File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Chapter Tax 11

SALES AND USE TAX

Subchapter I — General Provisions
Tax 11.001 Forward and definitions.
Tax 11.002 Registration.
Tax 11.01 Sales and use tax, local exposition tax, and premier resort area tax return forms.

Subchapter II — Exempt Entities
Tax 11.03 Schools and related organizations.
Tax 11.04 Constructing buildings for exempt entities.
Tax 11.05 Governmental units.

Subchapter III — Exemptions
Tax 11.08 Durable medical equipment, mobility−enhancing equipment, and prosthetic devices.
Tax 11.09 Drugs.
Tax 11.10 Wind, solar, and certain gas powered products.
Tax 11.11 Utility, industrial and governmental waste treatment facilities.
Tax 11.12 Farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services.
Tax 11.13 Direct pay.
Tax 11.14 Exemption certificates.
Tax 11.15 Containers and other packaging and shipping materials.
Tax 11.16 Common or contract carriers.
Tax 11.17 Hospitals, clinics and medical professions.
Tax 11.18 Dentists and their suppliers.
Tax 11.19 Printed material exemptions.
Tax 11.20 Property used in qualified research and property used to raise research animals.

Subchapter IV — Sales Price
Tax 11.26 Other taxes in taxable sales price and purchase price.
Tax 11.27 Maintenance contracts, insurance, and warranties.
Tax 11.28 Gifts and other advertising specialties.
Tax 11.29 Leases, licenses and rentals of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats.
Tax 11.30 Credit sales, bad debts and repossessions.
Tax 11.32 "Sales price" and "purchase price".

Subchapter V — Occasional Sales
Tax 11.33 Occasional sales.
Tax 11.34 Occasional sales exemption for sale of a business or business assets.
Tax 11.35 Occasional sales by nonprofit organizations.

Subchapter VI — Manufacturers and Producers
Tax 11.38 Fabricating, processing, and printing.
Tax 11.39 Manufacturing.
Tax 11.40 Exemption of machines and processing equipment.
Tax 11.41 Exemption of property and items consumed or destroyed in manufacturing.

Subchapter VII — Types of Retailers
Tax 11.45 Sales by pharmacies and drug stores.
Tax 11.46 Summer camps.
Tax 11.47 Commercial photographers and photographic services.
Tax 11.48 Landlords, hotels and motels.
Tax 11.49 Service stations and fuel oil dealers.
Tax 11.50 Auctions.
Tax 11.51 Grocers' guidelist.
Tax 11.52 Coin−operated vending machines and amusement devices.
Tax 11.53 Temporary events.
Tax 11.535 Operators of a swap meet, flea market, craft fair, or similar event.
Tax 11.54 Temporary amusement, entertainment, or recreational events or places.
Tax 11.55 Agents, consignees, lienors, and brokers.
Tax 11.56 Printing industry.
Tax 11.57 Utilities.

Subchapter VIII — Service Enterprises
Tax 11.61 Veterinarians and their suppliers.
Tax 11.62 Barber or beauty shop operator.
Tax 11.63 Radio and television stations.
Tax 11.64 Background music.
Tax 11.65 Admissions.
Tax 11.66 Telecommunications and telecommunications message services.
Tax 11.67 Service enterprises.
Tax 11.68 Construction contractors.
Tax 11.69 Financial institutions.
Tax 11.70 Advertising agencies.
Tax 11.71 Computer industry.
Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers.

Subchapter IX — Types of Tangible Personal Property and Items, Property, and Goods Under s. 77.52 (1) (b), (c), and (d), Stats.
Tax 11.78 Stamps, coins, and bullion.
Tax 11.79 Leases of highway vehicles and equipment.
Tax 11.80 Sales of ice.
Tax 11.81 Industrial gases, welding rods, fluxing materials, and fuels.
Tax 11.82 Mailing lists and mailing services.
Tax 11.83 Motor vehicles.
Tax 11.84 Aircraft.
Tax 11.85 Boats, vessels, and barges.
Tax 11.86 Utility transmission and distribution lines.
Tax 11.87 Prepared food, food and food ingredients, and soft drinks.
Tax 11.88 Manufactured homes, mobile homes, modular homes, and recreational vehicles.

Subchapter X — Administrative Provisions
Tax 11.90 Penalty for failure to produce records under s. 77.61 (19), Stats.
Tax 11.91 Successor's liability.
Tax 11.92 Records and record keeping.
Tax 11.925 Sales and use tax security deposits.
Tax 11.93 Annual filing of sales tax returns.
Tax 11.94 Delivery charges.
Tax 11.945 Sourcing transactions.
Tax 11.95 Retailer's discount.
Tax 11.96 Delivery of ordinance or resolution; county, stadium, and premier resort area tax.
Tax 11.97 "Engaged in business" in Wisconsin.
Tax 11.98 Reduction of delinquent interest rate under s. 77.62, Stats.
Tax 11.985 Bundled transactions.

Subchapter I — General Provisions

Tax 11.001 Forward and definitions. (1) APPLICABILITY. Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to the county and stadium sales and use taxes authorized under subch. V of ch. 77, Stats.

(2) DEFINITIONS. In this chapter, unless otherwise specified:

(a) "Consumers" means persons who purchase and use tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(am) "County tax" means the sales and use tax that is authorized under subch. V of ch. 77, Stats.

(b) "Department" means the Wisconsin department of revenue.

(bc) "Goods under s. 77.52 (1) (d), Stats." means specified digital goods and additional digital goods that are sold, leased, licensed, or rented on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.

(bg) "Items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats." means "items under s. 77.52 (1) (b), Stats." as defined in par. (bn), "property under s. 77.52 (1) (c), Stats." as defined in par. (br), and "goods under s. 77.52 (1) (d), Stats." as defined in par. (bc).

(bn) "Items under s. 77.52 (1) (b), Stats." means coins and stamps of the United States that are sold, licensed, leased, rented, or traded as collector's items above their face value.

(br) "Property under s. 77.52 (1) (c), Stats." means leased property that is affixed to real property, if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed.

(c) "Retailer" has the meaning in s. 77.51 (13), Stats.

(d) "Stadium tax" means the local professional baseball park district sales or use tax or the local professional football stadium district sales or use tax authorized under subch. V of ch. 77, Stats.

(e) "Tax" means the Wisconsin sales or use taxes in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats. "Tax" also includes the county and stadium taxes imposed under s. 77.71, Stats.

(f) "Taxable" and similar terms including "subject to the tax" and "tax applies" mean either of the following:

1. The sales tax applies to a sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services, measured by the sales price from the sale.

2. The use tax applies to the storage, use, or other consumption of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services sold, measured by the purchase price.

(3) RETAILERS AND RETAIL SALES. (a) Retailers shall comply with all requirements imposed upon them, including all of the following:

1. Obtaining a seller's permit for each place of business in this state.

2. Filing tax returns and paying tax.

3. Collecting use tax when applicable and remitting the tax with returns.

4. Keeping proper records.

Note: See s. Tax 11.92 regarding proper record keeping.

(b) Sales to consumers are retail sales to which either the sales tax or the use tax applies.

Note: Section Tax 11.001 interprets subchs. III and V of ch. 77, Stats.

Note: The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2. The regional transit authority taxes were authorized by 2009 Wis. Act 28 and repealed by 2011 Wis. Act 32.

History: Cr. Register, January, 1978, No. 265, eff. 2−1−78; am. (12), Register, January, 1983, No. 325, eff. 2−1−83; emerg. am. (intro.), eff. 3−24−86; am. (intro.), Register, October, 1986, No. 370, eff. 11−1−86; renum. (3), (5), (8), (12) and (13) to be (1) to (5), am. (3) (d), Register, June, 1991, No. 426, eff. 7−1−91; am. (intro), renum. (4) to (5), cr. (4) and (6), r. (5), Register, October, 1997, No. 502, eff. 11−1−97; CR 02−128: renum. (intro.), (1), (2), (3) (intro.) and (a) to (d), (4) (5) and (6) (intro.), (a) and (b) to be (1), (2) (a), (b) and (c), (3) (a) 1. to 4. and (2) (d), (e) and (f) (intro.), 1. and 2., am. (1), (2) (a) and (c), (3) (a) 1. to 3. and (2) (d) and (e), cr. (2) (intro.), (a) (intro.) and (b), Register July 2003 No. 571, eff. 8−1−03; EmR0924: emerg. am. (1), (2) (a), (e), (f) 1. and 2., cr. (2) (am), (bc), (bg), (bn), (br), and bw), eff. 10−1−09; CR 09−090: am. (1), (2) (a), (e), (f) 1. and 2., cr. (2) (am), (bc), (bg), (bn), (br), and (bw) Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: am. (1), r. (2) (bw), am. (2) (e) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.002 Registration. (1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate, or consumer's use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department will act on the application.

(2) PERMITS AND CERTIFICATES REQUIRED. (a) *Seller's permit.* Every individual, partnership, corporation, or other organization making retail sales, licenses, leases, or rentals of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or selling, licensing, performing, or furnishing taxable services at retail in Wisconsin shall have a seller's permit for each place of operation, unless the seller is exempt from taxation.

Note: A nonprofit organization's receipts are exempt from taxation if it meets the requirements under s. 77.54 (7m), Stats. Also see s. Tax 11.35.

(b) *Use tax registration certificate.* Every out−of−state retailer engaged in business in this state and not required to hold a seller's permit or who is not engaged in business in this state but elects to collect use tax for the convenience of its Wisconsin customers shall have a use tax registration certificate.

(c) *Consumer's use tax registration certificate.* Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a consumer's use tax registration certificate.

(d) *Local exposition registration.* Every person selling lodging, alcoholic beverages, as defined in s. 77.51 (1b), Stats., if the alcoholic beverages are for consumption on the retailer's premises, candy, as defined in s. 77.51 (1fm), Stats., prepared food, as defined in s. 77.51 (10m), Stats., and soft drinks, as defined in s. 77.51 (17w), Stats., or renting automobiles subject to local exposition district taxes shall register with the department. Upon registration for local exposition district taxes, a separate seller's permit or use tax registration certificate only for local exposition district taxes will not be issued. The seller's permit or use tax registration certificate, as described in pars. (a) and (b), issued for sales and use tax purposes will apply for local exposition district tax purposes.

(3) APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES. (a) A person required to have a seller's permit or use tax registration certificate shall register by one of the following methods:

1. Using the department's online registration system.

2. Filing an "Application for Business Tax Registration," form BTR−101, with the department at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form.

3. a. Using the Streamlined Sales Tax Governing Board's Central Registration System (SSTGBCRS). The information submitted using the SSTGBCRS is obtained by the department on a daily basis and will be used to automatically register a person in Wisconsin. If the department determines that additional information is necessary to process the registration, a person will be contacted by the department.

b. Except for a seller who uses a certified service provider, a seller who registers through the SSTGBCRS may indicate at the time of registration that it anticipates making no taxable sales in Wisconsin and is not required to file a sales and use tax return in Wisconsin until such time as the seller makes a taxable sale that is sourced to Wisconsin. However, once the seller makes a taxable sale in Wisconsin, the seller is required to file a sales and use tax return in Wisconsin by the last day of the month following the end of the calendar quarter in which the sale occurred and continue to file returns by the last day of each calendar quarter thereafter, unless they are notified in writing by the department of a different filing frequency.

(am) A person required to have a consumer's use tax registration certificate or required to register for local exposition district taxes shall register using the method described in par. (a) 1. or 2.

(b) Security, as described in s. Tax 11.925, may be required.

Note: The online registration system and Form BTR−101 are available on the Department's web site at: http://www.revenue.wi.gov/forms/sales/index.html. Form BTR−101 may also be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708−8902, telephone (608) 266−2776.

(4) REVIEW AND ACTION BY DEPARTMENT. The department shall review and make a determination on an application for a seller's permit or use tax certificate described in sub. (2) within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant.

(b) The department mails notification to the applicant that security is required or that the application is incomplete or incorrect, or more information is needed. The 15−day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department.

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Note: Section Tax 11.002 interprets ss. 66.0615 (1m) (f), 77.52 (9) and (12), 77.53 (9) and (9m), 77.58 (2) (d), 77.61 (2), 77.982 (4), 77.991 (4) and 227.116, Stats.

Note: Section Tax 11.002 (3) (am) interprets s. 77.58 (2) (d), Stats., which became effective May 27, 2010.

History: Cr. Register, August, 1985, No. 356, eff. 9−1−85; am. (2) (a), (3), and (4) (intro.), Register, March, 1991, No. 423, eff. 4−1−91; am. (1), (2) (c), (3), (4) (a) and (b), cr. (2) (d), Register, October, 1997, No. 502, eff. 11−1−97; EmR0924: emerg. am. (1), (2) (a) and (d), renum. (3) to be (3) (a) (intro.) and am., cr. (3) (a) 1., 2. and (b), eff. 10−1−09; CR 09−090: am. (1), (2) (a) and (d), renum. (3) to be (3) (a) (intro.) and am., cr. (3) (a) 1., 2. and (b) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (d), (3) (a) (intro.), cr. (3) (a) 3., (am) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.01 Sales and use tax, local exposition tax, and premier resort area tax return forms. (1) FORMS. For filing sales and use tax, local exposition tax, and premier resort area tax returns, the following forms shall be used:

(a) Form MV−1. A department of transportation form for occasional and dealer sales of motor vehicles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, and semi−trailers.

(b) Form S−012. Also called form ST−12. The monthly, quarterly, or annual return used to report state, county, and stadium taxes by persons holding a Wisconsin seller's permit, use tax registration certificate, or consumer's use tax registration certificate. This form is also used to file refund claims or report additional taxes for prior periods.

(c) Form SU−050. Also called form UT−5. For consumers other than persons holding a Wisconsin seller's permit, use tax registration certificate, or consumer's use tax registration certificate.

(d) Form DT 1556. A department of transportation form for occasional and dealer sales of aircraft.

(e) Form 9400−193. A department of natural resources form for occasional and dealer sales of boats.

(f) Form 9400−210. A department of natural resources form for occasional and dealer sales of snowmobiles.

(g) Form 9400−376. A department of natural resources form for occasional and dealer sales of all−terrain vehicles.

(h) Form EX−012. The return used to report local exposition taxes. This form is also used to file refund claims or report additional taxes for prior periods.

(i) Form PRA−012. The return used to report premier resort area taxes. This form is also used to file refund claims or report additional taxes for prior periods.

(2) FILING RETURNS. (a) Forms required to be filed shall be submitted by one of the following means:

1. Mailing them to the address specified by the department on the forms or in the instructions.

2. Delivering them to the department or to the destination that the department prescribes.

3. Filing them electronically as prescribed by the department.

(b) Except as provided in par. (c), the department may require a person registered or required to be registered for Wisconsin sales and use tax purposes to file its sales and use tax return electronically. The department shall notify the person at least 90 days prior to the due date of the first sales and use tax return required to be filed electronically of the requirement to file electronically. In its notice, the department shall indicate the period covered for the first return to be filed electronically.

(bg) Except as provided in par. (c), the department may require a person registered or required to be registered for Wisconsin sales and use tax purposes to file its premier resort area tax return electronically. The department shall notify the person at least 90 days prior to the due date of the first premier resort area tax return required to be filed electronically of the requirement to file electronically. In its notice, the department shall indicate the period covered for the first return to be filed electronically.

(br) Except as provided in par. (c), the department may require a person registered or required to be registered for Wisconsin local exposition tax purposes to file its local exposition tax return electronically. The department shall notify the person at least 90 days prior to the due date of the first local exposition tax return required to be filed electronically of the requirement to file electronically. In its notice, the department shall indicate the period covered for the first return to be filed electronically.

(c) The secretary of revenue may waive the requirement to file electronically when the secretary determines that the requirement causes an undue hardship, if the person does all of the following:

1. Requests the waiver in writing.

Note: Written requests should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8949, Madison WI 53708−8949.

2. Clearly indicates why the requirement causes an undue hardship.

(d) In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note: Section Tax 11.01 interprets ss. 77.51(3r), 77.58, 77.75, 77.982(2), and 77.9941(4), Stats.

History: Cr. Register, February, 1978, No. 266, eff. 3−1−78; am. (1) (a), r. (1) (d), cr. (1) (m), Register, January, 1983, No. 325, eff. 2−1−83; r. and recr., Register, March, 1991, No. 423, eff. 4−1−91; r. (1) (e), renum. (1) (f) to (i) to be (1) (e) to (h), Register, January, 1992, No. 433, eff. 2−1−92; am. (1) (b), cr. (1) (i), (j) and (k), Register, October, 1997, No. 502, eff. 11−1−97; CR 01−143: am. (1) (b), r. (1) (c), (d), (e) and (h), renum. (1) (f), (g), (i), (j) and (k) to be (1) (c) to (g) and am. (1) (d), r. and recr. (2) Register July 2002 No. 559, eff. 8−1−02; CR 10−093: am. (title), (1) (intro.), (a), (b), (c), (2) (a) 3., (b), (c) (intro.), (d) (intro.), 1., cr. (1) (h), (i), (2) (bg), (br) Register November 2010 No. 659, eff. 12−1−10; correction in (1) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2010 No. 659.

