TEMPORARY USE IN WISCONSIN.** Motor vehicles purchased outside Wisconsin, which are not registered or titled or required to be registered or titled in Wisconsin, brought into Wisconsin by a nondomiciliary for that person's own storage, use or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used or otherwise consumed in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

**(6) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN.** A motor vehicle purchased outside Wisconsin and registered in Wisconsin is subject to Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made, sales or use tax paid to the other state or the District of Columbia may be applied as a credit against and deducted from the Wisconsin use tax. This credit does not apply to taxes paid to another country or to municipalities in other states, or to motor vehicle registration fees.

**(7) TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir or heirs of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate

is subject to the tax, and the purchaser shall pay the tax to the department of transportation at the time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable, unless the donor is an organization described in s. 77.54 (9a), Stats.

(c) A motor vehicle donated to an organization described in s. 77.54 (9a), Stats., is not subject to Wisconsin use tax.

**(8) VEHICLES USED BY LICENSED WISCONSIN MOTOR VEHICLE DEALERS.** (a) *General.* Motor vehicles purchased without tax for resale by a Wisconsin motor vehicle dealer licensed under s. 218.01, Stats., and used for a purpose in addition to retention, demonstration or display, except motor vehicles loaned to any school or school district for a driver training educational program conducted by the school or school district, are subject to Wisconsin use tax. Motor vehicles used by the dealership solely for retention, demonstration and display, while holding them for sale in the regular course of business, or solely for leasing to others, such as customers and employees, are not subject to Wisconsin use tax.

(b) *Amount subject to use tax.* The amount subject to use tax on a motor vehicle used by a licensed motor vehicle dealer for a purpose in addition to retention, demonstration or display is one of the following:

1. Motor vehicles held for sale which are assigned to a specific dealer employe subject to withholding from federal income tax on wages are subject to Wisconsin use tax on \$96 per motor vehicle registration plate per month.

*Note:* As provided in s. 77.53 (1m), Stats., the department annually, beginning January 1, 1997, will adjust the \$96 amount to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the *Wisconsin Tax Bulletin* prior to the January 1, that the change becomes effective.

2. Motor vehicles held for sale and not assigned to a specific dealer employe subject to federal withholding on wages are subject to Wisconsin use tax on the lease value of the motor vehicle computed on a calendar month basis. If a motor vehicle is used by the dealer for a period of less than one calendar month, the amount subject to use tax is the daily lease value calculated by multiplying the applicable monthly lease value by a fraction, the numerator of which is the number of days used by the dealer for a purpose in addition to retention, demonstration or display and the denominator of which is the number of days in the calendar month. Lease value is computed using the internal revenue service lease value table contained in internal revenue service regulation s. 1.61-21 (d) (2). In the lease value table, the "automobile fair market value" is one of the following:

a. The amount an individual would have to pay in an arm's length transaction to purchase the motor vehicle. The amount includes all amounts attributable to the purchase of the automobile such as sales tax and title fees.

b. The motor vehicle dealer's cost of purchasing the automobile, including all expenses attributable to that purchase, provided the automobile is owned by the dealer and the purchase was made at arm's length.

3. Motor vehicles not held for sale, including motor vehicles properly capitalized for Wisconsin income or franchise tax purposes, are subject to use tax based on the sales price of the motor vehicle as defined in s. 77.51 (15), Stats. However, if the motor vehicles were purchased without tax using a resale or other exemption certificate and the first use, in addition to retention, demonstration or display, occurs more than 6 months after the purchase by the dealer, the dealer may use the fair market value of the motor vehicle at the time of first use as the amount subject to tax.

(c) *Recordkeeping.* It is presumed that all dealer plates issued by the department of transportation to a licensed motor vehicle dealer are used each month on motor vehicles assigned to

employes subject to withholding for federal income tax purposes for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par. (b) 1., unless one of the following applies:

1. The motor vehicle dealer keeps adequate records showing that the dealer plates were not used during the month on motor vehicles for a purpose in addition to retention, demonstration or display.

2. The motor vehicle to which the dealer plate is assigned is subject to use tax as computed in par. (b) 2. or 3.

(d) *Transitional provision.* For motor vehicles, not assigned to employes or salespersons subject to federal withholding on wages, that are used by the dealer for a purpose in addition to retention, demonstration and display both prior to September 1, 1995, and on and after September 1, 1995, upon which a sales or use tax was paid on the purchase price of the motor vehicle by the dealer, the imposition of use tax as described in par. (b) 2. does not apply.

**(9) SALES BY DEALERS TO THEIR SALESPERSONS OR OTHER EMPLOYEES.** When a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons or other employees, the transaction is subject to the sales tax.