Subchapter II — Exempt Entities

Tax 11.03 Schools and related organizations. (1) DEFINITIONS. (a) In this section:

1. "Elementary school" means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable.

2. "School district" has the same meaning as provided for in s. 115.01 (3), Stats.

3. "Secondary school" means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in s. 119.30, Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par. (a) 1. and 3. and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year. Elementary and secondary schools also include school districts for purposes of exemption under s. 77.54 (4), Stats.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Exempt sales by elementary or secondary schools include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers, or similar publications.

2. School lunches and library and book fines.

Example: A school auditorium is rented to a religious group which conducts a religious revival. The sales price from the rental is exempt.

3. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees, and equipment, when used for

other than recreational, athletic, amusement, or entertainment purposes.

4. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees, and equipment, when used by a promoter or professional group which will sell admissions to the public for recreational, athletic, amusement, or entertainment purposes.

Examples: 1) A school gymnasium is rented to a professional basketball team which will sell tickets to the event. The sales price from the rental is exempt.

2) A school auditorium is rented to a popular band for one night. The band will sell tickets to its performance. The sales price from the rental is exempt.

5. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, films or other exhibits, lectures, and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious, or charitable purposes.

6. The transfer of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a contractor for performance of a real property construction activity in exchange for a reduction in the contract price, even though the contract provides that the contractor is to supply all materials.

(b) Taxable sales by elementary or secondary schools include:

1. Admissions to recreational facilities, such as golf courses, swimming pools, ball fields, and gymnasiums which are open to the general public for recreational purposes.

2. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees, and equipment, when used by persons for their own recreation, entertainment, or amusement where there is no charge for admission.

Example: A local neighborhood group rents the school gymnasium for its residents to play volleyball. The neighborhood group does not charge its residents to play volleyball. The sales price from the rental is taxable. If the group charged an entry fee to play volleyball, the sales price from the rental of the gymnasium is not taxable because the rental is for resale.

3. Taxable services under s. 77.52 (2) (a), Stats., such as parking and repair services.

Example: A school sponsors an athletic tournament and charges $1 for parking. The sales price from parking is taxable.

(3) SALES BY SCHOOL−RELATED ORGANIZATIONS AND OTHERS. Taxable sales by school−related organizations and others, not including school districts, include:

(a) The sale of class rings, photographs, or caps and gowns rented or sold to students by retailers or photographers where the school acts as a collection agent for the seller, whether or not the school receives a commission for the collection. The retailer, such as a photographer, is subject to the tax on these sales.

(b) Sales made by school−related organizations, such as parent−teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services by technical college districts.

(4) SALES TO SCHOOLS AND SCHOOL−RELATED ORGANIZATIONS. Under s. 77.54, Stats., sales to the following organizations are exempt:

(a) Public schools, technical colleges, state colleges and universities, and public school districts, located in Wisconsin. An exemption certificate or a purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools which have certificates of exempt status, such as parent−teacher associations and student organizations which are not subject to the control and supervision of school officials.

(d) Related organizations of private or public schools, such as parent−teacher associations and student organizations which are subject to the control and supervision of school officials. An exemption certificate completed by the school or a school purchase order shall be acceptable evidence of a sale's exempt status.

Note: Section Tax 11.03 interprets ss. 77.52 (1) and (2) (a) and 77.54 (4), (9), and (9a), Stats.

Note: The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (1) (a), (2) (a) 3., (3) (a) and (4) (c), renum. (2) (a) 4. to be 5., cr. (2) (a) 4., r. and recr. (2) (b), Register, September, 1991, No. 429, eff. 10−1−91; r. and recr. (1) (a), am. (1) (b), (3) (intro.) and (a), cr. (2) (a) 6., Register, April, 1993, No. 448, eff. 5−1−93; renum. (1) (a) 2. and 3. to be (1) (a) 3. and 2., am. (1) (b), (3) (c), (4) (a) and (c), cr. (4) (d), Register, October, 1999, No. 526, eff. 11−1−99; EmR0924: emerg. am. (2) (a) (intro.), 6., (b) (intro.), (3) (intro.), (c) and (4) (intro.), eff. 10−1−09; CR 09−090: am. (2) (a) (intro.), 6., (b) (intro.), (3) (intro.), (c) and (4) (intro.) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (a) 1., 3., 4., 5., (b) 1., 2., (3) (a), (4) (a) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.04 Constructing buildings for exempt entities. (1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk−Sharing Plan Authority, and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county−city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; a cemetery company or corporation described under section 501 (c) 13 of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated [incorporated] agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) TAXABLE SALES. Sales of building materials to contractors or subcontractors used in the construction of buildings or structures, or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) PURCHASES PRESUMED TAXABLE. When a contractor and an exempt entity enter into a construction contract to improve real property, and the contract provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(4) SUPPLIER IS CONTRACTOR. A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. The sale of building materials to the consumer is subject to the tax.

(5) EXEMPT SALES. A supplier's sales of building materials made directly to an exempt entity are not taxable, even though

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

such tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received directly from the exempt entity.

Note: Section Tax 11.04 interprets ss. 77.51 (2) and (14), 77.54 (9a) and 77.55 (1), Stats.

Note: The interpretations in s. Tax 11.04 are effective under the general sales and use tax law on and after September 1, 1969, except: The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524; EmR0924: emerg. am. (1), (2) (title), (3) and (5), eff. 10−1−09; CR 09−090: am. (1), (2) (title), (3) and (5) Register May 2010 No. 653, eff. 6−1−10; **CR12−014: am. (1) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.05 Governmental units. (1) GENERAL. Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) TAXABLE SALES. Taxable sales by governmental units include the following:

(a) Admissions to facilities if the activity being conducted at the facility is amusement, athletic, entertainment, or recreational in nature, except as provided in sub. (3) (r), (s), and (y).

Example: Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

(b) Food and gift stand sales, including sales of candy, soft drinks, prepared foods, cigarettes, tobacco products, postcards, books, magazines and other periodicals described in s. Tax 11.19, and novelties. Newspaper sales are exempt.

Note: See s. Tax 11.51 for a list of food products subject to tax.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums, and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature, except as provided in sub. (3) (r), (s), (y), and (zg).

(e) Sales of electricity, gas, and steam by municipal utilities, except as provided in sub. (3) (b).

(f) Sales of maps, plat books, photocopies, or other printed material, except as provided in sub. (3) (q).

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees.

(gm) Sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semitrailers, all−terrain vehicles, and aircraft. Governmental units must collect the sales tax on its sales of these items. If the governmental unit does not collect the tax from the purchaser, the purchaser shall file a sales tax return and pay the tax prior to titling or registering the property in this state.

(h) Sales of buildings or timber when the purchaser acquires the property for removal.

(i) Furnishing of rooms or lodging facilities, available to the public, to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges, or universities operated by governmental units and the tax does not apply to furnishing rooms or lodging to a person through the sale of any kind of time−share property.

(j) Sales of taxable items, property, or goods dispensed through vending machines, and sales of access to or the use of amusement devices, if the governmental unit owns the machine or device or has control of the contents of the machine or the device.

(k) Sales of soft drinks and alcoholic beverages, including sales of these items by hospitals, sanatoriums, nursing homes, retirement homes, community−based residential facilities as defined in s. 50.01 (1g), Stats., and any facility certified or licensed under ch. 48, Stats.

(L) Charges for candy, soft drinks, dietary supplements and prepared foods to "Huber" law prisoners.

(m) Sales of books and supplies, including sales by technical college districts. Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by elementary and secondary schools are exempt under s. 77.54 (4), Stats.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including motor vehicles.

(p) Sales and delivery of trees, shrubs, or gravel to private purchasers. A sale of gravel is not taxable if the seller of the gravel puts the gravel in its final resting place.

Examples: 1) Governmental Unit A sells a load of gravel to Individual B. Governmental Unit A dumps the gravel in a pile at Individual B's home. Individual B will then spread the gravel and put it in its final resting place. The sale of the gravel by Governmental Unit A to Individual B is a sale of tangible personal property that is subject to Wisconsin sales or use tax.

2) Governmental Unit X dump spreads or gate spreads gravel on Customer Z's driveway. Customer Z, or someone other than Governmental Unit X, will then grade, rake, and compact the materials into their final resting place. Since Governmental Unit X is not placing the gravel in its final resting place, Governmental Unit X's sale of the gravel to Customer Z is subject to sales tax as a sale of tangible personal property.

3) Governmental Unit G spreads gravel on Individual H's driveway. Governmental Unit G grades and compacts the gravel so that it is in its final resting place. Governmental Unit G's charges to Individual H are not subject to Wisconsin sales or use tax since Governmental Unit G is performing a real property construction activity by putting the gravel in its final resting place.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

(r) The sales price received for parking and providing parking space for motor vehicles and aircraft, and docking or providing storage space for boats.

(s) The sales price received for landscaping and lawn maintenance services, including weed cutting in lawn and garden areas and along highways, streets, and walkways, but not charges for damages described in sub. (3) (c).

(t) Charges for salvage vehicle inspections.

(3) NONTAXABLE RECEIPTS. Receipts by governmental units from the following are not taxable:

(a) Fees for licenses and permits, including tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, including original or duplicate library cards but not camping permits or I.D. cards issued exclusively for obtaining admission to facilities or events taxed under s. 77.52 (2) (a) 2., Stats.

(b) 1. Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste, wood, and biomass as defined in s. 196.378 (1) (ar), Stats., used for fuel sold for residential use. Electricity and natural gas sold for residential use during the months of November through April. Fuel and electricity sold for use in farming. Fuel and electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (q) 2.

2. Electricity and natural gas are considered sold at the time of the billing. If the billings are mailed, the time of billing is the day on which the billing is mailed.

3. Fuels other than electricity and natural gas are considered sold at the time possession is transferred from the seller or seller's agent to the purchaser or purchaser's agent, except that a common

carrier is the agent of the seller regardless of any f.o.b. point and regardless of the method in which the freight is paid.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses, and meeting rooms, used for activities which are not amusement, athletic, entertainment, or recreational in nature.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines, including charges for books that are not returned or charges for a duplicate library card.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable unless a combined charge is made for removal and bags or receptacles and the amount allocated to the bag or receptacle is incidental to the charge for removal.

Example: A city government provides that in order to have trash removed by the city, the trash must be put in special bags which are sold for $1 each. The $1 charge is allocated as follows: 18¢ for the bag, 42¢ for removal and 40¢ for cost of the disposal site. The $1 charge for the bag is not subject to tax because the transfer of the bag is incidental to the sale of the waste removal service.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machine or device, or does not have the right of access to the machine or device for stocking or restocking or for removing the receipts from the machine or device.

(jm) Sales through vending machines of food and food ingredients, except for candy, soft drinks, dietary supplements, and prepared foods.

(k) Sales or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(L) Food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, community−based residential facilities as defined in s. 50.01 (1g), Stats., and any facility certified or licensed under ch. 48, Stats., such as day care centers, child placement agencies, residential care centers, foster homes, treatment foster homes, group homes and shelter care facilities, including prepared food sold to the elderly or handicapped by "mobile meals on wheels." Sales of alcoholic beverages by these organizations are taxable.

(m) Food and food ingredients furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The food and food ingredients are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.

2. The food and food ingredients are furnished to a national football league team.

(n) Service charges for snow removal, police officers at social gatherings, service of legal papers including summons, complaints, and civil process, and ushers and door guards.

(o) Sales for resale, if supported by a valid exemption certificate obtained from the purchaser.

(p) Fees charged for admission to a university student union building.

(q) Charges for filing, entering, docketing, recording, or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officer and clerk of court under ss. 59.40 (3), 59.43 (2), and 69.22, Stats., or by a filing officer under s. 409.525, Stats., and fees charged by a register in probate pursuant to s. 814.66, Stats. Also, charges by an "authority," as defined in s. 19.32 (1), Stats., for copies of a record under s. 19.35 (1) (a), Stats., including charges for a search of records.

(r) The sale of all admission fees or admission stickers to state parks and recreational areas in state forests imposed under s. 27.01 (7), (8) and (9), Stats.

(s) Camping fees in Wisconsin state parks imposed under s. 27.01 (10) (d), Stats.

(t) Admissions to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

(u) Revenues collected under s. 256.35 (3), Stats., and the surcharge established by rule by the public service commission under s. 256.35 (3m) (f), Stats., for customers of wireless providers, as defined in s. 256.35 (3m) (a) 6., Stats.

(v) Animal identification tags and standard samples representing product or commodity grades only when sold by the Wisconsin department of agriculture, trade and consumer protection.

(w) Parking tickets.

(x) Charges for lessons.

(y) The sale or furnishing the use of recreational facilities on a periodic basis or other recreational rights, including but not limited to, membership rights, vacation services, and club memberships, in connection with the sale or use of time−share property, if the facilities or rights are not available to persons who have not purchased the time−share property, other than guests.

(z) The collection of low−income assistance fees under s. 16.957 (4) (a) or (5) (a), Stats.

(zg) Admissions by a governmental unit to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger.

(zr) Police and fire protection fees imposed under s. 196.025 (6), Stats.

(4) PURCHASES. (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., and services by Wisconsin or by any agency of Wisconsin, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk−Sharing Plan Authority, and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county−city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; and a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

Note: Refer to s. Tax 11.04 regarding the purchase of building materials used in the construction of buildings for governmental units.

(b) In addition to the invoice or other billing document being in the name of the governmental unit, a Wisconsin governmental unit shall provide one of the following to a retailer as proof that a sale to the governmental unit is exempt from tax:

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

1. A purchase order or similar written document identifying the governmental unit as the purchaser.

2. A Wisconsin sales and use tax exemption certificate, form S−211.

Note: Form S−211 is available from any department of revenue office.

3. Its certificate of exempt status number that the retailer should record on the invoice or other document it keeps as part of its records.

(c) A Wisconsin governmental unit's payments to retailers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and all 3 of the following conditions apply:

1. The governmental unit gives the retailer a purchase order.

2. The retailer issues the billing or invoice for the purchases in the name of the governmental unit.

3. The retailer keeps a copy of the governmental unit's purchase order and the retailer's billing or invoice to substantiate that the sale was exempt from sales and use tax.

Example: A governmental unit intends to purchase clothing for a welfare recipient. The governmental unit gives a purchase order to the retailer and the retailer makes the invoice out to the governmental unit. The sale is not subject to sales tax if the welfare recipient pays the retailer with funds given to the recipient by the governmental unit or if the governmental unit pays the retailer directly.

(d) Purchases by state chartered credit unions are subject to the tax. Purchases by federally chartered credit unions and federal reserve banks are not subject to the tax.

(e) Purchases, including lodging, meals, or uniforms, by employees of a governmental unit are not exempt, whether or not the employee is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental unit, receives from the governmental unit a document as described in par. (b), and keeps a copy of both documents.

(f) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United States government providing for sales and use tax exemptions are exempt provided the personnel present their tax exemption card issued by the United States department of state showing their tax exemption number.

Note: Section Tax 11.05 interprets ss. 77.52 (1), (2), (13), and (14) and 77.54 (9a), (10), (15), (17), (20n), (30), (32), (37), (42), (44), and (55), Stats.

Note: The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972, through October 3, 1973; (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973; (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977; (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, and the electricity and natural gas six−month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979; (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980, pursuant to Chapter 221, Laws of 1979; (f) Landscaping and lawn maintenance services became taxable on May 1, 1982, pursuant to Chapter 317, Laws of 1981; (g) A governmental unit's charges for copying public records became exempt effective April 27, 1984, pursuant to 1983 Wis. Act 287, later amended effective April 2, 1986, pursuant to 1985 Wis. Act 149 to clarify that the exemption also applies to confidential records, and again amended effective May 1, 1992, pursuant to 1991 Wis. Act 269, to include records under s. 19.35 (1) (a), Stats.; (h) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption for an agency or instrumentality of a Wisconsin governmental unit became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wis. Act 27; (k) The exemption for admissions to a museum operated by a nonprofit corporation under lease with the state historical society became exempt July 20, 1985, pursuant to 1985 Wis. Act 29; (L) The exclusion of hospital service insurance corporation from the definition of exempt entity became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (m) Revenues from establishing a "911" emergency telephone system became exempt August 1, 1987, pursuant to 1987 Wis. Act 27; (n) State park camping fees became exempt effective September 1, 1989, pursuant to 1989 Wis. Act 31; (o) The exemption for animal identification tags and standard samples by the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16; (p) The exemption for fuel used in farming became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (q) The requirement that meals must be served on the premises of hospitals, nursing homes, etc., for exemption to apply became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (r) The exemption for sales to a local exposition district became effective April 26, 1994, pursuant to 1993 Wis. Act 263; (s) The exemption for sales of meals by community−based residential facilities became effective June 1, 1994, pursuant to 1993 Wis. Act 332; (t) The exemption for sales to the University of Wisconsin Hospitals and Clinics Authority became effective July 29, 1995, pursuant to 1995 Wis. Act 27; (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; (v) The exemption for electricity sold for use in farming was expanded to include sales of electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9; (w) The exemption for sales from the collection of public benefit fees became effective October 29, 1999, pursuant to 1999 Wis. Act 9; (x) The exemption for use of recreational facilities in connection with the sale of time−share property became effective December 1, 1999, pursuant to 1999 Wis. Act 9; (y) The exemption for certain items sold from a vending machine became effective July 1, 2001, pursuant to 1999 Wis. Act 9; (z) The exemption for fuel consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (zb) The exemption for regional transit authorities and the Wisconsin Quality Home Health Care Authority became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (ze) The exemption for federally recognized American Indian tribes or bands in Wisconsin became effective August 1, 2009, pursuant to 2009 Act 28; (zh) The requirement that governmental units collect sales tax on their sales of used motor vehicles became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (zL) The exemption for low−income assistance fees became effective July 1, 2005, pursuant to 2005 Wis. Act 141; (zp) The exemption for certain admissions to sports activities by governmental units became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (zr) The exemption for the police and fire protection fee became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (zu) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (zy) The exemption for sales of food and food ingredients, except soft drinks, by any facility certified or licensed under ch. 48, Stats., became effective May 6, 2010, pursuant to 2009 Wis. Act 204; and (zz) The exemption for regional transit authorities was repealed effective September 28, 2011, pursuant to 2011 Wis. Act 32 and the exemption for the Wisconsin Quality Home Care Authority was repealed effective June 29, 2011, pursuant to 2011 Wis. Act 10.