**(10) HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration may not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with Wisconsin. The heavy equipment dealers may purchase motor vehicles for resale without tax.

**(11) MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. The property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle is subject to tax. The property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Taxable supplies include sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle even though a separate charge may be made to the customer for these supplies.

(c) A supplier may not accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, except when the purchaser does all of the following:

1. Inventories the property.

2. Certifies that the purchaser sells the property in the regular course of business.

3. Specifies on the resale certificate each type of item the purchaser sells in the regular course of business.

**(12) EXEMPTION FOR MIXING AND PROCESSING UNITS.** Sales, leases and rentals of mobile units used for mixing and processing, and the motor vehicles or trailers on which the units are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units, are exempt from sales and use tax.

**(13) EXEMPTION FOR VEHICLES USED IN WASTE REDUCTION OR RECYCLING.** Gross receipts from the sale, lease or rental of vehicles which are not required to be licensed for highway use and which are used exclusively and directly in waste reduction or recycling activities are exempt from sales and use tax.

**(14) REFUNDS UNDER "LEMON LAW".** Sales tax refunds made under s. 218.015 (2) (f), Stats., the "lemon law," are normally made in the same manner as the other sales tax refunds. However, when a defective motor vehicle is returned to the manufacturer for a refund of the purchase price, the purchaser is permitted to collect a sales tax refund directly from the department if the manufacturer fails to refund the tax.

**Note:** Section Tax 11.83 interprets ss. 77.51 (13) (am) and (14) (j), 77.52 (1) and (15), 77.53 (1), (1m), (16), (17) and (18), 77.54 (5) (a), (c) and (d), (7) and (22) (g), 77.56 (2) and (3), 77.61 (1) and 77.71 (2) and (4), Stats.

**Note:** The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for adaptive equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemption for parts and accessories for adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (h) the measure of use tax on motor vehicles as described in sub. (8) (b) became effective September 1, 1995, pursuant to 1995 Wis. Act 27.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7) (a) and (8), Register, May, 1981, No. 307, eff. 6-1-81; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (7) (a) 1. and 2., Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (7) (a) 1. and 2., eff. 3-24-86; am. (7) (a) 1. and 2., Register, October, 1986, No. 370, eff. 11-1-86; cr. (11), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (a), (c) and (d), (3) (a) and (4) (a) and (c), cr. (5), (13) and (14), renun. (5) to be (6), renun. (6) to be (7) to be (12) and am. (8) (a), (9), (10), and (11) (a), (b) and (c) 1., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (a), (c), (d), (3) (a), (4) (a), (b), (6), (7) (a), (b), (8) (b), (10) and (14), cr. (7) (c), Register, April, 1993, No. 448, eff. 5-1-93; am. (1), (2), (3) (d), (4) (b), (5), (6), (7) (a), (11) (c) and (12), r. and recr. (8), Register, February, 1997, No. 494, eff. 3-1-97.

**Tax 11.84 Aircraft. (1) GENERAL.** (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor is not engaged in the business of selling aircraft.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of aeronautics. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state.

(d) The use tax does not apply to aircraft for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the aircraft into Wisconsin in connection with a change of domicile to this state.

(e) The use tax does not apply to aircraft registered in Wisconsin when all of the following requirements are fulfilled:

1. The aircraft is purchased in another state.
2. The aircraft's owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
3. The owner or lessee is one of the following:
  - a. A corporation, and that corporation and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or tangible personal property,

except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

b. A partnership, and all the corporate partners fulfill the requirements in subd. 3. a., none of the general partners or limited partners who have management or control responsibilities is domiciled in Wisconsin and the partnership has no other real property or tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

c. An individual not domiciled in Wisconsin.

d. An estate, trust or cooperative, and that estate, that trust and its grantor or that cooperative does not have real property or tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

4. The department has not determined that the owner, if the owner is a corporation, trust or partnership, was formed to qualify for the exemption from Wisconsin use tax.

**(2) TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.
2. The sale and delivery in Wisconsin of oil, equipment, parts and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52 (2) (a) 9., Stats., imposes the tax on "Parking or providing parking space for motor vehicles and aircraft for a consideration...." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational.

**Examples:** 1) A ready-to-fly aircraft occupying space in a hangar and available for immediate use is parked.

2) An aircraft occupying space in a hangar with its wings off is not parked, since it would require a substantial expenditure of time or effort to make it operational.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor, or "tie-down," parking are taxable.

(c) *Other taxable receipts.* The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

**(3) EXEMPT SALES OF AIRCRAFT.** (a) Section 77.54 (5) (a), Stats., provides that the tax does not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use the aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(b) The tax does not apply to charges for repair, service and maintenance of aircraft used by a certified or licensed carrier of persons or property in interstate or foreign commerce under the laws of the United States or any foreign government.

**(4) NONTAXABLE SERVICES.** Gross receipts from the following services or fees are not taxable:

(a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for the instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in the business of crop dusting, spraying, fertilizing and seeding for farmers may purchase weed killers, fertilizer and seed without tax for resale, if these items are used in conjunction with but not incidental to providing the service.

(f) Landing fees.

Note: Section Tax 11.84 interprets ss. 77.52(2)(a) 9., 77.53(17r) and (18), 77.54(5)(a) and (7) and 77.61, Stats.

Note: The interpretations in s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the exemption for federal aviation fuel is effective January 1, 1982, pursuant to Chapter 20, Laws of 1981; (b) The exemption for aircraft brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for certain nonresidents' aircraft became effective May 15, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of aircraft to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (b) 1. and 2., Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) 2. and (3), Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (e), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (b) 3., cr. (1) (d), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (c), cr. (1) (c) and (3) (b), renum. (3) (intro.) to be (3) (a), Register, June 1991, No. 426, eff. 7-1-91; am. (1) (b) 1., (c), (2) (b), (3), (4) (intro.) and (b), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.85 Boats, vessels and barges. (1) TAXABLE SALES.** Taxable gross receipts involving boats include the following:

(a) Gross receipts from the sale, lease or rental of boats and boat accessories; and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats. The tax applies to boat storage in public storage warehouses.

**(2) EXEMPT SALES.** (a) The sale of a boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may qualify as an exempt occasional sale if the transferor does not hold or is not required to hold a seller's permit.

(b) Sales of boats to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor shall be exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor is not engaged in the business of selling boats.

(c) Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more are exempt from the tax. Accessories, attachments and parts attached to the vessel or barge and fuel for the vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees. The use tax does not

apply to a boat for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the boat into Wisconsin in connection with a change of domicile to this state.

(e) A boat purchased by a Wisconsin or federal governmental unit or by certain nonprofit organizations is exempt from the tax, regardless of the boat's size or kind, pursuant to s. 77.54(9a) or 77.55(1), Stats.

(f) Section 77.53(17m), Stats., exempts: "...a boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made."

**(3) PAYMENT OF TAX.** (a) No boat may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax with the boat registration, mailed to Wisconsin Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, WI 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin, unless exempt under sub. (2) (d).

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

(d) The "boat" subject to the use tax at the time the boat is registered in this state includes all accessories affixed or attached to the boat when in use. Anchors, boat cushions, marine radios, radar equipment and other similar accessories are included in the measure of the tax.

Note: In a decision dated July 25, 1983, in the case of *Alan G. Dwyer vs. Wisconsin Department of Revenue*, the Wisconsin Tax Appeals Commission held that the tax applies to boat accessories, including the anchor, boat cushions and marine radio, in addition to the bare hull of the boat.

**(4) TAXABLE SUPPLIES.** Sales of consumable supplies or furnishings not attached to the vessel or barge are not exempt from sales or use tax under s. 77.54(13), Stats.

Note: Sales of bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, paper towels, etc., used on commercial barges or barges of 50 ton burden or over engaged primarily in interstate or foreign commerce or commercial fishing are subject to sales and use tax.

**(5) SALES TO SHIPS.** Sales of tangible personal property or taxable services delivered to operators of foreign flag ships or ships under the U.S. flag in a Wisconsin harbor are subject to tax, unless the retailer receives a properly completed resale or other exemption certificate from the purchaser.

Example: The operator of the ship may purchase without tax fuel and repair parts for a ship which exceeds 50-ton burden under s. 77.54(13), Stats.

Note: Section Tax 11.85 interprets ss. 77.51(13)(am), 77.52(2)(a) 9. and 10., 77.53(17), (17m) and (18), 77.54(7) and (13) and 77.61(1), Stats.

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Boats documented under laws of the United States do not qualify for the occasional sale exemption effective February 28, 1979, pursuant to Chapter 1, Laws of 1979; (b) Charges by governmental units for docking and storing boats became taxable effective June 1, 1980, pursuant to Chapter 221, Laws of 1979; (c) The exemption for boats of nonresidents kept in waters contiguous to the nonresident's state of domicile became effective September 1, 1985, pursuant to 1985 Wis. Act 29, later amended effective June 1, 1988, pursuant to 1987 Wis. Act 268; (d) The exemption for boats brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; and (e) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (d), (2) (a) and (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a), Register, September, 1984, No. 345, eff. 10-1-84; cr. (2) (f), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b) to (e), cr. (3) (d) and (4), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (a), (c) and (f) and (3) (b), cr. (4), renum. (4) to be (5), r. (1) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (b) and (3) (a), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.86 Utility transmission and distribution lines. (1) DEFINITIONS.** In this section:

(a) "Utility facilities" include telephone, telegraph and television lines; electrical, water and gas transmission and distribution lines; and poles, transformers and towers, including pipes, conduits, sleeves, risers for cable television lines, or other property by which lines are supported or in which they are contained or connected.