History: Cr. Register, December, 1977, No. 264, eff. 1−1−78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9−1−79; am. (2) (e) and (i), cr. (2) (r), r. and recr. (3) (b), Register, January, 1983, No. 325, eff. 2−1−83; am. (2) (b) and (m), (3) (a), (L), (m) and (p), cr. (2) (s) and (3) (q), Register, September, 1984, No. 345, eff. 10−1−84; am. (3) (p), Register, July, 1987, No. 379, eff. 8−1−87; reprinted to correct error in (2) (p), Register, October, 1987, No. 382; am. (3) (b) and (4) (intro.), Register, June, 1990, No. 414, eff. 7−1−90; am. (2) (a), (d), (i), (k) and (o), (3) (i), (L), (p) and (q), and (4) (intro.), (d) and (e), cr. (3) (r), (s) and (t), r. and recr. (4) (b), Register, June, 1991, No. 426, eff. 7−1−91; am. (3) (p), renum. (4) (intro.) to (e) to be (4) (a) to (f), Register, April, 1993, No. 448, eff. 5−1−93; am. (2) (f) and (g), (3) (L), (4) (c) (intro.), 1. and 2., cr. (3) (u), Register, April, 1994, No. 460, eff. 5−1−94; reprinted to restore dropped copy in (2) (g) and correction made in (4) (a) under s. 13.93 (2m) (b) 7., Stats., Register, October, 1996, No. 490; emerg. am. (2) (s), eff. 5−18−97; am. (2) (h), (k), (m), (s), (3) (b), (L) and (4) (a), (e), r. and recr. (4) (b), Register, October, 1997, No. 502, eff. 11−1−97; am. (2) (a), (d), (f) and (i), (3) (d) and (L), (4) (a) and (b) 2., renum. (3) (m) to (u) to be (3) (n) to (v), cr. (3) (m), (w) and (x), (4) (b) 3., Register, October, 1999, No. 526, eff. 11−1−99; corrections in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. am. (2) (title), (intro.), (a), (b), (d), (g), (i) to (m), (o), (p), (r), (s), (3) (intro.), (a), (b), (d), (j) to (m), (o), (q), (u), (4) (a) and (b) (intro.), cr. (2) (gm), (t), (3) (jm), (y), (z), (zg) and (zr), eff. 10−1−09; CR 09−090: am. (2) (title), (intro.), (a), (b), (d), (g), (i) to (m), (o), (p), (r), (s), (3) (intro.), (a), (b), (d), (j) to (m), (o), (q), (u), (4) (a) and (b) (intro.), cr. (2) (gm), (t), (3) (jm), (y), (z), (zg) and (zr) Register May 2010 No. 653, eff. 6−1−10; correction in (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653; CR 10−094: am. (2) (a), (d), (e), (f), (k), (s), (3) (d), (L), (n), (y), (4) (e) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: renum. (3) (b) to be (3) (b) 1. and am., cr. (3) (b) 2., 3., am. (4) (a) Register August 2012 No. 680, eff. 9−1−12.**

Subchapter III — Exemptions

Tax 11.08 Durable medical equipment, mobility−enhancing equipment, and prosthetic devices. (1) GENERAL. Certain items may qualify as either "durable medical equipment" or a "prosthetic device," depending on whether or not the item is worn in or on the body. The distinction between when an item is "durable medical equipment" or a "prosthetic device" is important because an item that is "durable medical equipment" is exempt only when purchased for use by a human being in a person's home, whereas the purchase of a "prosthetic device" for a human being is exempt regardless of whether or not it is purchased for use in a person's home.

(2) DURABLE MEDICAL EQUIPMENT. Section 77.54 (22b), Stats., exempts the sales price from the sale of and the storage, use, or other consumption of durable medical equipment that is for use in a person's home, along with repair parts, replacement parts, and

accessories for that equipment, if the equipment is used for a human being.

(a) "Durable medical equipment" is defined in s. 77.51 (3pm), Stats., to mean equipment, including the repair parts and replacement parts for the equipment that is primarily and customarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" does not include mobility−enhancing equipment.

(b) 1. "Use in a person's home" means that the equipment is sold to an individual for use where they are living, regardless of whether the individual resides in a single family home, apartment building, nursing home, assisted living center, convalescent home, or school dormitory.

2. Durable medical equipment is not for use in a person's home if it is purchased by a hospital, clinic, nursing home, assisted living center, convalescent home, dental office, chiropractor, or optician's office. In addition, purchases of durable medical equipment by a nursing home, assisted living center, and convalescent home are not for use in a person's home even if the equipment is purchased for use by the residents of the nursing home, assisted living center, or convalescent home.

(c) Examples of durable medical equipment that qualify for exemption from Wisconsin sales and use tax if they are purchased for use in a person's home include the following:

Alternating pressure pads and decubitus pads (eliminate bed sores).
Anesthesia equipment.
Anti−thrombolytic pumps.
Apnea monitors.
Aqua K pumps and pads.
Aspirators (suction pumps).
Audiology equipment.
Bed pans, commodes, urinals.
Billie lights (used for yellow jaundice).
Blanket cradles.
Blood glucose monitoring machines.
Blood pressure machines and cuffs.
Cardiology equipment.
Cauterization equipment.
Cofflator.
Crash carts.
Dialyzers.
Defibrillators (not implanted).
Drug infusion pumps.
Examination tables.
Forceps.
Heat lamps.
Heating pads.
Hospital beds and mattresses.
Incubators and isolettes.
Injection guns for drug delivery.
Infra−red lamps and bulbs for heat therapy.
Intra−aortic balloon pump.
Intravenous stands.
IV therapy arm boards.
Kinetic therapy tables.
Lambs wool pads.
Laser equipment.
Lithotripters.
Mammography equipment.
Medical atomizers.
Medical instruments.
Medical monitoring equipment.
Mini dopplers (measures blood flow & rate).
Nebulizers.
Nerve stimulator programmers.
Ophthalmoscopes.
Ostomy irrigation sets.
Otoscopes.
Over the bed tray tables.
Oxygen concentrators and regulators.
Pacemaker programmers and transmitters.
Patient positioners.
Percussors.
Pillows (abduction, cervical, orthotic).
Platelet separator.
Radiology equipment.
Respirators and respiratory bags.
Respiratory humidifiers (connects to oxygen equipment).
Resuscitators.
Scales (chair and sling).
Speech aids (hand held).
Stethoscopes.
Stirrups.
Stretchers.
Suction machines and regulators.
Surgical equipment.
Surgical tables.
Thermometers (oral, rectal, ear, etc.).
Tourniquets (pneumatic and non−pneumatic).
Traction equipment.
Transfusion equipment.
Ultrasound equipment.
Vaporizers.
Ventilators, anesthesia.
Wheelchair cushions (brace or support).
Whirlpools (portable over−the−tub only).
X−ray equipment.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility−enhancing equipment, and prosthetic devices can be found in the Rules and Procedures of the Streamlined Sales Tax Governing Board, Inc., available at http://www.streamlinedsalestax.org.

(d) Examples of items that are not durable medical equipment include the following:

Air purifiers.
Air conditioners, dehumidifiers and humidifiers.
Blankets and sheets.
Closed caption devices.
Cubicle curtains.
Disposable or single use instruments or equipment.
Eating utensils including adjustable utensils.
Exercise equipment.
Hot and cold packs.
Massagers, massage appliances and furniture.
Needles.
Pillows not specifically designed for medical purposes.
Safety equipment such as goggles and shields.
Sitz baths.
Spas not specifically manufactured for medical purposes.
Specimen containers.
Syringes.
Telephone alert systems.
Visually impaired equipment and supplies.
Waterproof sheeting.

(3) MOBILITY−ENHANCING EQUIPMENT. Section 77.54 (22b), Stats., exempts from Wisconsin sales and use tax the sales price from the sale of mobility−enhancing equipment for human use and its accessories.

(a) "Mobility−enhancing equipment" is defined in s. 77.51 (7m), Stats., to mean equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a person who has normal mobility. "Mobility−enhancing equipment" does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer. "Mobility−enhancing equipment" does not include durable medical equipment.

(b) Examples of mobility−enhancing equipment for a human being that are exempt include the following:

Adjustable or raised toilet seat.
Tub and Shower Stools.
Bed Pull−up Ts.
Canes.
Crutches.
Grab bars and hand rails.
Lift chairs.
Patient lifts.
Scooters and transporters for disabled persons.
Specialty chairs.
Transfer belts and benches.
Walkers.
Wheelchairs and ramps.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility−enhancing equipment, and prosthetic devices can be found in the Rules and Procedures of the Streamlined Sales Tax Governing Board, Inc., available at http://www.streamlinedsalestax.org.

(4) PROSTHETIC DEVICES. Section 77.54 (22b), Stats., exempts from Wisconsin sales and use tax the sales price from the sale of prosthetic devices and accessories for prosthetic devices that are used for a human being.

(a) "Prosthetic device" is defined in s. 77.51 (11m), Stats., to mean a device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

(b) A device is "worn in or on the body" if the device is implanted or attached so that it becomes part of the body or if it is carried by the body and does not hinder the mobility of the individual. Items that are attached to the body, but are either stationary or placed on a pole, cart, or other device that makes them portable are durable medical equipment and not prosthetic devices. Therefore, these items are only exempt if they are purchased for use in a person's home.

(c) Examples of prosthetic devices for a human being which are exempt include:

Abdominal belts and supports.
Access ports (Port−a−cath).
Ace bandages.
Anti−embolism stockings.
Arch supports.
Arm slings.
Arterial prostheses (artificial arteries implanted into humans).
Artificial body parts (eyes, heart valves, limbs, etc.).
Body implants (bone, hip, knee, ocular, etc.).
Bone cement and wax.
Bone pins, plates, nails, screws, etc.
Braces.
Breast implants.
Burn garments.
Casts, foam padding inside, any part of cast.
Catheters.
Cervical collars.
Cochlear implant devices.
Collagen implants.
Colostomy devices.
Compression sleeves and stockings.
Contact lenses.
Dentures.
Drainage catheters.
Drains, shunts.
Elastic bandages and supports (wrist, ankle, knee, etc.).
Eye glasses.
Gastric bands and intragastric balloons.
Grafts (Vascular, Dacron).
Head halters.
Hearing aids and batteries.
Heel protectors.
Insulin pumps.
Knee immobilizers.
Mastectomy surgical bras.
Maxillofacial devices (implanted).
Nasal cannulas.
Orthopedic shoes.
Ostomy adhesives, barriers, catheters, leg bags and straps, drain bags and pouches, drain valves and tubes, stoma caps, tubing, hernia belts.
Pacemakers.
Penile pumps and implants.
Pressure garments (edema gloves and mast pants).
Salem sump (used to fill or empty stomach).
Seraphim (barrier to separate tissue in the body).
Shoe lifts and inserts.
Slings.
Speaking valves.
Sphincters.
Splints, air or other.
Staples and sutures.
Stents.
Stump shrinkers.
Suspensories.
Synthetic skin implants.
Tissue expander (stimulates skin growth).
Trachea tubes.
Tracheostomy.
Traction devices (cervical, pelvic).
Trusses.
Vena cava filters.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility−enhancing equipment, and prosthetic devices can be found in the Rules and Procedures of the Streamlined Sales Tax Governing Board, Inc., available at http://www.streamlinedsalestax.org.

(d) The following are examples of items which if worn in or on the body are also exempt as prosthetic devices:

Bone growth stimulators.
CPAP machines.
Defibrillator and leads.
Electronic nerve and muscle stimulators.
Incontinence control devices, such as bed wetting alarms, but not including items such as diapers.
Infusion pumps.
Programmable drug infusion devices.
Speech generating devices.
TENS devices (nerve stimulators).

Note: If these items are not worn in or on the body, they are not exempt as prosthetic devices, but may be exempt as durable medical equipment if for use by a person in a person's home.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility−enhancing equip-

ment, and prosthetic devices can be found in the Rules and Procedures of the Streamlined Sales Tax Governing Board, Inc., available at http://www.streamlinedsalestax.org.

(5) PARTS, ACCESSORIES AND SERVICE. The sales price from the sale of repair and replacement parts, accessories, and services to the exempt property identified in s. 77.54 (22b), Stats., is also exempt.

(6) DIABETES SUPPLIES. Section 77.54 (28), Stats., exempts from Wisconsin sales and use tax the sales price from the sale of and the storage, use or other consumption to or by the ultimate consumer of supplies used to determine blood sugar level.

Example: The sales price from the sale of blood glucose test strips is exempt from sales and use tax.

Note: Section Tax 11.08 interprets ss. 77.51 (3pm), (7m), and (11m) and 77.54 (22b) and (28), Stats.

Note: The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for anti-embolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a handicapped person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; (f) The exemption for parts and accessories became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemptions provided in s. 77.54 (14s) and (22), Stats., were repealed effective October 1, 2009, and replaced with the exemptions provided under s. 77.54 (22b), Stats., pursuant to 2009 Wis. Act 2; and (h) The exemption in s. 77.54 (28), Stats., was amended to remove the exemption for apparatus and equipment for the injection of insulin or the treatment of diabetes. These items will still qualify for exemption under s. 77.54 (22b), Stats., if they are for home use, pursuant to 2009 Wis. Act 2.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; am. (1) and (4), Register, July, 1978, No. 271, eff. 8−1−78; am. (1), (2) and (3), Register, January, 1983, No. 325, eff. 2−1−83; r. (2) (c), renum. (5) to be (6), cr. (5), Register, September, 1984, No. 345, eff. 10−1−84; am. (4), Register, July, 1987, No. 379, eff. 8−1−87; am. (1), cr. (5), (7) and (8), renum. (5) and (6) to be (6) and (9), Register, March, 1991, No. 423, eff. 4−1−91; am. (1) (intro.), (2) (intro.), (3) to (6), (8) and (9), r. (1) (d), renum. (1) (e) to (i) to be (1) (d) to (h), Register, May, 1993, No. 449, eff. 6−1−93; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (b) 2., (4) (b), (5) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.09 Drugs. (1) DEFINITION. For the exemption in s. 77.54 (14), Stats., "drug" means a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

(a) It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them.

(b) It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.

(c) It is intended to affect a function or structure of the body.

(2) ITEMS WHICH ARE DRUGS. Drugs include the following items described in sub. (1):

(a) Acne medications.

(b) Alcohol (rubbing).

(c) Analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.).

(d) Antacids.

(e) Antibiotic creams and ointments.

(f) Antifungal creams and sprays.

(g) Antihistamines.

(h) Antiseptics (betadyne, iodine).

(i) Birth control (pills and patches and implants).

(j) Burn remedies.

(k) Contraceptives (creams, gels, foams, and medicated condoms).

(L) Cold and cough medicines, drops, and lozenges.

(m) Contact lens solutions.

(n) Decongestants.

(o) Dermal fillers (injectable).

(p) Dialysis dialysate solution.

(q) Diaper rash creams.

(r) Enema preparations.

(s) Eye drops.

(t) Gases — medical grade (air, carbon dioxide, helium, nitrogen, oxygen).

(u) Hand sanitizers.

(v) Hydrogen peroxide.

(w) Insulin.

(x) Laxatives.

(y) Lip balm.

(z) Nutrition formulas (enteral and parenteral with a drug facts label).

(za) Oxygen.

(zb) Prescription medicines.

(zc) Radioactive isotopes.

(zd) Rubs, mentholated.

(ze) Sleeping pills.

(zf) Smoking cessation products such as gums, lozenges, and patches that contain nicotine.

(zg) Sterile water (for injections).

(zh) Sterile normal saline .9% (IV or irrigation).