(b) "Real property" includes underground utility facilities; lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land; and concrete foundations, anchors, crushed rock and backfill whether or not on land owned by the utility.

(c) "Tangible personal property" includes overhead utility facilities and circuit breakers and other equipment, but not their foundations, installed to control the flow of electricity. It also includes other overhead property by which lines are supported or in which they are contained or connected if erected or installed under an easement or license, including authorizations under ss. 86.16 and 182.017, Stats., on land owned by a person other than the utility.

(2) GENERAL. (a) Gross receipts from the installation, lease, rental, repair, service or maintenance of tangible personal property are subject to sales tax.

(b) Materials used in construction or forming of real property are taxable when purchased by the contractor.

**Examples:** 1) The gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion of an overhead utility facility, and from a sale "in place" of the facility, if installed under an easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of the property may be purchased without tax for resale.

2) The gross receipts of a utility from the repair, service or maintenance of an overhead utility facility, or a portion of an overhead facility of another utility are taxable. Materials used in the repair, service or installation may be purchased without tax for resale.

3) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to sales or use tax. However, the materials used in the construction or installation of the underground utility facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

4) X-ray testing of weld joints in the pipe as part of the construction of an underground utility pipeline is part of the construction process and the gross receipts are not subject to sales or use tax. However, materials used in the X-ray testing of the underground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) RELATED EXPENSES. The gross receipts from the performance of a lump sum contract for the construction of an overhead utility facility, which is tangible personal property, may not be reduced by expenses in performing the contract, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and unloading and hauling materials.

**Note:** The related expenses described in sub. (3) are costs of performing the contract and do not affect the amount of taxable gross receipts.

(4) EQUIPMENT CHARGES. (a) The gross receipts from a contract to construct or repair an overhead utility facility which is tangible personal property may not be reduced by the amount of hourly charges for the use of equipment.

(b) The gross receipts from the rental of equipment, including any charge for an operator of the equipment, for the construction or repair of a utility line to a utility are taxable, unless the utility employs all of the crew to construct or repair the utility line, in which case only the charge for the equipment is taxable.

**Note:** See s. Tax 11.29 (4) for more information.

(5) NONTAXABLE SERVICES. (a) Gross receipts from tree and shrub trimming services for a utility for the purpose of keeping the overhead transmission and distribution lines free from interference from nearby trees and shrubs or inaccessible to children are not services which are taxable under s. 77.52 (2) (a) 20., Stats.

(b) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line are not taxable.

(c) Gross receipts from a separate charge for removing an existing utility line are not taxable.

(6) LANDSCAPING SERVICES. Gross receipts from landscaping services are taxable when performed in lawn and garden areas. This includes lawn, shrub and tree services, except for services described in sub. (5) (a), performed in developed areas found in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other developed areas.

**Example:** Restoration work performed when a utility extends its service or repairs or replaces existing lines is subject to sales tax.

**Note:** Section Tax 11.86 interprets ss. 77.51 (20), 77.52 (2) (a) 10., 11. and 20., 86.16 and 182.017, Stats.

**Note:** The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except: (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; and (c) The Wisconsin Tax Appeals Commission decision in *Capital City Tree Experts, Inc.*, dated June 19, 1987, later modified by stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (4) (a) and cr. (5), Register, September, 1984, No. 345, eff. 10-1-84; r. and recr., Register, June, 1991, No. 426, eff. 7-1-91; emerg. r. and recr. (6), eff. 5-18-97.

**Tax 11.87 Meals, food, food products and beverages. (1) DEFINITIONS.** In this section:

(a) "Community-based residential facility" has the meaning in s. 50.01 (1g), Stats.

(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54 (20), Stats.

(c) "Hospital" has the meaning in s. 50.33 (2), Stats.

(d) "Nursing home" has the meaning in s. 50.01 (3), Stats.

(e) "Retirement home" means a nonprofit residential facility, which as its primary function provides personal care above the level of room and board to retired persons, where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(f) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing and ambulation.

(g) "Sanatorium" means an institution for the recuperation and treatment of the victims of physical or mental disorders.

(h) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) TAXABLE SALES. (a) *General.* Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs, young men's christian associations, young women's christian associations and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

**Example:** When a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food or beverages are taxable.

(c) *Food components of meals.* Food items which comprise or are components of a meal shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

**Example:** A basket of chicken with coleslaw and french fries sold "to go" is taxable food.

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

1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute taxable gross receipts.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

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, 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 their use. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placements and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator has a "premises" as defined in s. 77.54 (20) (c) 6., Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(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 the service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe shall be exempt from the sales tax, if the amount of the tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of the meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

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

1. A consideration shall be deemed made for meals if any one of the following conditions is met:

a. The employe pays cash for meals consumed.

b. An actual, specific charge for meals is deducted from an employe's wages.

c. An employe receives meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.

d. An employe has the option to receive cash for meals not consumed.

2. In the absence of any of the conditions in subd. 1, a consideration is not deemed made when:

a. A value is assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA, social security, or union contract purposes.

b. An employe who does not consume available meals has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies, such as airlines or railways, to a customer while operating in Wisconsin for a specific charge shall be taxable. These meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage is not separately stated to the customer, the tax shall apply to purchases of these meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for the items, the place of business shall be considered selling directly to the members and not to the organization except as provided in subds. 2. and 3. The sales shall, therefore, be subject to the tax, even if the organization collects from the members, pays the seller, and retains a portion of the collections for its own purposes. In these situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

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 is not 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. Sales of food and beverages are not subject to tax even though the employe of an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for the sale of the food or beverages provided all of the following are met:

a. The retailer issues the billing or invoice for the food and beverages in the name of the exempt organization.

b. The certificate of exempt status number of the exempt organization is entered on the retailer's copy of the invoice or billing document.

c. The retailer keeps a copy of the documents described in subd. 3. a. and b.

(3) EXEMPT SALES. The following meals shall be exempt:

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

*Example:* If a ladies' auxiliary of a hospital, separate from the hospital, operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at the coffee shop are taxable.

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

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of food, food products and beverages for human consumption exempt from tax under s. 77.54 (20), Stats. This includes sales of prepackaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are tax-

able. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

Note: See s. Tax 11.51 for more information.

(c) **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 security income, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

(4) **SPECIALTY SITUATIONS.** (a) **Specialty items.** A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food.

Example: A restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) **Fund-raising events.** When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

Note: Section Tax 11.87 interprets ss. 77.51 (4) (c) 2., (14) (b) and (f) and (15) (c) 1. and 77.54 (20), Stats.

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; (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; and (c) Sales of meals by community-based residential facilities on their premises became exempt on June 1, 1994, pursuant to 1993 Wis. Act. 332.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (d), Register, September, 1984, No. 345, eff. 10-1-84; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats; am. (1) (intro.) and (f), (2) (a), (b), (c), (d) 1., (g), (j) and (k), (3) (a) and (4) (a), cr. (2) (k) 3., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d) (intro.), 3., (f), (i) (intro.), 1. intro. and 2. intro., (k) 2., (3) (a), (b) and (d), cr. (3) (e), Register, December, 1992, No. 444, eff. 1-1-93; renum. (1) (a) to (g) to be (b) to (h) and am. (1) (b), cr. (1) (a), am. (3) (a), (d) and (e), Register, December, 1996, No. 492, eff. 1-1-97.

**Tax 11.88 Mobile homes.** (1) **MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT.** A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) **SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS.** (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to the contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) **SALES AND RENTALS OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY.** (a) Under s. 77.54 (31), Stats., the total gross receipts from the sale of a used mobile home, which is a primary housing unit, are exempt from the sales and use tax.

(b) Under s. 77.51 (4) (b) 6. and (15) (b) 5., Stats., 35% of the total gross receipts from the sale of certain new mobile homes is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of these new mobile homes. The 35% exemption applies to a new mobile home that is:

1. A primary housing unit under s. 340.01 (29), Stats., or
2. 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.

(c) Under s. 77.54 (36), Stats., the rental of a mobile home, as defined in s. 66.058 (1) (e), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(d) Under s. 77.54 (7), Stats., mobile homes transferred to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor are exempt occasional sales if the mobile home has been previously registered or titled in Wisconsin in the name of the transferor and the transferor is not engaged in the business of selling homes.

(e) Under s. 77.53 (18), Stats., the use tax does not apply to a mobile home purchased by a nonresident outside Wisconsin 90 days or more before bringing the mobile home into Wisconsin in connection with a change of domicile to Wisconsin.

(4) **PAYMENT OF TAX.** (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) If a mobile home purchased outside Wisconsin is subject to the Wisconsin use tax, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) **CONSIGNMENT SALES.** When a mobile home dealer has possession of a mobile home owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

Note: For information regarding principals, see s. Tax 11.55.

(6) **DEFINITION.** In this section:

(a) "Mobile home dealer" has the meaning defined in s. 218.10 (3), Stats.