(zi) Vaccines.

(zj) Yeast infection medications.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility−enhancing equipment, and prosthetic devices can be found in the Rules and Procedures of the Streamlined Sales Tax Governing Board, Inc., available at http://www.streamlinedsalestax.org.

(3) ITEMS WHICH ARE NOT DRUGS. Items which are not described in sub. (1) and which are not drugs include:

(a) Alcoholic beverages, soft drinks and distilled water.

(b) Durable medical equipment.

(c) Prosthetic devices.

(d) Mobility−enhancing equipment.

(e) Dietary supplements.

(4) EXEMPT SALES OR USE OF DRUGS. Drugs shall be exempt if:

(a) Prescribed for the treatment of a human being by a person authorized to prescribe the drugs, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(b) Sold to a licensed physician, surgeon, podiatrist, dentist, or hospital for the treatment of a human being.

(c) Furnished by a licensed physician, surgeon, podiatrist, or dentist to a patient who is a human being for treatment of the patient.

(d) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, dentist, or podiatrist. For this exemption, "hospital" has the meaning described in s. 50.33 (2), Stats., and does not include nursing homes.

(e) Sold to this state or any political subdivision or municipal corporation of the state, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation of the state.

(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the drug may not be dispensed without a prescription.

(5) TAXABLE SALES OF DRUGS. Taxable sales of drugs include:

(a) Retail sales for use in laboratories.

(b) Retail sales of drugs for pets.

Note: For exemption of drugs used on farm livestock or other animals, refer to ss. Tax 11.12 and 11.61.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Note: Section Tax 11.09 interprets ss. 77.51 (3pj) and 77.54 (14), (14m), (14r), and (33), Stats.

Note: The interpretations in s. Tax 11.09 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27; and (b). The definition of "drug" is effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; r. (3) (g), Register, September, 1984, No. 345, eff. 10−1−84; am. (4) (d) and (6), Register, July, 1987, No. 379, eff. 8−1−87; am. (5) (b), Register, June, 1990, No. 414, eff. 7−1−90; am. (2) (c), (3) (c) and (4) (a), Register, March, 1991, No. 423, eff. 4−1−91; am. (1), (4) (e), cr. (4) (f), r. (6), Register, May, 1999, No. 521, eff. 6−1−99; EmR0924: emerg. r. and recr. (title), (1), (2) and (3), am. (4) (title), (intro), (a) to (d), (f), (5) (title), (intro.) and (b), eff. 10−1−09; CR 09−090: r. and recr. (title), (1), (2) and (3), am. (4) (title), (intro), (a) to (d), (f), (5) (title), (intro.) and (b) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) (b), renum. (2) to be (2) (intro.) and am., cr. (2) (a) to (zj) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.10 Wind, solar, and certain gas powered products. (1) GENERAL. Section 77.54 (56), Stats., provides a sales and use tax exemption for the following:

(a) The sales price from the sale of and the storage, use, or other consumption of a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, except that the exemption does not apply to an uninterruptible power source that is designed primarily for computers.

(b) Except for the sale of electricity or energy that is exempt from taxation under s. 77.54 (30), Stats., the sales price from the sale of and the storage, use, or other consumption of electricity or energy produced by a product described in par. (a).

(2) DEFINITIONS. In this section and in s. 77.54 (56), Stats.:

(a) "Agricultural waste" means a byproduct of farming.

(b) "Farming" has the meaning given in s. Tax 11.12 (2) (f), except "farming" includes holding livestock in a feed lot for less than 30 days.

(c) "Feed lot" has the meaning given in s. Tax 11.12 (2) (g).

(d) "Gas" means a fuel that is comprised primarily of methane and exists in a gaseous state at normal room temperature and pressure.

(e) "Product" means tangible personal property that converts wind energy, direct radiant energy received from the sun, or gas generated from the anaerobic digestion of animal manure and other agricultural waste into alternating current electricity or heat.

(3) ITEMS WHICH ARE PRODUCTS. Product, as defined in sub. (2) (e), includes the following items:

(a) Wind turbine generators, including blade assembly and tower.

(b) Gas powered electric generators.

(c) Gas fueled furnaces, space heaters, and water heaters.

(d) Photovoltaic cells, modules, and arrays, including tracking equipment that maintains optimal orientation to the sun.

(e) Solar thermal collectors.

(f) Inverters used to transform direct current produced by an item described in sub. (2) into alternating current, including property used to convey the direct current from the product to the inverter.

(g) Hardware required for installation of an item described in pars. (a) to (f).

(4) ITEMS WHICH ARE NOT PRODUCTS. Product, as defined in sub. (2) (e), excludes the following items:

(a) Tangible personal property that consumes electricity or heat produced by an item described in sub. (2) (e).

Example: A refrigerator that consumes electricity produced by a wind turbine generator is not itself a product whose power source is wind energy.

(b) A foundation for an item described in sub. (2) (e).

Example: A solar tracking device that holds an array of photovoltaic cells is installed onto a concrete foundation. The concrete foundation is not a product whose power source is direct radiant energy received from the sun.

(c) Except as provided in sub. (3) (f), property necessary to convey, transfer, or alter electricity or heat generated by an item described in sub. (2) (e).

(d) Tangible personal property used to store electricity or heat produced by an item described in sub. (2) (e).

Examples: 1) A tank that stores hot water heated by a solar collector is not itself a product whose power source is direct radiant energy received from the sun.

2) Batteries used to store electricity produced by a wind turbine generator or photovoltaic cells are not themselves products whose power source is wind energy or direct radiant energy received from the sun.

(5) EXEMPTION FOR PRODUCTS. (a) For purposes of the exemption under sub. (1) (a), a product that produces direct current shall be considered to produce alternating current if the direct current is modified to alternating current prior to the direct current being stored, used, consumed, or sold by the producer.

Examples: 1) An array of photovoltaic cells produces direct current. All of the current produced by the array is transferred directly to an inverter. The alternating current from the inverter is then either used to power equipment or it is sold to a utility. The photovoltaic array is considered to meet the requirement that it be a product that produces alternating current.

2) A wind turbine generator produces direct current. The current is used to charge batteries. When needed, the batteries supply direct current to an inverter, producing alternating current used to power various devices. The direct current generator does not qualify for exemption since the direct current is being stored by the producer prior to changing it to alternating current.

(b) In order to qualify for the exemption under sub. (1) (a), a product using gas as a power source shall use gas from the anaerobic digestion of animal manure and other agricultural waste exclusively as its power source. A product that uses other fuels such as natural gas, propane, or gas generated from a landfill does not qualify for exemption.

(c) Products that qualify for the exemption under sub. (1) (a) include the following:

1. An alternating current wind turbine generator rated by the manufacturer to produce at least 200 watts of alternating current with a wind speed of 25 miles per hour.

2. A direct current wind turbine generator that is rated by the manufacturer to produce at least 250 watts of direct current at a wind speed of 25 miles per hour and produces alternating current as described in par. (a).

Example: A direct current wind turbine generator is rated by the manufacturer to produce at least 250 watts of direct current with a wind speed of 25 miles per hour. The generator is connected to an inverter that modifies the direct current to alternating current prior to the direct current being stored, used, consumed, or sold by the producer. The generator, inverter, and the property used to convey the direct current from the generator to the inverter qualify for exemption.

3. A direct current wind turbine generator that produces alternating current as described in par. (a) of at least 200 watts as measured at the inverter under normal operating conditions with a wind speed of no more than 25 miles per hour.

4. A solar thermal collector with an output rating of at least 600 British thermal units per day, as determined by the Solar Rating and Certification Corporation, that is normally in service every day throughout the year.

5. A photovoltaic cell, module, or array with a standard test condition output rating of at least 250 watts of direct current that produces alternating current as described in par. (a).

6. A direct current gas powered generator that meets the requirement in par. (b) and produces alternating current as described in par. (a) of at least 200 watts as measured at the inverter when producing direct current under its normal operating conditions.

7. A gas fueled furnace, space heater, or water heater that meets the requirement in par. (b) and can be expected to consume gas in an amount equivalent to at least 600 British thermal units per day throughout the year.

Example: Gas generated by the anaerobic digestion of animal manure or agricultural waste is used solely as the power source for a space heater and a water heater. Both products, when in use, produce over 600 British thermal units per day. The water heater is used every day of the year while the space heater is used only during the months of October through April. The water heater qualifies for exemption; the space heater does not.

(d) The exemption under sub. (1) (a) may be claimed by the consumer of the product who purchases the product as tangible

personal property. A contractor who will purchase, furnish, and install a product which will become real property when installed is the consumer of the product, and may provide its supplier with a properly completed exemption certificate, claiming the product is exempt under s. 77.54 (56), Stats. A contractor who will furnish and install a product that will remain tangible personal property when installed may purchase a product without tax for resale. The purchaser may then issue the contractor an exemption certificate, claiming the product is exempt under s. 77.54 (56) (a), Stats.

Note: See s. Tax 11.68 (4), (5), and (6) for information on the determination of the classification of property after installation.

(6) EXEMPTION FOR ENERGY PRODUCED BY A PRODUCT. (a) The exemption under sub. (1) (b) applies to a direct sale from the producer of electricity or energy to the consumer of the same electricity or energy where all of the following apply:

1. The electricity or energy is produced by a product that qualifies for exemption under sub. (1) (a).

2. The sale does not qualify for exemption under s. 77.54 (30), Stats.

Note: Section 77.54 (30) (a), Stats., includes an exemption for electricity sold from November through April for residential use, fuel and electricity sold for use in farming, and fuel and electricity consumed in manufacturing tangible personal property in Wisconsin.

(b) The exemption under sub. (1) (b) does not apply to electricity or energy which is first purchased for resale from the producer and is then sold in a subsequent retail sale, unless the person making the retail sale is able to account for the quantity of electricity or energy that qualifies for exemption under s. 77.54 (56) (b), Stats., and is able to identify the person to whom such electricity or heat is sold.

Example: Electricity that would otherwise qualify for exemption under s. 77.54 (56) (b), Stats., is commingled in a distribution network with electricity that is not produced by a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural wastes. It is not possible to determine to whom, or in what amount, the electricity that qualifies for exemption is sold. A purchaser of this electricity will not be able to provide an exemption certificate to a utility and properly claim what portion of the electricity it has purchased is exempt pursuant to s. 77.54 (56) (b), Stats., nor is it possible for a utility to know what portion of the electricity purchased by the consumer was from eligible sources.

(c) The exemption under sub. (1) (b) does not apply to the sale of, or the storage, use or other consumption of gas produced by the anaerobic digestion of animal manure or other agricultural wastes unless such gas is produced by a product described in sub. (1) (a).

History: EmR1110: emerg. cr., eff. 6−29−11; CR 11−052: cr. Register July 2012 No. 679, eff. 8−1−12.

Tax 11.11 Utility, industrial and governmental waste treatment facilities. (1) GENERAL. Section 77.54 (26), Stats., provides a sales and use tax exemption for tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., which becomes a component part of certain waste treatment facilities.

(2) UTILITY WASTE TREATMENT EXEMPTION. If a utility waste treatment facility that is taxed under ch. 76, Stats., qualifies for property tax exemption under s. 76.025 (1), Stats., as approved by the department, it qualifies for the sales and use tax exemption under s. 77.54 (26), Stats.

Note: Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines, and pipelines, approved by the department, write to Wisconsin Department of Revenue, Manufacturing and Utility Section, PO Box 8971, Madison WI 53708−8971; telephone (608) 266−8162; send an e−mail to utility@revenue.wi.gov; or access the department's internet web site at http://www.revenue.wi.gov/contact/slfbmta.html.

(2m) INDUSTRIAL WASTE TREATMENT EXEMPTION. (a) An industrial waste treatment facility is any property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale. In this paragraph, "used exclusively" means to the exclusion of all other uses except:

1. For other use not exceeding 5% of total use.

2. To produce heat or steam for a manufacturing process, if the fuel consists of either 95% or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50 percent or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

(b) Tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., becoming a component part of an industrial waste treatment facility is exempt from the sales and use tax under s. 77.54 (26), Stats., if the facility qualifies for property tax exemption under s. 70.11 (21), Stats.

Note: Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities. For more information regarding the property tax exemption for industrial waste treatment facilities of manufacturers write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, PO Box 8971, Madison WI 53708−8971; telephone (608) 266−1147. The web site is www.revenue.wi.gov/contact/slfbmta. To ascertain whether a non−manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

(3) MUNICIPAL WASTE TREATMENT EXEMPTION. Tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., which become a component or ingredient part of the following municipal facilities that treat waste qualifies for exemption from Wisconsin sales and use tax under s. 77.54 (26), Stats.:

(a) *Wastewater treatment facility.* 1. Only the central waste treatment plant which actually treats the sewage qualifies for the exemption.

2. Storm sewers, water supply systems and private domestic waste water facilities do not qualify for the sales and use tax exemption.

3. The collection system throughout the area served by the treatment facility, the effluent pipeline carrying the treated sewage away from the central treatment plant, earthen dikes, and chain link fences on the boundary of a treatment plant, and dredge material disposal sites are not exempt. The collection systems includes the lift stations, force mains, and associated pumping equipment used to bring the raw sewage to the central treatment plant.

(b) *Material recovery facility.* 1. A facility constructed by a municipality to meet mandates of ch. 287, Stats., regarding the reuse, recycling, and recovery of waste material to reduce the need for waste disposal is exempt if the activities include all of the following:

a. Sorting recyclable materials delivered from municipalities.

b. Processing recyclable materials which may include removing contaminants, baling paper, shredding paper, pelletizing plastics, and crushing glass.

c. Storing processed recyclable materials for sale to others.

2. The exemption does not apply if the only activities performed are sorting and storing and no processing of the materials takes place.

(c) *Sanitary landfill.* A sanitary landfill, including the treatment equipment, such as the collection and burner system, laboratory equipment, maintenance buildings, garages, office buildings, fences, and gates, qualifies for exemption.

(d) *Groundwater facilities.* 1. A municipal facility constructed to treat hazardous or contaminated groundwater, including oil and water separators, air strippers, aerators, blowers, filters, carbon units, controls, pumps, and thermal oxidizers, qualifies for exemption.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

2. The collection system used to bring the hazardous or contaminated water to the facility and the distribution system used to carry the treated water away from the facility are not exempt.

Note: For more information regarding the exemption for municipal treatment facilities, write or call Wisconsin Department of Revenue, Bureau of Customer Service, Mail Stop 5−77, PO Box 8902, Madison WI 53708−8902, telephone (608) 266−2772. The web site is www.revenue.wi.gov/contact/pcs.html#cust.

(4) REPAIR, SERVICE AND OPERATION. (a) The repair, service, alteration, cleaning, painting, and maintenance of a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m), and a municipal waste treatment facility described in sub. (3) as well as the repair parts and replacement for those types of facilities are exempt from the sales and use tax.

(b) Chemicals and supplies, including fuel and electricity, used or consumed in operating a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m) and a municipal waste treatment facility described in sub. (3) are exempt from the sales and use tax.

(5) CONTRACTORS AND SUBCONTRACTORS. (a) *Exempt purchases*. The sales and use tax exemption extends to and includes the purchases of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., by a contractor−installer who incorporates the property into an approved utility waste treatment facility or who incorporates the property into an industrial waste treatment facility or a municipal waste treatment facility. The contractor−installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sales. Certification of exempt use shall be made on a Wisconsin sales and use tax exemption certificate, form S−211.

Note: Form S−211 may be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708−8902, telephone (608) 266−2776.

(b) *Taxable purchases*. A contractor's purchases of items used or consumed in the performance of the construction contract, and which do not become a component part of the waste treatment facility, are subject to the tax. This includes industrial gases, form lumber, tunnel shields, and supplies used by a contractor during construction. Payments by a contractor for equipment purchased or leased to perform a construction job are also taxable.

(c) *Determining exemptions*. 1. 'Utility property taxed under ch. 76, Stats.' A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that becomes a component part of a utility waste treatment facility that has not been approved by the department for a property tax exemption under s. 76.025 (1), Stats.

Note: Contractors may direct questions concerning the property to the department as provided in sub. (2).

2. 'Industrial property taxed under ch. 70, Stats.' Approvals are not required for industrial waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that becomes a component part of a facility that is determined to not qualify for a waste treatment facility property tax exemption under s. 70.11 (21), Stats.

Note: Contractors may direct questions concerning the taxability of the waste treatment facility to the department as provided in sub. (2m).

3. 'Municipal waste treatment facilities.' Approvals are not required for municipal waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that becomes a component part of a facility that is determined not to be a municipal waste treatment facility as provided in sub. (3).

Note: Contractors may direct questions concerning the taxability of the waste treatment facility to the department as provided in sub. (2m).

Note: Section Tax 11.11 interprets s. 77.54 (26), Stats.

Note: The interpretations in s. Tax 11.11 are effective July 31, 1975 when ss. 70.11 (21) and 77.54 (26), Stats., were revised, except: (a) The exemptions for chemicals and supplies used or consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979; (b) The approval process for property and sales tax exemptions for industrial waste treatment facilities, except utilities, were eliminated effective January 1, 2002, pursuant to 2001 Wis. Act 16; (c) The definition of an industrial waste treatment facility was amended pursuant to 2007 Wis. Act 19 and applies on and after October 1, 2007; and (d) The separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, March, 1979, No. 279, eff. 4−1−79; am. (2), (4) (b) and (5) (d), r. and recr. (3), Register, September, 1982, No. 321, eff. 10−1−82; am. (2) (b), (3) (a) and (b) and (5) (b), Register, September, 1984, No. 345, eff. 10−1−84; cr. (2) (c), r. (1) (b) and (3), renum. (1) (a) to be (1) and am., renum. (2) (a), (b) and (c) to be (4) (a), (c) and (b) and am., renum. (4) to be (2) and am. (2) (a) and (b), renum. (5) (a), (b), (c) and (d) to be (3) (b), (a), (c) and (d), Register, June, 1991, No. 426, eff. 7−1−91; correction in (2) (a) made under 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524; am. (2) (b), r. (2) (c), cr. (3) (intro.), (b), (c) and (d), renum. (3) (a) to (d) and (4) to be (3) (a) 1., 2. and 3, (4) and (5) and am. (4) and (5) (c), Register, October, 1999, No. 526, eff. 11−1−99; CR 02−053: renum. (2) (a) and (4) to be (2) and (4) (a) and am., r. (2) (b), cr. (2m) and (4) (b), am. (5) (a), r. and recr. (5) (c) Register November 2002 No. 563, eff. 12−1−02; EmR0924: emerg. am. (1), (2m) (b), (3) (intro.), (5) (a), (c) 1. to 3., renum. (2m) (a) to be (2m) (a) (intro.) and am., cr. (2m) (a) 1. and 2., eff. 10−1−09; CR 09−090: am. (1), (2m) (b), (3) (intro.), (5) (a), (c) 1. to 3., renum. (2m) (a) to be (2m) (a) (intro.) and am., cr. (2m) (a) 1. and 2. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (3) (a) 3., (b) 1. (intro.), b., (c), (d) 1., (4) (a), (5) (b) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.12 Farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services. (1) STATUTES. Section 77.54 (3) and (3m), Stats., provides exemptions for certain sales of tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., to persons who are engaged in farming as a business enterprise, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services.

(2) DEFINITIONS. In this section and s. 77.54 (3), (3m), (30) (a) 3. and 5., and (33), Stats.:

(a) "Animal bedding" used in farming means disposable loose materials, including straw, shavings, sawdust, leaves, sand, and shredded paper, used where an animal may lie, to promote cleanliness and absorb urine or liquid manure. It does not include nonabsorbent items, including rubber floor mats.

(b) "Custom farming services" means the performance of an activity, defined as farming in this section, for a farmer for a fee. The fee may include a cash payment, a share of the harvest or other valuable consideration.

(c) "Dairy farming" means the business of feeding and raising cattle and other milk producing animals, but does not include operations such as pasteurizing, homogenizing, or making butter, cheese, or ice cream.

(d) "Farm livestock drugs" means any substance or preparation used in the diagnosis, cure, mitigation, treatment, or prevention of disease in farm livestock. This includes antibiotics, dewormers, mastitis treatments, medicated shampoos and vaccines in the form of boluses, capsules, feed additives, fluids, pills, powders, ointments, and salves. This also includes disinfectants, flea powder and flea sprays, mastitis indicators, teat dips, udder wash, and vitamins. "Farm livestock drug" does not include drugs for work stock, horses used in racing, pleasure riding, or show, or small domestic animals, including dogs and cats. It also does not include laboratory equipment used by a veterinarian, non−medicated shampoos, non−medicated pet foods, and non−medicated bandages, or plaster of paris that is used to set an animal's broken bone.

(e) "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase includes horses used exclusively in farming to check on or herd livestock. The phrase does not include dogs, horses used for racing, pleasure riding or show or laboratory animals. The food for animals which are not farm work stock is taxable unless the animals are livestock as defined in par. (j).

Example: Dog and cat food is taxable.

(f) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, poultry, domesticated rabbits, or other ani-

mals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "farming" includes raising earthworms, pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul, and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses and llamas for sale; and raising ginseng, mushrooms, and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; operating sporting or recreational facilities, such as riding stables or shooting preserves; operating stockyards, slaughterhouses, or feed lots as described in par. (g); pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices, or syrup.

Example: Dog and cat food is taxable.

(g) "Feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for the livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

(h) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants, or shrubs, including such operations as greenhouses.

(i) "Horticulture" means the business of producing vegetables, vegetable plants, fruits, and nursery stock, including the operation of commercial nurseries and orchards but not businesses which hold stock for purposes other than propagation or growth. "Horticulture" does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(j) "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals or animals which are a source of wool, such as llamas, including those purchased for breeding.

(k) 1. "Silviculture" means the business of raising trees for timber, lumber, or other wood products. Silviculture includes the logging of timber when it is performed by a person engaged in the business of silviculture and the logging is conducted with respect to that person's silviculture activity. Silviculture does not include pulp or sawmill operations.

2. "Logging" as used in subd. 1. includes the following activities which occur while in the field:

a. The felling of trees.

b. The delimbing of trees.

c. The cutting of trees into logs, poles, or other units.

d. The transportation of cut timber to a sawmill.

e. Activities conducted in the forest incidental to the felling, cutting, and removal of trees from the forest such as the clearing of the forest to allow access to and removal of the timber from the forest land.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer, except that if the exemption certificate is received electronically, a signature is not required. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4) STATUTORY EXEMPTIONS. (a) Section 77.54 (3) (a), Stats., exempts the sales price from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property and excluding tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that that personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., makes to the production process in that building or real property and regardless of the extent to which that personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., functions as a machine, except as provided in subd. 4. d. For purposes of this section:

1. 'Directly.' Items used "directly" in farming include a plow, a combine, and a milking machine. Items of "indirect" use include repair tools, computers used for tracking prices or inventories or for word processing, and lawn and garden tractors used for mowing lawns and tilling home gardens.

2. 'Exclusively.' "Used exclusively" means used to the exclusion of all other uses except for other uses not exceeding 5% of total use.

2g. 'Consumed.' Property is "consumed" in farming when it is used 100% in farming. Items consumed in farming include repair tools used to repair farm machinery or farm equipment, insect control strips, computers used indirectly but solely in the business of farming, test kits to test milk for contaminants, and lubricants used in farm tractors and machines.

2r. 'Lose their identities.' Property "loses its identity in farming" when it is used 100% in farming. Property losing its identity in farming includes disinfectants and sanitizers such as iodine and chlorine, water softener salt, and detergents.

3. 'Accessories, attachments, and parts.' Included within the exemption are accessories, attachments, and parts for tractors and machines used exclusively and directly, or which are consumed or lose their identities in the business of farming. "Accessories" and "attachments" include devices designed to be mounted on a machine, such as a slow moving vehicle sign attached to a tractor or pipes attached to an irrigation pump, or devices to be pushed or pulled by a machine such as a farm wagon or a plow. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor tires, oil filters, and fuel pumps. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids such as antifreeze, hydraulic fluids, or diesel fuel anti−gel additives. These are "other tangible personal property" rather than "parts."

4. 'Machines.' a. "Machine" means an assemblage of parts that transmit force, motion and energy from one part to another in a predetermined manner.

b. "Machines which qualify for exemption" include, if not realty improvements, all−terrain vehicles or trucks not licensed for highway use, balers, chain saws for orchard or logging use but not for use in cutting firewood for personal use or for use in pulpwood or sawmill operations, choppers, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, end loaders, electric clippers and hoof trimmers, electric dehorners, electric fence chargers not fencing or insulators, electric foggers, fork lifts, harrows, harvesting combines, hay wagons, manure spreaders, mowers, planters, plows, powered posthole diggers, pumps and associ-

ated piping for irrigation, rock pickers, rotary hoes, space heaters not for residential use, sprayers, stalk shredders, and windrowers.

c. "Machines which do not qualify for exemption" include tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., that are attached to, fastened to, connected to or built into real property or that become an addition to, component of or capital improvement of real property. Also, tangible personal property, and items and property under s. 77.52 (1) (b) and (c), Stats., used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that the personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., makes to the production process in that building or real property and regardless of the extent to which that personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., functions as a machine does not qualify for exemption. However, there is an exception for those items specifically mentioned in subd. 4. d.

d. The following items retain their character as tangible personal property and qualify for exemption, regardless of the extent to which they are fastened to, connected to or built into real property: auxiliary power generators, bale loaders, barn cleaners and elevators, conveyors, feed elevators and augers, grain dryers and grinders, irrigation implements, milk coolers, milking machines, including piping, pipeline washers and compressors, top and bottom silo unloaders, and powered feeders, excluding platforms and troughs constructed from ordinary building materials.

5. 'Real property improvements.' a. "Building" means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals, or plants, for storing property, or for working, office, parking, sales, or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to the real property; that is covered by a roof or encloses space; that is not readily moved or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

b. Certain machines in addition to those in subd. 4. qualify for the exemption if purchased by farmers directly from retailers, even though after the sale they are affixed to realty by the farmer, or someone hired by the farmer. Machines included are automated livestock feeder bunks, but not ordinary building materials; automatic stock waterers powered by electricity or water pressure and built into a permanent plumbing system; automatic water softeners, such as for milkhouses; barn fans and blowers and other ventilating units; unit heaters and other heating units; water heaters serving production areas; and water pumps serving production areas.

6. 'Motor vehicles and their accessories, attachments, and parts.' Specifically excluded from the exemption are "motor vehicles for highway use," which includes motor trucks, automobiles, station wagons, buses and motorcycles. The exclusion from the exemption also applies to accessories, attachments, and parts for motor vehicles for highway use. "For highway use" means registered or required to be registered for that use. Charges for labor for the repair of vehicles registered for highway use, such as nurse tanks and trailers, are taxable. Sales of parts for vehicles registered for highway use which are used exclusively and directly in farming or are consumed in farming, such as nurse tanks and trailers, are taxable.

Note: Nurse tanks may qualify for the exemption provided in s. 77.54 (5) (d), Stats., as mobile units used for mixing and processing if they have pumps to blend and mix the product.

7. 'Other non−exempt sales.' The exemption does not apply to:

a. Tools used in construction of or making repairs to real estate, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, powered or nonpowered hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

b. Building materials used to repair or improve real estate such as cement, drain tile, fencing, light fixtures, lumber, nails, and stanchions.

8. 'Sales and use tax.' A person who buys without tax by claiming the farming exemption owes the sales tax at the time the person uses the property or item purchased in a taxable manner or for a taxable purpose. Property, items, or goods purchased without tax by claiming they will be used exclusively and directly in the business of farming, become subject to the tax when use of the property, items, or goods for nonexempt purposes exceeds 5% of total use. Property, items, or goods purchased without tax by claiming they will be consumed or lose their identity in the business of farming, become subject to the tax when the property, items, or goods are used for a purpose other than for an exempt use in the business of farming.

(b) Section 77.54 (3m), Stats., exempts: *"The sales price from the sale of and the storage, use or other consumption of the following items if they are used exclusively by the purchaser or user in the business of farming; including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services:*

(a) Seeds for planting.

(b) Plants.

(c) Feed.

(d) Fertilizer.

(e) Soil conditioners.

(f) Animal bedding.

(g) Sprays, pesticides and fungicides.

(h) Breeding and other livestock.

(i) Poultry.

(j) Farm work stock.

(k) Baling twine and baling wire.

(L) Containers for fruits, vegetables, grain, hay, silage and animal wastes.

(m) Plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage." "Exclusively" as used in s. 77.54 (3m), Stats., and in this section means that the items mentioned in s. 77.54 (3m), Stats., are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for those items will not be invalidated by an infrequent and sporadic use other than in farming. For purposes of this section:

1. 'Seeds for planting.' "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and vegetables; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

2. 'Plants.' "Plants" include herbs, shrubs or young trees, slips, seedlings, or saplings planted or ready to plant.

3. 'Feed.' a. "Feed" includes processed vegetable and animal products and essential minerals required for the normal nutritional needs of livestock, poultry and domestic fur−bearing animals and other materials which are required for the normal nutritional needs of animals in some domestic environments, such as vitamins A, B−complex, D and E. Essential minerals include phosphorous, calcium, sodium, chlorine, iodine, iron, copper, sulfur, potassium, magnesium and zinc. Common feed additives containing these substances include cod liver oil, salt in granular or block form, ground limestone, fish oil, fish meal, oyster shells and bone meal.

b. "Feed" includes medicated feed or drug carriers purchased for use as an ingredient of medicated feed, the primary purpose of which is the prevention of diseases in livestock or poultry. "Feed" does not include a mixture labeled and sold for specific treatment or cure of a disease. Feed for farm livestock, poultry and work stock is exempt but feed for pets, such as dogs and cats, is taxable.

4. 'Fertilizers and soil conditioners.' a. "Fertilizer" means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used pri-

marily for its plant food content to improve the soil's agricultural qualities. "Fertilizer" and "soil conditioners" include fertilizer and insecticide combinations, agricultural minerals, carbon dioxide for application to land, urea, sewage sludge, liquid spray mixtures of minerals and plant nutrients, lime, compost, manure, peat moss and soy bean straw.

b. "Fertilizer" and "soil conditioners" do not include fill dirt, top soil, wood chips, wood shavings, litter and hormone growth stimulants.

Note: The difference between fertilizers and hormone growth stimulants is that fertilizers nourish plants whereas hormone growth stimulants act upon the cellular structure.

5. 'Sprays, pesticides and fungicides.' "Sprays," "pesticides" and "fungicides" include disinfectant sprays, fly sprays and preparations used to destroy insects, mites, nematodes, slugs, or other invertebrate animals injurious to plants and animals; chemicals used for crop disease, pest and weed control, including insecticides, rodenticides, and pesticides used to sanitize and clean dairy equipment. Products used to sanitize dairy equipment are exempt, if they are registered with the U.S. environmental protection agency, or "EPA," as pesticides, advertised and sold as pesticides, and each bottle, can, or other container containing the pesticide has an EPA pesticide registration number on it.

6. 'Containers for fruits, vegetables, grain, hay, silage and animal wastes and plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage.' a. "Containers for fruits, vegetables, grain, hay, silage and animal wastes and plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains, hay, silage or animal wastes. The phrase includes feeders and feed carts if used to hold hay, silage or feed which contains grain.

b. A complete corn crib or grain bin may be purchased "knocked−down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install the bin permanently into real estate is a consumer of the bin, not its seller. The contractor, dealer or installer, not being a farmer, may not furnish an exemption certificate claiming a farming exemption on the bin's purchase. Being the consumer, not a seller, the contractor shall pay the sales tax to the supplier or report the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) on the purchase price directly to the department. A farmer who utilizes the exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. Farmers or contractors may purchase animal waste containers or the component parts of animal waste containers without tax, by issuing their supplier a properly completed"single purchase" exemption certificate.

d. Silos are not included in the exemption. The purchaser of materials used in building a silo shall pay the sales tax to the purchaser's supplier. A silo unloader may be purchased by a farmer as an exempt machine.

7. 'Semen.' Semen used for artificial insemination of livestock is exempt under s. 77.54 (27), Stats.

(c) Section 77.54 (30) (a) 3., Stats., exempts the sales price from the sale of electricity sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, and horticulture. Section 77.54 (30) (a) 5., Stats., exempts the sales price from the sale of fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, and horticulture.

1. Electricity and fuel sold for use in farming includes electricity and fuel sold for use in performing custom farming services.

2. Fuel includes oxygen used to enrich a fuel mixture, or oxygen and acetylene used in a welding process.

(d) Section 77.54 (33), Stats., exempts the sales price from sales of and the storage, use or other consumption of drugs used on farm livestock, not including workstock.

(5) SERVICES FURNISHED TO FARMERS. (a) Sales tax imposed under s. 77.52 (2) (a) 10., Stats., does not apply to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., if the farmer may purchase the property, item, or good without tax under s. 77.54 (3), (3m), (27), (30) (a) 3. and 5., (33), and (50), Stats.

Examples: 1) Charges to a farmer for labor to replace a water pump on a motor vehicle registered for highway use are taxable. However, charges to a farmer for labor to replace a water pump on a tractor used exclusively and directly in farming are not taxable.

2) A farmer may claim an exemption when having draft horses or horses used exclusively in farming for breeding or to check on or herd livestock shod, but not when having horses ridden for pleasure shod.

(b) Fees for breeding farm livestock or farm work stock, charges for artificial insemination of farm livestock or farm work stock, and medical and hospitalization services furnished by veterinarians are not taxable.

(c) The exemptions under s. 77.54 (3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52 (2) (a), Stats., including telephone, laundry, dry cleaning, photographic services, and breeding or artificial insemination of animals other than farm livestock or farm work stock.

(6) SERVICES PROVIDED BY FARMERS. (a) *Nontaxable services.* The following services performed by farmers are not subject to the sales tax:

1. 'Custom work.' The performance of custom farm services, such as plowing a field, planting seeds, harvesting grain, or logging timber.