(b) "New mobile home" has the meaning defined in s. 218.10 (7), Stats.

(c) "Primary housing unit" has the meaning defined in s. 340.01 (29), Stats.

(d) "Retailer" is a person who has a seller's permit issued under s. 77.52 (9), Stats.

(e) "Used mobile home" has the meaning defined in s. 218.10 (9), Stats.

Note: Section Tax 11.88 interprets ss. 77.51 (2), (4) (b) 6., (13) (am) and (15) (b) 5., 77.52 (2) (a) 1., 77.53 (17) and (18), 77.54 (7), (31) and (36), 77.61 (1) (a) and (c), 218.10 (3), (7) and (9) and 340.01 (29), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (g) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to

1991 Wis. Act 39; and (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and rec. (3) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b), (3) (d), (4) (b) and (5), cr. (3) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (b) and (d), Register, April, 1993, No. 448, eff. 5-1-93.

### Subchapter X Administrative Provisions

**Tax 11.91 Successor's liability.** (1) DESCRIPTION OF SUCCESSOR. (a) A purchaser or assignee of the business or stock of goods, including furniture, fixtures, equipment and inventory, of any retailer liable for sales or use tax shall be personally liable for the payment of the sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation is created and acquires the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for any sales or use tax liability of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a creditor, including a financial institution, actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered, if it never operates the business and if its sole purpose is to sell the business in its entirety, as a whole or piecemeal, at whatever price it can obtain to recover its investment.

(2) EXTENT OF LIABILITY. (a) If there is no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) PROCEDURES FOR PURCHASER. (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. An oral request for a clearance certificate shall not be accepted. The letter requesting the certificate shall include the real name, business name and seller's permit number, if known, of the prior operator. All sales tax returns for

all periods during which the predecessor operated shall be filed with the department before it may issue the certificate.

(c) Under s. 77.52 (18) (a), Stats., the department has 60 days from the date it receives the request for a clearance certificate or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

Note: Section Tax 11.91 interprets s. 77.52 (18), Stats.

Note: The interpretations in s. Tax 11.91 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (a), (b) and (g), (2) (a) and (3) (b) and (c) (intro.), Register, June, 1991, No. 426, eff. 7-1-91.

### Tax 11.92 Records and record keeping. (1) GENERAL.

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

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property, including any services that are a part of the sale or lease, made within Wisconsin even if the seller or lessor regards the receipts as taxable or nontaxable. Taxable gross receipts shall be reported on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

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

orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

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

(d) Every person subject to the county sales and use tax shall keep a record of sales the person completes in each county enacting an ordinance under s. 77.70, Stats., imposing a county tax, separately from sales made elsewhere in the state. Every person shall also keep a record of the sales price of items on which the person is subject to county use or excise tax in each enacting county.

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

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

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

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

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

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing, ADP, tax accounting system shall have the capability of producing visible and legible records which will provide the following necessary information for verification of the taxpayer's tax liability:

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

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

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

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

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

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

determination shall be preserved and retained until the tax redetermination has been finally resolved.

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

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

(7) **PENALTIES.** If the department has given notice to a person to keep certain sales and use tax records, and thereafter additional sales or use taxes are assessed on the basis of information not contained in the records, the department shall impose a penalty equal to 25% of the amount of sales or use tax assessed. This is in addition to all other penalties provided by law.

Note: Section Tax 11.92 interprets ss. 77.51 (4) (d), 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9) and 77.75, Stats.

Note: The interpretations in this s. Tax 11.92 are effective under the general sales and use tax law on and after September 1, 1969, except that the 25% penalty in sub. (7) became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; emerg. cr. (1) (d), eff. 3-24-86; cr. (1) (d), Register, October, 1986, No. 370, eff. 11-1-86; am. (1) (intro.), (a), (b) and (c), (2) (intro.), (3) (intro.) and (c) and (4), cr. (7), Register, June, 1991, No. 426, eff. 7-1-91.

#### Tax 11.925 Sales and use tax security deposits.

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

1. Evidence of adequate financial responsibility. Evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.
2. Prior record of filing tax returns and paying taxes of any kind with the department.
3. Type of business.

Example: A temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location.

4. Type of entity.

Example: A sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets.

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

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

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

- (a) *Non interest-bearing.* 1. Cash, certified check or money order.
2. Surety bonds issued by authorized underwriters.

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

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A security assignment, form S-127, shall be completed if this type of security is selected.

*Note:* Form S-127 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, (608) 266-2278.

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

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

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

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

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

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

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

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

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

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

(d) Compliance with subch. III, ch. 77, Stats., means that:

1. Sales and use tax returns were timely filed.

2. All payments were made when due.

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

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

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

(e) If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

*Note:* Section Tax 11.925 interprets s. 77.61 (2), Stats.