2. 'Training animals.' The training of horses, dogs, or other animals.

(b) *Services to tangible personal property.* Charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., are taxable, unless at the time such services are performed, a sale in Wisconsin of the type of property, item or good so serviced would have been exempt from Wisconsin sales tax. Taxable services to tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., include:

1. 'Boarding animals.' The boarding of dogs, cats, horses used for racing, pleasure riding or show, or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed exemption certificate claiming an exemption for resale.

2. 'Grooming animals.' The grooming of recreational animals.

Example: Charges by a farmer for labor to replace a radiator on a motor vehicle registered for highway use are taxable. However, charges by a farmer for labor to replace a radiator on a tractor used exclusively and directly in the business of farming are not taxable.

(7) TAXABLE SALES. Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by farmers which are taxable include:

(a) Horses for use in racing, pleasure riding, or show.

(b) Llamas for use as pack animals, pets, or to herd sheep.

(c) Flowers, Christmas trees and other decorative trees, plants, or shrubs.

(d) Timber or gravel when the purchaser acquires this property for removal, unless the purchaser pays royalties to lease land.

Note: Section Tax 11.12 interprets ss. 77.52 (1) and (2) (a) 10. and 77.54 (3), (3m), (27), (30), and (33), Stats.

Note: The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Semen became exempt effective July 22, 1971, pursuant to Chapter 64, Laws of 1971; (b) Baling wire and twine

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

became exempt effective December 24, 1975, pursuant to Chapter 146, Laws of 1975; (c) The exemption for electricity for residential use and use in farming and for fuel oil, propane, coal, steam or wood for residential use became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (d) The definition of "feed lot" became effective December 1, 1981; (e) Farm livestock medicine, milk house supplies and animal bedding became exempt effective July 1, 1986, pursuant to 1985 Wis. Act 29; (f) The definition of "exclusively used" became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (g) The farm machinery exemption was revised effective October 1, 1989, pursuant to 1989 Wis. Act 31; (h) The exemption for farm fuel for items other than machines became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemption for electricity sold for use in farming was expanded to include sales of electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9; (j) The expansion of the exemption for tangible personal property consumed in farming and the addition of "silviculture" to the definition of farming became effective July 1, 2007, pursuant to 2005 Wis. Act 366; and (k) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, March, 1978, No. 267, eff. 4−1−78; am. (2) (intro.), (4) (a) 1., (4) (b) (intro.) and (5) (c), renum. (2) (a) to be (2) (a) 1. and am., cr. (2) (a) 2., Register, November, 1981, No. 311, eff. 12−1−81; am. (2) (a) 1., (4) (b) 5., 6. c. and 9., Register, June, 1983, No. 330, eff. 7−1−83; am. (4) (a) 1., 3. and 5., and (5) (c), cr. (5) (d), Register, September, 1984, No. 345, eff. 10−1−84; am. (4) (a) (intro.) and 7., (4) (b) 6. b., Register, July, 1987, No. 379, eff. 8−1−87; am. (2) (a) 1. and (4) (b) 7., cr. (7), Register, November, 1988, No. 395, eff. 12−1−88; renum. (2) (a) to (d) and (4) (b) 7. and 8. to be (2) (c), (g), (f), (b), (h) and (e), cr. (2) (a), and (d) and (i), am. (4) (b) (intro.) and 3. b., Register, June, 1990, No. 414, eff. 7−1−90; cr. (2) (b), (4) (a) 2., 4. c. and d. and 5. a., am. (1), (4) (a) (intro.), (4) (b) 3. a., 4. b. and 6. b. and d., renum. (2) (b) to be (2) (c), renum. (2) (c) 1. and 2. to be (2) (d) and (g) and am. (g), renum. (2) (d) to (g) to be (2) (e), (f), (h) and (i) and am. (f), renum. (2) (h) and (i) to be (2) (j) and (k), renum. (4) (a) 2. to be 3., and am., renum. (4) (a) 3. and 4. a. and b. to be (4) (a) 4. and 5. b. and c., and am. 4. a. and b. and 5. b. and c., renum. (4) (a) 5., 6., and 7. to be (4) (a) 6., 7. and 8. and am. 7. b. and 8., Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (d), (e), (i) and (3), (4) (a) (intro.), 3., 5. c., 6., 7. c., (b) (intro.), 4. a., 5. and 6. c., renum. (4) (b) 9. to be (4) (b) 7., r. (5) (d), Register, April, 1993, No. 448, eff. 5−1−93; am. (1), (3), (4) (a) (intro.), 7. c. and (b) (intro.), 1. and 6., a., b., c., and e., (5), (6) (b) 1. and (7) (b), r. (4) (a) 5. c., renum. (2) (d), (e) and (f) to be (2) (f), (d) and (e) and am. (e) and (f), Register, May, 1999, No. 521, eff. 6−1−99; EmR0924: emerg. am. (title), (1), (2) (intro.), (d), (f), (4) (a) (intro.), 1., 3., 4. b. to d., 5. b., 7. a., 8., (b) (intro.), 2., 6. c., 7., (5) (a), (6) (a) 1., (b) 1., and (7) (intro.), r. and recr. (2) (k), (4) (a) 6., (6) (b) (title) and (intro.), cr. (4) (a) 2g., 2r., (c) and (d), r. (4) (a) 7. c., (b) 6. e., and (7) (a), renum. (7) (b) to (e) to be (7) (a) to (d), eff. 10−1−09; CR 09−090: am. (title), (1), (2) (intro.), (d), (f), (4) (a) (intro.), 1., 3., 4. b. to d., 5. b., 7. a., 8., (b) (intro.), 2., 6. c., 7., (5) (a), (6) (a) 1., (b) 1., and (7) (intro.), r. and recr. (2) (k), (4) (a) 6., (6) (b) (title) and (intro.), cr. (4) (a) 2g., 2r., (c) and (d), r. (4) (a) 7. c., (b) 6. e., and (7) (a), renum. (7) (b) to (e) to be (7) (a) to (d) and am. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (a), (c), (d), (f), (h), (i), (k) 1., 2. e., (4) (a) (intro.), 3., 4. b., d., 5. a., 6., 7. b., (b) 2., 5., (5), (6) (a) 2., (b) (intro.) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (3) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.13 Direct pay. (1) DEFINITIONS. In this section:

(a) "Continuous" use of a direct pay permit means that the purchase without tax applies to the purchase being made from the retailer and subsequent purchases from that retailer and is considered a part of each order given to the retailer.

(b) "Single purchase" use of a direct pay permit means that the purchase without tax applies only to the purchase being made from a retailer for which the direct pay permit is given.

(2) GENERAL. (a) The holder of a direct pay permit may purchase tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services, except those in sub. (6) (a) and (b), from a retailer without paying Wisconsin sales or use tax to the retailer.

(b) The direct pay permit holder shall report Wisconsin use tax on the purchase price of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services purchased from a retailer without tax using a direct pay permit if the property, item, good, or service is subject to Wisconsin sales or use tax. The tax shall be reported on the direct pay permit holder's Wisconsin sales tax return for the period in which the taxable storage, use, or consumption first occurs in Wisconsin.

Note: Purchase price, for purposes of this paragraph, has the meaning specified in s. 77.51 (12m), Stats.

(3) ISSUANCE. (a) The department shall issue a direct pay permit to those applicants who meet the qualifications set forth in s. 77.52 (17m) (b), Stats.

(b) Persons who wish to obtain a direct pay permit shall apply to the department using form S−101, "Application for Direct Pay Permit."

Note: Form S−101 is available by writing to Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8902, Madison WI 53708−8902; calling (608) 266−2776; or downloading it from the department's web site, www.revenue.wi.gov.

(c) A direct pay permit shall be effective for purchases made beginning on the first day of the applicant's taxable year, for Wisconsin franchise or income tax purposes, after the permit is issued.

Example: A person's taxable year begins July 1 for Wisconsin franchise or income tax purposes. The person files an application for a direct pay permit with the department on January 1, 2009. The person is issued a direct pay permit which is effective for purchases made on or after July 1, 2009.

(4) REVOCATION OR CANCELLATION. (a) A direct pay permit issued by the department may be used indefinitely until it is revoked by the department or cancelled by the holder.

(b) A permit may be cancelled by the holder by mailing the permit to the department for cancellation. A letter shall be enclosed with the permit, indicating the holder's intention to cancel the permit.

Note: The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8902, Madison WI 53708−8902.

(c) The cancellation of a direct pay permit shall become effective immediately following the last day of the holder's taxable year in which the permit is received by the department.

(5) USING DIRECT PAY. (a) *Documentation.* A direct pay permit holder shall provide one of the following to a retailer when purchasing without paying tax to the retailer using a direct pay permit:

1. A copy of its direct pay permit. The direct pay permit holder shall also provide to the retailer a written statement as to whether the direct pay permit is for a single purchase or is continuous.

2. A form S−211, "Wisconsin Sales and Use Tax Exemption Certificate," or other written document, either of which contains all of the following:

a. The name and address of the direct pay permit holder.

b. A statement that the direct pay permit holder is purchasing without Wisconsin sales or use tax using a direct pay permit.

c. The direct pay permit holder's direct pay permit number.

d. The effective date of the direct pay permit.

e. A statement as to whether the use of the direct pay permit is for a single purchase or is continuous.

f. The signature of the direct pay permit holder.

(b) *Continuous use.* 1. If a direct pay permit holder indicates in writing to a retailer that the use of the direct pay permit is continuous, that purchase and all subsequent purchases from the retailer, except those in sub. (6) (a) and (b), shall be made without paying Wisconsin sales or use tax to the retailer using the direct pay permit, unless the continuous use is voided by the direct pay permit holder. The direct pay permit holder may void the continuous use of its direct pay permit by furnishing the retailer a letter indicating that continuous use no longer applies.

2. If the use of a direct pay permit is continuous, it is necessary for the direct pay permit holder to provide the documentation in par. (a) to a retailer only at the time the direct pay permit holder begins making purchases without paying tax to that retailer using the direct pay permit, rather than at the time of each purchase.

3. While the use of a direct pay permit is continuous, all purchases from a retailer, except those in sub. (6) (a) and (b), shall be made using the direct pay permit even though an exemption certificate requiring different documentation may apply.

Example: On October 1, 2009, Company A begins using its direct pay permit when purchasing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., from Company B. Company A provides a written statement to Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, except those described in sub. (6) (a) and (b), by Company A from Company B on or after October 1, 2009, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, no other exemption certificate may be used.

(c) *Single purchase.* If a direct pay permit holder uses its direct pay permit for a single purchase, any subsequent purchase by the

direct pay permit holder from that retailer is subject to Wisconsin sales or use tax unless the direct pay permit holder provides the information in par. (a) for that purchase or that purchase is otherwise exempt from tax.

(d) *Retailer records*. The retailer shall keep the information provided by the direct pay permit holder under par. (a) on file as authorization for the direct pay permit holder to make purchases without paying tax to the retailer.

(6) SERVICES AND PROPERTY NOT ELIGIBLE FOR DIRECT PAY. (a) *Services*. A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sales of services to the direct pay permit holder under the following Wisconsin statutes:

1. Section 77.52 (2) (a) 1., Stats., relating to furnishing rooms or lodging.

2. Section 77.52 (2) (a) 2., Stats., relating to admissions to amusement, athletic, entertainment, or recreational events, devices, or facilities.

3. Section 77.52 (2) (a) 5. and 5m., Stats., relating to internet access services; prepaid calling services and intrastate, interstate, and international telecommunications services, except interstate 800 services; ancillary services, and telecommunications message services.

4. Section 77.52 (2) (a) 9., Stats., relating to parking.

5. Section 77.52 (2) (a) 12., Stats., relating to cable television system services.

6. Section 77.52 (2) (a) 20., Stats., relating to landscaping services.

(b) *Property.* A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sale, lease, license, or rental to the direct pay permit holder of the following tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.:

1. Tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to a purchaser in connection with the sale of landscaping services subject to tax under s. 77.52 (2) (a) 20., Stats.

2. Motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semitrailers, all−terrain vehicles, or aircraft.

3. Candy as defined in s. 77.51 (1fm), Stats., soft drinks as defined in s. 77.51 (17w), Stats., dietary supplements as defined in s. 77.51 (3n), Stats., prepared foods as defined in s. 77.51 (10m), Stats., and alcoholic beverages as defined in s. 77.51 (1b), Stats.

(c) *Exemptions*. Although not eligible to be purchased without paying Wisconsin sales or use tax to a retailer using a direct pay permit, the taxable services and tangible personal property, and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., described in pars. (a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farming, manufacturing, or other exemption applies. Documentation is required to purchase without tax, as provided in s. Tax 11.14.

(d) *Penalty for prohibited or incorrect use*. A person who uses a direct pay permit in a manner that is prohibited by or inconsistent with the Wisconsin sales and use tax laws or who provides incorrect information to a seller or certified service provider related to their direct pay permit shall be subject to a penalty of $250 for each invoice or bill of sale related to the prohibited or inconsistent use of their direct pay permit as provided in s. 77.60 (13), Stats.

(7) RETAILER'S LIABILITY — PERMIT REVOKED OR CANCELLED. A retailer is not liable for sales or use tax on the sales price from the sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, except those described in sub. (6) (a) and (b), to a person who has provided the retailer with the appropriate information under sub. (5) (a), until the earlier of the following:

(a) The date the retailer is notified by the direct pay permit holder or the department that the holder's direct pay permit has been revoked by the department. A direct pay permit is considered revoked on the date the holder receives the department's notice of revocation.

(b) The last day of the direct pay permit holder's taxable year in which the retailer is notified by the holder or the department that the holder's direct pay permit is being cancelled by the holder as provided in sub. (4) (b).

Note: Section Tax 11.13 interprets ss. 77.52 (17m) and 77.60 (13), Stats.

Note: The change of the term "gross receipts" to "sales price," the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., and the penalty for prohibited or inconsistent use of a direct pay permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, June, 1995, No. 474, eff. 7−1−95; CR 02−128: am. (1) (a), (3) (b), (5) (a) 2. (intro.) and (b) 3., Register July 2003 No. 571, eff. 8−1−03; EmR0924: emerg. am. (2) (a), (b), (6) (b) (intro.), 1., 2., (c), and (7) (intro.), cr. (6) (a) 3m., r. and recr. (6) (b) 3., r. (6) (b) 4., eff. 10−1−09; CR 09−090: am. (2) (a), (b), (6) (b) (intro.), 1., 2., (c), and (7) (intro.), cr. (6) (a) 3m. and (d), r. and recr. (6) (b) 3., r. (6) (b) 4. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (6) (a) 2., 3., (b) (intro.), 2., 3., (c), r. (6) (a) 3m. Register November 2010 No. 659, eff. 12−1−10.

Tax 11.14 Exemption certificates. (1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52 (13) to (17), Stats., and the use tax status of exemption certificates is contained in s. 77.53 (10) to (13), Stats.

(2) GENERAL. (a) Exemption certificates are given to sellers or lessors by purchasers or lessees to verify that a transaction is exempt from Wisconsin sales and use taxes. Sellers and lessors shall exclude from the taxable sales price those transactions for which they have accepted a valid exemption certificate from the purchaser. The following sales and use tax exemption certificates may be used in Wisconsin:

1. Wisconsin sales and use tax exemption certificate, form S−211. This is a multipurpose form which may be used for any Wisconsin sales and use tax exemption provided by law, except as provided in sub. (14). For direct pay, form S−211 may be used as the document described in s. Tax 11.13 (5) (a) 2. if all of the required information is included on the form S−211.

2. Construction contract entered into before the effective date of county/stadium tax, form S−207CT−1. This is a certificate which may be used by a contractor to purchase building materials without a county or stadium tax under the circumstances described in sub. (13).

3. Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003 or Streamlined Sales and Use Tax Exemption Certificate − Wisconsin, Form S−211−SST. These are multistate forms which may be used to claim any sales or use tax exemption provided under Wisconsin law. Since these are multistate exemption certificates, purchasers should use caution when issuing these certificates, since they contain various exemptions that are not applicable in Wisconsin and only apply in other states. Purchasers are responsible for knowing if they qualify for the exemption they are claiming in the state in which the exemption is being claimed. The purchaser will be held liable for any tax, interest, and penalties that result from the purchaser claiming an exemption for which they were not eligible.

(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. Paper exemption certificates must be signed by and bear the name and address of the purchaser, the name and address of the seller, a general description of the purchaser's business and the reason for the claimed exemption. An electronic exemption certificate shall contain the same information as a paper exemption certificate, except that a signature is not required.

(c) If a purchaser provides an exemption certificate indicating that the property, item, good, or service purchased will be used for activities or under circumstances which make the purchase of the property, item, good, or service exempt from the sales tax or for resale, and the property, item, good, or service is subsequently

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

used by the purchaser in a manner that makes the property, item, good, or service ineligible for exemption from tax, the purchaser is liable for payment of the applicable sales or use tax.