*Note:* The interpretations in s. Tax 11.925 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The return of deposit provisions in sub. (5) became effective March 13, 1980, pursuant to Chapter 125, Laws of 1979; and (b) The \$15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wis. Act 29.

*History:* Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. (1), (2) (a) 1., 3., and 4., (3) (b) 2., and (5) (c), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), (2) (b), (3) (b) 1., (5) (c), (d) 4. and 5., r. (3) (a) 3., Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.93 Annual filing of sales tax returns.** (1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

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

*Note:* Section Tax 11.93 interprets s. 77.58 (5), Stats.

*Note:* The interpretations in s. Tax 11.93 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to that date, a \$100 standard applied; and (b) The "annual information return" was eliminated for 1981 and subsequent years, pursuant to Chapter 221, Laws of 1979.

*History:* Cr. Register, December, 1978, No. 276, eff. 1-1-79; cr. (4), Register, January, 1983, No. 325, eff. 2-1-83; r. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.94 Wisconsin sales and taxable transportation charges.** (1) **"WISCONSIN SALE."** (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (14r), Stats.

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

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

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

(e) Section 77.51 (14) (d), Stats., applies to a situation where tangible personal property is delivered to a purchaser in Wisconsin by an owner or former owner of the property holding or required to hold a Wisconsin seller's permit or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a manufacturer ships or turns over the property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller, who had received the original order from the Wisconsin purchaser, the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) **TAXABLE TRANSPORTATION CHARGES.** (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

**Example:** When the seller charges the purchaser for delivery of the taxable tangible personal property in a Wisconsin county that has not adopted the 1/2 % county tax, the correct computation of tax is as follows:

Selling price of merchandise	\$100.00
Delivery charge	10.00
Subtotal	\$110.00
Tax at 5% (\$110 × 5%)	5.50
Total	\$115.50

(b) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no allocation is made, the total delivery charge shall be taxable.

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(d) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller.

**Example:** If the "delivered price" of a carload of lumber is \$6,000, including transportation, and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

**Note:** Section Tax 11.94 interprets ss. 77.51 (14) (intro.) and (d) and (14r) and 77.52 (1), Stats.

**Note:** The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969.

**History:** Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (e), r. (2) (b), renun. (2) (c), (d) and (e) to be (2) (b), (c) and (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (2) (b) and (d), Register, June, 1991, No. 426, eff. 7-1-91; reprinted to restore dropped copy in (1) (b), Register, December, 1995, No. 480.

**Tax 11.95 Retailer's discount. (1) COMPUTATION.** (a) Effective for Wisconsin sales and use tax returns filed for periods ending on or after January 1, 1997, for timely reporting state, county and stadium sales or use tax collected on their retail sales, except as provided in par. (b), retailers may deduct 0.5% of the sales and use tax payable on retail sales.

(b) If, for each reporting period required under s. 77.58 (1), Stats., multiplying the sales and use tax payable on retail sales by 0.5% results in \$10 or less, the retailer's discount is the lesser of \$10 or the amount of the sales and use tax payable on retail sales.

(2) **RETAILER'S DISCOUNT ALLOWED.** The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted.

(3) **RETAILER'S DISCOUNT NOT ALLOWED.** The retailer's discount is not allowed if any one of the following applies:

(a) The payment of sales and use tax is delinquent.

(b) The sales and use tax payable is as a result of a deficiency determination or filing an amended return after the due date of the return, or after the expiration of any extension period if one has been granted.

(c) The use tax payable is imposed pursuant to s. 77.53 (2), Stats.

**Note:** Section Tax 11.95 interprets ss. 77.61 (4) (c), 77.76 (3) and (3m) and 77.79, Stats.

**Note:** (a) The amount of retailer's discount on or after January 1, 1983 until December 31, 1992 was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use tax payable and 0.5% of the sales and use tax payable in excess of \$20,000 each year; (b) The requirement that county tax be remitted by dealers to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wis. Act 141; (c) The amount of retailer's

discount for returns filed for periods ending on or after January 1, 1993 and before January 1, 1997, was 0.5% of sales and use tax payable on retail sales, pursuant to 1991 Wis. Act 269; and (d) The amount of retailer's discount in sub. (1) became effective for returns filed for periods ending on or after January 1, 1997, pursuant to 1995 Wis. Act 280.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. Register, September, 1984, No. 345, eff. 10-1-84; emerg. am. (1), eff. 3-24-86; am. (1) Register, October, 1986, No. 370, eff. 11-1-86; am. (1), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), Register, April, 1993, No. 448, eff. 5-1-93; r. and recr. Register, December, 1996, No. 492, eff. 1-1-97.