(3) EFFECT OF OBTAINING CERTIFICATE. (a) Except as provided in par. (b), a seller is relieved of liability for the tax if the seller obtains from the purchaser, prior to the date of the sale or within 90 days after the date of the sale, a fully completed exemption certificate which indicates that the purchaser will use the property or service in a manner that is exempt from Wisconsin sales and use tax.

(b) A seller is not relieved of its liability to collect and remit the applicable Wisconsin sales or use tax on a sale to a purchaser if any of the following apply:

1. The seller fraudulently fails to collect the sales or use tax.

2. The seller solicits the purchaser to claim an unlawful exemption.

3. The seller accepts an exemption certificate from a purchaser claiming to be an entity that is not subject to sales and use taxes, if both of the following apply:

a. The subject of the transaction covered by the exemption certificate is received by the purchaser at the seller's Wisconsin location.

b. The exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in Wisconsin.

Note: All retailers should be familiar with the instructions contained in an exemption certificate.

(4) FAILURE TO OBTAIN CERTIFICATE. (a) A seller who does not obtain an exemption certificate as provided in sub. (3) (a), shall be relieved from liability for the tax if, no later than 90 days after the sale, the seller captures and maintains all of the following data elements in its accounting system, with respect to the transaction upon which an exemption is being claimed:

1. Name and business address of the purchaser.

2. Purchaser's state tax identification number and state of issue. If the purchaser does not have a state tax identification number then the purchaser's federal employer identification number is needed. If the purchaser does not have a federal employer identification number then the purchaser's personal driver's license number and state of issue is needed.

3. Purchaser's type of business.

4. The reason for the claimed exemption.

(b) If a seller does not obtain an exemption certificate as provided in sub. (3) (a) or the relevant data elements provided in par. (a), the seller may, within 120 days after it is requested by the department to substantiate a claimed exemption, either obtain, in good faith, a fully completed exemption certificate from the purchaser; or by some other means provide proof that the transaction was not subject to Wisconsin sales or use tax. If a seller cannot prove that a transaction was exempt by one of these methods, the seller is not relieved from liability for the tax, interest, or penalties.

(c) 1. A seller accepts an exemption certificate as provided in sub. (4) (b) in good faith if all of the following apply:

a. The exemption claimed was authorized by law on the date of the transaction in the jurisdiction to which the transaction is sourced.

b. The exemption could be applicable to the property, item, good, or service being purchased.

c. The exemption being claimed is reasonable for the purchaser's type of business.

2. If a seller obtains the information in subd. 1., the seller is relieved of its liability for the tax unless it is discovered through the audit process that the seller had knowledge or reason to know at the time the information relating to the exemption was provided that the information was materially false or the seller otherwise knowingly participated in an activity intended to purposefully evade the tax that is properly due on the transaction.

(5) CONTINUOUS CERTIFICATES. (a) Continuous or blanket exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change, or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(b) If a purchaser provides a continuous or blanket exemption certificate, the purchaser may not issue "this time only" purchase orders or similar documents cancelling the continuous or blanket exemption certificate for the one transaction only. In addition, the notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for a previously issued continuous or blanket certificate. The seller is not liable for the tax on transactions covered by a valid exemption certificate. If a purchaser does not want a continuous or blanket exemption certificate to apply, it must notify the seller in writing that it is rescinding a previously issued continuous or blanket exemption certificate.

(6) RESALE. (a) *Effect of obtaining exemption certificate claiming resale.* 1. The burden of proving that a sale of property, items, goods, or services is not at retail is upon the seller unless the seller accepts an exemption certificate from the purchaser as provided in sub. (3) (a) or captures and maintains the data elements as required in sub. (4) (a) that indicate the property, item, good, or service is purchased for resale. Obtaining the certificate or capturing and maintaining the data elements that indicate the property, item, good, or service is purchased for resale, relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives an exemption certificate as provided in sub. (3) (a) or provides the data elements described in sub. (4) (a), claiming resale for property, item, good, or service acquired and then makes any storage or use of the property, item, good, or service other than retention, demonstration, or display while holding it for sale, lease, license, or rental in the regular course of business, the storage or use is taxable to the purchaser as of the time the property, item, good, or service is first stored or used. The sales tax shall be reported and paid by the purchaser with the tax return for the period in which the property, item, good, or service is first so stored or used.

(b) *Contents of exemption certificates claiming resale.* An exemption certificate claiming resale shall contain the following information for the seller to be relieved from the burden of proving the sale of property or services was not a taxable sale:

1. The name, address, and signature of the purchaser, except that if the exemption certificate is received electronically, a signature is not required.

2. A general description of the purchaser's business.

3. The basis for the claimed exemption including the seller's permit number of the purchaser, except that:

a. A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a seller's permit number.

b. A person registered as a seller in another state, who makes no retail sales in Wisconsin, may insert the name of the state in which registered and the permit number issued to the person by that state.

c. A person who makes exempt sales only in the regular course of business may insert the words "exempt sales only" in the space for a seller's permit number.

(7) MANUFACTURING EXEMPTION. (a) A supplier who accepts a fully completed exemption certificate claiming a manufacturing exemption marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of the property, items, or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If an exemption certificate is a "continuous" form, each purchase order of the manufac-

turer shall refer to it. If an individual order contains both exempt and non−exempt purchases, the purchaser shall designate which items are taxable.

(b) If the manufacturer uses "single purchase" certificates, it may print these as an integral part of its purchase orders, as long as the essential information on the approved form is retained.

(8) FARMER'S EXEMPTION. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer, except that if the exemption certificate is received electronically, a signature is not required.

Note: Section Tax 11.12 describes the types of property, items, goods, and services which may be sold to farmers without tax, and the use of the exemption certificate to claim farming exemptions.

(9) EXEMPTION FOR FUEL OIL, PROPANE, COAL, STEAM, AND WOOD FOR FUEL FOR RESIDENTIAL OR FARM USE. A retailer shall have a signed exemption certificate if the sale of fuel oil, propane, coal, steam or wood for residential or farm use is partially exempt from sales or use tax, except that if the exemption certificate is received electronically, a signature is not required. If the sale is 100% exempt, an exemption certificate is not required.

(10) EXEMPTION FOR ELECTRICITY AND NATURAL GAS SOLD FOR RESIDENTIAL OR FARM USE. A retailer of electricity or natural gas shall have a signed exemption certificate, except that if the exemption certificate is received electronically, a signature is not required, for all sales of electricity or natural gas for residential or farm use which are exempt from sales or use tax unless any, or all, of the following apply:

(a) 100% of the electricity or natural gas is for exempt use.

(b) The sale is to an account which is properly classified as residential or farm pursuant to schedules which are filed for rate tariff with the Wisconsin public service commission which are in force at the time of the sale.

(c) The sale is to an account which is properly classified as residential or farm for classification purposes as directed by the federal rural electrification administration.

(11) GOVERNMENT SALES AND USE TAX EXEMPTION. (a) A retailer of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services may accept from a federal or Wisconsin governmental unit or any federally recognized American Indian tribe or band in Wisconsin, an exemption certificate as provided in sub. (3) (a) or the data elements as required in sub. (4) (a) as proof that a sale is exempt from sales or use tax.

(b) In lieu of accepting an exemption certificate as provided in par. (a), a retailer who issues its billing or invoice in the name of the Wisconsin or federal governmental unit or any federally recognized American Indian tribe or band in Wisconsin, may accept either one of the following:

1. A purchase order or similar written document from the governmental unit or tribe or band, identifying itself as the purchaser.

2. A verbal indication of the governmental unit's or tribe's or band's, certificate of exempt status, or CES, number, which the retailer shall record on the copy of the invoice it retains.

(12) OTHER EXEMPTIONS. The Wisconsin sales and use tax exemption certificate, form S−211, and the Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003, may also be used to claim any other sales and use tax exemption provided by law, including the following:

(a) Containers and other packaging, packing, and shipping materials used to transfer merchandise to customers of the purchaser.

(b) Tangible personal property and items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale, except as provided in s. 77.54 (30) (a) 6., Stats.

(c) Trailers or accessories, attachments, parts, supplies, materials, and service on motor trucks, tractors, and trailers which are used exclusively in common or contract carriage.

(d) Property, items, goods, or services purchased directly by and used by a religious, charitable, educational, scientific, or other organization or governmental unit holding a Certificate of Exempt Status, "CES". Sales to organizations holding a CES also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, which is located out−of−state, may use the Wisconsin sales and use tax exemption certificate, form S−211, or the Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003, to purchase without tax even though it has not been issued a Wisconsin CES number.

(e) Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants, or fuel therefor.

(f) Commercial vessels and barges of 50−ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts, and fuel therefor.

(13) CONSTRUCTION CONTRACTS ENTERED INTO BEFORE THE EFFECTIVE DATE OF A COUNTY OR STADIUM TAX. (a) The certificate for a construction contract entered into before the effective date of a county tax, or a stadium tax as defined in s. Tax 11.001 (2) (d), form S−207CT−1, is used by contractors to purchase building materials without the county or stadium tax. The certificate shall be used by a contractor only if the following 3 conditions are met:

1. The contractor entered into a written contract or made a formal bid before the effective date of the county or stadium tax to construct, alter, repair, or improve real estate for another person.

2. The written contract is for a fixed price that cannot be changed or the formal written bid cannot be altered or withdrawn.

3. The building materials purchased on or after the effective date of the county or stadium tax are affixed and made a part of real estate in fulfilling the written contract or formal written bid.

(b) The certificate shall give the descriptive name of the contract, job site, county or stadium tax effective date, date of prime contract and bid, date contract was signed, seller's name, date of performance of the contract, and contractor's name and address and shall be signed by the contractor, except that if the certificate is received electronically, a signature is not required.

(14) DIRECT PAY PERMITS. The use of direct pay permits in Wisconsin is authorized under s. 77.52 (17m), Stats. A person may apply to the department for a direct pay permit.

Note: For information on who qualifies for a direct pay permit and how to use direct pay, refer to s. Tax 11.13.

(15) IMPROPER USE OF CERTIFICATES. (a) A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor under s. 77.52 (16), Stats. The purchaser may also be liable for other penalties provided by law for filing incorrect returns.

(b) A purchaser who uses an exemption certificate in a manner that is prohibited by or inconsistent with Wisconsin law or who provides incorrect information to a seller or certified service provider relating to an exemption being claimed will also be subject to a penalty of $250 for each invoice or bill of sale related to the prohibited or inconsistent use to which the incorrect information applies.

(16) EXEMPTION CERTIFICATE NOT NEEDED FOR CERTAIN SALES. No exemption certificate is required for sales of property, items, goods, or services that are exempt from Wisconsin sales and use

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

tax under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), and (52), Stats.

Note: Section Tax 11.14 interprets ss. 77.52 (13) to (17), 77.53 (10) to (13), 77.60 (13), and 77.77 (3), Stats.

Note: The interpretations in s. Tax 11.14 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for railroad lubricants became effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (b) The use of direct pay permits in Wisconsin became effective for taxable years beginning on or after January 1, 1995, pursuant to 1993 Wis. Act 437; (c) The elimination of the exemption certificate requirement for sales of certain consigned commodities became effective December 1, 1997 as it relates to sales taxes on commodities consigned for resale, pursuant to 1997 Wis. Act 27, and June 17, 1998 as it relates to sales and use taxes on commodities consigned for sale, pursuant to 1997 Wis. Act 237; (d) The multipurpose exemption certificate, form S−211, was created in November 1998 to replace various types of exemption certificates; (e) The removal of the good faith requirement if a fully completed exemption certificate is obtained by the seller from the purchaser within 90 days of the date of sale became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (f) The requirement that a seller is allowed 120 days after the Department of Revenue requests that they obtain an exemption certificate or otherwise prove that a transaction is exempt became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (g) The exemption from sales and use tax for federally recognized American Indian bands or tribes in Wisconsin became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (h) The acceptance of the Streamlined Sales and Use Tax Exemption Certificate to prove a transaction is exempt became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (i) The penalty for prohibited or inconsistent use of an exemption certificate or direct pay permit became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (j) The identification of the specific exemptions for which an exemption certificate is not required became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (k) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1978, No. 275, eff. 12−1−78; am. (7) (a)., Register, June, 1983, No. 330, eff. 7−1−83; cr. (2) (c) and am. (10), Register, July, 1987, No. 379, eff. 8−1−87; cr. (2) (a) 5. and 6., (10), (11) and (14), am. (2) (a), (5) (b), (6) (b) (intro.) and 5., (7) (a) (intro.) and 4. and 5., (8) (a) and (9), renum. (10) and (11) to be (12) and (13) and am., Register, March, 1991, No. 423, eff. 4−1−91; am. (2) (c), (3) (b) and (c), (6) (b) 4., r. and recr. (12), Register, June, 1995, No. 474, eff. 7−1−95; renum. (12), (13) and (14) to be (13), (14) and (15), am. (2) (a) (intro.), cr. (2) (a) 7. and (12), Register, October, 1997, No. 502, eff. 11−1−97; am. (1) (c), (3) (a) and (b), (5) (b), (6) (a) 2., (b), 3., r. and recr. (2) (a) 1. and 2., cr. (6) (b) 4. c. and (16), r. (2) (a) 3. to 7., (7) (b), (10) (b), (11) (b) and (12) (b) 1., renum. (7) (a) 1. to 6. to be (12) (a) to (f) and am. (12) (d), renum. (8) to (10) (a) to be (7) to (9) and am. (7) (a), (8) and (9), renum. (11) (a) 1. to 3. to be (10) (a) to (c), renum. (12) (a) to be (11) (a) and am., renum. (12) (b) 2. and 3., (13), (14) and (15) to be (11) (b) 1. and 2., (13), (14) and (15) and am. (13) (a), 1. and 3. and (b), Register, August, 1999, No. 524, eff. 9−1−99; CR 02−128: am. (6) (a) 2., and (13) (a) (intro.) and (b), Register July 2003 No. 571, eff. 8−1−03; EmR0924: emerg. am. (2) (a) (intro.), 1., (b), (c), (5) (a), (6) (a) 1., 2., (b) 2., (7) (a), (11), (12) (intro.), (b) to (f), (13) (a) 1. and (b), cr. (2) (a) 3. and (15) (b), r. and recr. (3), (4), (5) (b) and (16), r. (6) (b) 3. and 5., renum. (6) (b) 4. and (15) to be (6) (b) 3. and (15) (a) and am. (6) (b) 3. (intro.), eff. 10−1−09; CR 09−090: am. (2) (a) (intro.), 1., (b), (c), (5) (a), (6) (a) 1., 2., (b) 2., (7) (a), (11), (12) (intro.), (b) to (f), (13) (a) 1. and (b), cr. (2) (a) 3. and (15) (b), r. and recr. (3), (4), (5) (b) and (16), r. (6) (b) 3. and 5., renum. (6) (b) 4. and (15) to be (6) (b) 3. and (15) (a) and am. (6) (b) 3. (intro.) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (c), (3) (a), (4) (b), (5) (a), (6) (a), (7) (a), (9), (12) (a), r. and recr. (4) (c) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (2) (a) 3., (6) (b) 1., (8), (9), (10) (intro.), (13) (b) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.15 Containers and other packaging and shipping materials. (1) PROPERTY EXEMPT UNDER S. 77.54 (6) (B), STATS. (a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials for use in packing, packaging, or shipping tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., shall be "used by the purchaser to transfer merchandise to customers." Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor. The exemption does not apply to containers used in the incidental transfer of property to customers by persons providing services.

(b) Containers include barrels, bottles, cartons, chemical carboys, and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize, or protect the contents, such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice, and batting, and rope, twine, gummed tape, wrapping paper, rubber bands, crates, and crating materials, pallets, skids, and mailing tubes.

(c) The sales price from the sale of the following items is within the exemption:

1. Cans in which canned goods, paints, and other commodities are contained; medicine bottles; boxes in which jewelry, candy, suits, dresses, and hats are delivered to customers; and ice cream cartons.

2. Bottles and cases used by breweries, wineries, or soda water beverage producers to transfer the product to customers.

3. Barrels, half−barrels, kegs, and the like, used by a brewery to transfer draft beer to wholesalers or retailers.

4. Caps for milk, beer, and soda water bottles.

5. "Fragile," "Handle with Care," or other shipping labels.

6. Paper food dividers used to separate food sections in a container for transfer to a customer.

7. Paper bags purchased by grocery stores, bakeries, or other retailers and used by their customers in carrying out their purchases.

8. Feed bags purchased by feed dealers who use the bags to transfer merchandise sold to their customers.

9. Bale ties sold to a hay owner and used to deliver hay to the owner's customers.

10. Ice used by a commercial fisher inside a box of fish to preserve the fish during shipment to market.

11. LPG tanks used to transfer fuel to customers which are replaced each time the fuel is exhausted.

12. 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.

Note: See Tax 11.12 for information on farmer's container exemption.

(2) PROPERTY NOT EXEMPT UNDER S. 77.54 (6) (B), STATS. Sales of the following items are not within this exemption:

(a) Wrapping equipment such as paper holders, tape dispensers, staplers, and string holders.

(b) Coat hangers used on display racks in stores.