### Tax 11.97 "Engaged in business" in Wisconsin.

(1) **GENERAL.** (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14th Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established, the out-of-state seller is required to register and collect the state's use tax.

**Note:** Retailers having nexus in Wisconsin for use tax purposes do not necessarily have nexus in Wisconsin for franchise or income tax purposes. Refer to s. Tax 2.82 for nexus standards with respect to franchise and income taxes.

(b) Some United States supreme court decisions concerning nexus include:

1. Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)
2. Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)
3. General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)
4. Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)
5. Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)
6. National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967)
7. National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977)

(2) **STATUTES.** (a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and s. 77.51 (14) (j), Stats., defines a lease as a continuing sale.

(b) Section 77.51 (13g), Stats., defines the term "retailer engaged in business in this state" and s. 77.51 (13h), Stats., provides an exception for foreign publishers.

(c) Under s. 77.53 (5), Stats., the tax required to be collected by a use tax registrant is a debt owed by the registrant to this state, and s. 77.53 (7), Stats., provides the tax is to be stated separately from the list price of the goods sold.

(3) **ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS."** Unless otherwise limited by federal statute, a retailer engaged in business in Wisconsin who shall register includes the following:

(a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property located in this state.

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.

(e) Any person servicing, repairing or installing equipment or other tangible personal property in Wisconsin.

(f) Any person delivering goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

**(4) ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS".** Activities which, in themselves, do not create nexus in this state, include:

(a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or common carrier by the retailer into this state, or when possession of the goods is taken at the out-of-state location by the consumer.

(e) A foreign corporation obtaining a certificate of authority from the Wisconsin secretary of state to transact business in Wisconsin.

**(5) EXCEPTION FOR FOREIGN PUBLISHERS.** (a) Under s. 77.51 (13g) and (13h), Stats., a foreign corporation that is a publisher of printed materials does not have nexus in Wisconsin if its only activities in Wisconsin are:

1. Storage of its raw materials for any length of time in Wisconsin in or on property owned by a person, other than the foreign corporation, if the materials are for printing by that person.

2. Delivery of its raw materials to another person in Wisconsin, if the delivery is for printing by that other person.

3. Purchase from a printer of a printing service or of printed materials in Wisconsin for the foreign corporation and the storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation.

4. Maintaining, occupying and using, directly or by means of another person, a place in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

(b) In this subsection, "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

**(6) REGISTRATION.** (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Permit", Form A-101. There is no fee for registration.

Note: Form A-101 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b) Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate, and the 15-day time period within which the department is required to act on certificate applications.

**(7) OUT-OF-STATE RETAILERS NOT ENGAGED IN BUSINESS IN THIS STATE.** Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may apply for a use tax registration certificate with the department in the manner described in sub. (6). Holders of the use tax registration certificates shall collect the use tax from Wisconsin customers, give receipts therefor and report and pay

the use tax to the Wisconsin department of revenue in the same manner as retailers engaged in business in this state.

**(8) ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES.** The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a county which has adopted the tax. The activities in sub. (4) which do not create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

Note: Section Tax 11.97 interprets ss. 77.51 (13) (c) and (c), (13g), (13h) and (14) (j), 77.53 (3), (5), (7), (9) and (9m) and 77.73, Stats.

Note: The interpretations in s. Tax 11.97 are effective under the general sales tax law on and after September 1, 1969, except that the provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wis. Act 336.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; cr. (5) (c), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (6), eff. 3-24-86; cr. (6), Register, October, 1986, No. 370, eff. 11-1-86; cr. (4) (e) and (5), r. and recr. (2) (b), am. (1) and (3) (d) and (e), renun. (5) (a) to (c) and (6) to be (6) (a), (7), (6) (b) and (8) and am. (6) (a), (b) and (7), Register, March, 1991, No. 423, eff. 4-1-91.

**Tax 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats. (1) PROCEDURES.** The secretary may reduce the delinquent interest rate from 18% to 12% per year effective for all determinations, assessments or other actions for additional tax made by the department on or after August 1, 1981, when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, WI 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the sales and use taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

**(2) FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

**(3) DETERMINATION NOT APPEALABLE.** The secretary's determination under this rule is not appealable.

Note: Section Tax 11.98 interprets ss. 71.82 (2) (b), 77.60 (2) and 77.62 (1), Stats.

Note: The interpretations in s. Tax 11.98 are effective under the general sales and use tax law on and after September 1, 1969, except that the secretary could reduce the delinquent interest rate from 18% to 9% for determinations made prior to August 1, 1981.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, June, 1983, No. 330, eff. 7-1-83.

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