(c) Shopping carts or baskets and similar equipment.

(d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to customers are exempt.

(e) Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers, where the carts are not transferred by the bakery to the retailer.

Examples: 1) Wholesaler A's truck driver delivers bakery products to Grocery Store B. The truck driver brings the bakery products into Grocery Store B on a cart, puts the bakery products from the cart onto Grocery Store B's shelves and returns the cart to the truck and provides Grocery Store B with an invoice for the bakery products. The cart is not transferred to Grocery Store B (the bakery retailer), and is not an exempt container.

2) Wholesaler C's truck driver delivers bread to Grocery Store D. The truck driver brings the bread into Grocery Store D on a cart, and leaves the bread on the cart at Grocery Store D. The truck driver picks up the cart that was left with the last delivery. The truck driver provides Grocery Store D with an invoice for the bread. Grocery Store D's employees stock its shelves as needed with the bread from the cart. The cart is transferred to Grocery Store D (the bakery retailer), and is an exempt container.

(f) Lumber or other material used for bracing, blocking, skidding, or shoring items while in transit that is not transferred to the customer of the shipped items; and cardboard and paper used to line box cars.

(g) Price tags and advertising matter used in connection with the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., including counter display cards used for advertising and display purposes.

(h) Tanks on trucks used to deliver merchandise to customers.

(i) Corrugated boxes and other containers and related packing materials purchased by movers for use in transporting a customer's goods.

(j) Bags, boxes, hangers, and other containers transferred to customers by laundries, dry cleaners, and other persons providing services.

Note: In a decision dated November 23, 1979 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Wisconsin Tax Appeals Commission held that corrugated boxes and related packing materials used by Leicht to transport a customer's property from one location to another do not come within the exemption in s. 77.54 (6) (b), Stats. This decision was affirmed by the Dane County Circuit Court on May 19, 1980, by the Court of Appeals, District IV on May 26, 1981.

(3) DEPOSITS ON RETURNABLE CONTAINERS. (a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., such as soft drink bottles, beer bottles and containers, and refunds of the deposits may be excluded from the computation of the taxable sales price if they are excluded from the sales price on the retailer's books of account.

(b) If a retailer's books of account include container deposits in the sales price and if refunds of the deposits are deducted from the sales price, the retailer shall use this method of reporting the taxable sales price on a sales tax return. Under this method, the sales price from the deposit is subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

(4) DISPOSABLE ITEMS USED BY RESTAURANTS. (a) The sales price from sales to restaurants, cafeterias, caterers, nursing homes, or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, wrapping materials, and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products, and beverages to customers are not subject to the tax.

(b) The sales price from the sale of disposable products to a restaurant that are transferred with candy, soft drinks, dietary supplements, and prepared foods furnished for no consideration by the restaurant to the restaurant's own employees during the employee's work hours is not subject to the tax.

(5) DEMURRAGE, LEASE, OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30−day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a charge is made to the customer for the use of the container and the container is used *exclusively* for those leasing purposes, the gas supplier may issue an exemption certificate claiming resale when the supplier purchases the container.

(6) CONTAINERS AND PACKAGING MATERIALS SOLD. (a) If a charge is made by a seller or lessor of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to a customer for a container or packaging materials used in connection with the shipment of the property or item, the charge for the container or packaging materials becomes a part of the sales price or rental charge. If the sale of the property or item shipped is not subject to or is exempt from tax, the charge for the container or packaging materials is not subject to or is exempt from tax. If the sale of the property or item shipped is subject to tax, the charge for the container or packaging materials is subject to tax. This paragraph is applicable to the taxation of containers and packaging materials regardless of whether the charge for the containers or packaging materials is separately stated or not separately stated.

(b) Any credit given by a seller or lessor to a customer for the container or packaging materials used in connection with the shipment of property or items which the customer returns to the seller or lessor shall reduce the seller's or lessor's sales price subject to tax in the reporting period during which the materials are returned, if the seller or lessor included the selling price of the container or packaging materials in the sales price subject to tax, and the seller or lessor returns the tax to the customer.

(7) GIFT WRAPPING. The amount charged for gift wrapping packages is taxable.

Note: Section Tax 11.15 interprets ss. 77.51 (14) (intro) and (j) and (15b), 77.52 (1) and (2) (a) 10., and 77.54 (3m), (6) (b) and (bm), and (20r), Stats.

Note: The interpretations in s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for meat packaging and shipping materials became effective on May 20, 1978, pursuant to Chapter 368, Laws of 1977; (b) Laundries and dry cleaners became the consumers of bags, boxes, hangers, and other containers transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

Note: In *Dernehl−Taylor Co. v. Department of Revenue* (Wisconsin Tax Appeals Commission, May 26, 1978), it was held that the gross receipts for doggie bags qualify for the exemption under s. 77.54 (6) (b), Stats., because they are used to transfer merchandise to customers.

History: Cr. Register, November, 1978, No. 275, eff. 12−1−78; am. (5) (a) and (8), r. (5) (b), Register, June, 1983, No. 330, eff. 7−1−83; cr. (2) (k), Register, December, 1983, No. 336, eff. 1−1−84; renum. (2) (j) to be (1) (c) 12., and am., Register, September, 1984, No. 345, eff. 10−1−84; am. (1) (a), (b), (c) 8., 11. and 12., (2) (g), (4) (a) and (b) and (5) (a), cr. (2) (L), Register, March, 1991, No. 423, eff. 4−1−91; renum. (2) (k) and (L) to be (2) (j) and (k), am. (7), cr. (7) (b), Register, July, 1993, No. 451, eff. 8−1−93; correction in (1) (c) 10. made under s. 13.93 (2m) (b) 5., Stats., Register, July, 1993, No. 451**;** am. (1) (a) and (c) 5., r. (3), renum. (4), (5), (6), (7) and (8) to be (3), (4), (5), (6) and (7) and am. (5), Register, December, 1997, No. 504, eff. 1−1−98; EmR0924: emerg. am. (1) (a), (c) (intro.), (2) (title), (intro.), (a), (d) to (f), (3), (5) and (6), r. (2) (g), renum. (2) (h) to (k) and (4) to be (2) (g) to (j) and (4) (a) and am. (2) (g) and (4) (a), cr. (4) (b), eff. 10−1−09; CR 09−090: am. (1) (a), (c) (intro.), (2) (title), (intro.), (a), (d) to (f), (3), (5) and (6), r. (2) (g), renum. (2) (h) to (k) and (4) to be (2) (g) to (j) and (4) (a) and am. (2) (g) and (4) (a), cr. (4) (b) Register May 2010 No. 653, eff. 6−1−10; CR. 10−094: am. (1) (title), (a), (b), (c) 1. to 5., 7., 12., (2) (title), (j), (3) (a), (4), (5) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (3) (a) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.16 Common or contract carriers. (1) MOTOR CARRIERS. (a) *Exemption.* Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for motor trucks, truck tractors, road tractors, buses, trailers, and semitrailers, and accessories, attachments, parts, supplies, and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers, and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38, Stats.

(am) *Exclusively.* As used in s. 77.54 (5) (b), Stats., and this section, "exclusively" means that the motor trucks, truck tractors, road tractors, buses, trailers, and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for this tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

Note: Under department of transportation rules, a licensed carrier (LC) number is required if a common or contract carrier hauls goods of others for hire. The sales and use tax exemption in par. (a) applies only if the common or contract carrier used the vehicle *exclusively* for hauling goods of others for hire.

(b) *Accessories and attachments.* Accessories, attachments, parts, and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54 (5) (b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle's load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps, and shoring beams. This exemption does not include corrugated boxes, containers, and related materials that are transferred to customers in conjunction with the selling, performing, or furnishing of a moving service, as provided in par. (g).

Note: In a decision dated May 19, 1980 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Dane County Circuit Court reversed the November 23, 1979 decision of the Wisconsin Tax Appeals Commission and held that van equipment and supplies that are exempt under s. 77.54 (5) (b), Stats., include furniture pads, covers, packing supplies, tape, pianoboards, ladders, walk-

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

boards, straps, lining paper and corrugated boxes. The Court also stated that "It must be kept in mind that it is undisputed that all of the items are assigned to and carried on the vans." The Court of Appeals District IV, affirmed the Circuit Court's decision. Under this interpretation, the only corrugated boxes and packing materials that qualify for exemption under s. 77.54 (5) (b), Stats., are those that are assigned to and carried on an exempt van and that are not transferred to a customer.

(c) *Repairs*. The sale or furnishing of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance to exempt vehicles shall be exempt.

(d) *Exceptions*. The exemption shall not apply to the following property used by common or contract carriers:

1. Automobiles as defined in s. 340.01 (4), Stats., except an automobile registered as a truck.

2. Self−propelled vehicles for off−highway use, such as road machinery, fork lifts, and other industrial trucks.

(e) *Equipment and supplies*. Equipment acquired by a carrier for the repair, service, or maintenance of its exempt vehicles is not exempt, including repair tools, welding torches, battery chargers, and grinding discs.

(f) *Conversion to private use*. If a vehicle purchased without tax is converted to private use, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) is due. The tax is measured by the sales price of the vehicle to the purchaser.

(g) *Packaging materials*. The transfer to a customer of corrugated boxes, containers, and related packing materials in conjunction with moving or transporting a customer's goods is incidental to the selling, performing, or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

(h) *Occasional sales*. Motor carriers are not required to register as retailers with the department if the sales price from their sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services are $1,000 or less within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services for resale without paying tax by issuing to their supplier a properly completed exemption certificate claiming resale or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

Note: Refer to s. Tax 11.002 for 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.

Examples: 1) A truck purchased to transport pads and packing materials to and from moving jobs qualifies for the exemption in par. (a).

2) Cutting down trees, cutting them into logs, and hauling them to a mill as a private business operation voids the exemption in par. (a), even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

3) Vehicles of a milk or cheese factory that engage in hauling milk from farms to its plant for processing do not qualify for the exemption under par. (a).

4) Towing of vehicles to the repair facility of a garage−wrecker operator is part of a private repair business that is not exempt under par. (a).

(2) RAILWAY ROLLING STOCK. (a) Section 77.54 (12), Stats., provides a sales and use tax exemption for the sales price from the sales of and the storage, use, or other consumption in this state of rail freight or passenger cars, locomotives, or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants, or fuel therefor.

(b) The exemption for rolling stock includes:

1. The sale or furnishing of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance to exempt rolling stock.

2. Purchases of any equipment that is operated on railroad rails, including an industrial firm's switching locomotives used to switch freight cars on its own property, except vehicles that may also be used on a highway.

3. Fuel used to heat a caboose or run a compressor that cools a railway car.

4. A utility's coal cars used to haul coal from mines to the utility.

(c) The exemption does not apply to:

1. Rails, crossties, and other road building and maintenance materials. However, sales of crossties to a common or contract carrier are exempt if they are shipped wholly or in part by way of the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside Wisconsin if the property is transported outside Wisconsin for use by the carrier in the conduct of its business as a carrier. The exemption will not be invalidated because of interruption of the shipment for storage, drying, processing, or creosoting of the crossties in Wisconsin.

2. Bracing materials, rough lumber, and dunnage materials.

3. Ice to refrigerate a railway car.

(3) COMMERCIAL VESSELS. (a) Section 77.54 (13), Stats., provides a sales and use tax exemption for the sales price from the sales of and the storage, use, or other consumption in this state of commercial vessels and barges of 50−ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts, and fuel therefor.

(b) The exemption for commercial vessels applies to:

1. 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.

2. Items that become a component part of the exempt commercial vessel.

3. The sale or furnishing of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of exempt commercial vessels.

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, nets, fishing tackle, lumber for dry docking, bracing, blocking and dunnage materials and other materials not incorporated into the vessel.

Note: Section Tax 11.16 interprets ss. 77.54 (5) (b), (7) (a), (12), and (13), 77.55 (2m), and 77.57, Stats.

Note: The interpretations in s. Tax 11.16 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The sale of packing materials to a service provider became taxable effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) The exemption for certain railroad crossties became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) Section 340.01 (61), Stats., which defined "station wagon" was repealed pursuant to 1999 Wis. Act 80; (d) In *Freight Lime and Sand Hauling, Inc. v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, November 20, 2002 (CCH 400−646), trucks hauling property of others for hire were found to qualify for exemption, even though the property being hauled had no value; (e) Section 77.57, Stats., was amended to remove the portion of the statute that allowed a purchaser to use the lesser of the cost or fair market value of an item that was purchased exempt and whose first taxable use occurred more than 6 months after it was purchased, pursuant to 2009 Wis. Act 2; and (f) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1978, No. 275, eff. 12−1−78; am. (1) (a) and (d), (3) (b) 1., Register, November, 1981, No. 311, eff. 12−1−81; am. (3) (b) 1., Register, January, 1983, No. 325, eff. 2−1−83; am. (1) (b), (d) and (2) (b) 2., r. and recr. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1−1−84; am. (1) (f) and (3) (b) 1., Register, July, 1987, No. 379, eff. 8−1−87; am. (1) (e) and (3) (b) 1., Register, April, 1990, No. 412, eff. 5−1−90; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1990, No. 412; am. (1) (a) and (d) and (2) (c) 1., r. (1) (g), renum. (1) (h) to be (g) and (1) (i) to be (h), Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. am. (1) (a), (b), (c), (f), (h), (2) (a), (b) 1. to 3., (3) (a) and (b) 3., renum. (1) (d) to be (1) (d) (intro.) and am., cr. (1) (d) 1. and 2., eff. 10−1−09; CR 09−090: am. (1) (a), (b), (c), (f), (h), (2) (a), (b) 1. to 3., (3) (a) and (b) 3., renum. (1) (d) to be (1) (d) (intro.) and am., cr. (1) (d) 1. and 2. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) (a), (am), (b), (e), (g), (2) (a), (c) 1., 2., (3) (a) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.17 Hospitals, clinics and medical professions. (1) GENERAL. (a) Although professional personnel in hospitals and clinics and other members of medical professions including physicians, surgeons, oculists, optometrists, and podiatrists regularly transfer antibiotics, bandages, splints, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to their patients in the performance of professional services, the transfer of that property, item, or good is an incident of a service rather than a retail sale of the property, item, or good. The persons are, therefore, deemed the consumers of the property, items, or goods in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics, and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for drugs furnished by a licensed physician, surgeon, or podiatrist to that person's patient for medical treatment. Section 77.54 (22b), Stats., provides an exemption for durable medical equipment for home use, mobility−enhancing equipment, and prosthetic devices, and repair and replacement parts and accessories for such equipment or devices, if such equipment or devices are used by a human being. The scope of these exemptions is set forth in ss. Tax 11.08, 11.09, and 11.45.

(2) PURCHASES BY HOSPITALS. Purchases by hospitals, except hospital service insurance corporations under s. 613.80 (2), Stats., are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a Certificate of Exempt Status, "CES", by the department. When purchasing property, items, goods, and services, a hospital shall furnish its CES number to its supplier, and the supplier may then make sales of every type of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

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

Taxable	Exempt
Adhesive tape	*Antiembolism elastic hose and stockings, including parts and accessories
Alcoholic beverages	*Artificial eyes and limbs, including parts and accessories
Apparatus and equipment for treatment of diabetes	*Blood sugar level testing supplies
Bandages, gauze and cotton	Bone pins and plates, including parts and accessories
Bed pans	* Crutches and wheel chairs, including motorized wheelchairs and scooters, including parts and accessories
Beds and linens	Diaphragms
Blankets	*Disposable syringes containing insulin
Cold packs and hot packs	Drugs
Compresses and dressings	Dye
Cosmetics	* Hearing aids, including parts and accessories
Deodorants and disinfectants	Medical oxygen
Distilled water	Oral contraceptives
Enema kits	Pacemakers, including parts and accessories
Instruments	Prophylactics
Laboratory equipment and supplies	Rubbing alcohol
Medical equipment	Suppositories
Needles and syringes	Sutures
Office equipment and supplies	Vaccines
Oxygen delivery equipment	Vaginal creams and jellies
Paper products	Vitamins
Printed material	
Rib belts and supports	
Soda water beverages	
Soap	
Splints and cast materials	
Uniforms and gowns	
X−ray film and machines	

(4) SALES BY HOSPITALS, HOSPITAL AUXILIARIES, CLINICS, AND MEMBERS OF THE MEDICAL PROFESSIONS. (a) The sales price from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for rooms, medical services, and other items including charges for anesthesia and anesthesia supplies, bandages applied in the hospital, blood and blood plasma, dressings applied in the hospital, intravenous solutions, laboratory tests, oxygen, radiation, and x−ray treatment.

2. Hospitals' sales of food and food ingredients, except soft drinks.

3. Prepared food sold to the elderly or handicapped by persons providing "mobile meals on wheels."

(b) The sales price from the sales of the following are taxable:

1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.

3. Sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services by a clinic, which sales are not directly related to the rendition of medical services.

4. Sales of prepared food and other tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services by an organization affiliated with a hospital, except as provided in par. (a) 3.

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

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

5. Sales of soft drinks by hospitals.

6. An optometrist's sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including nonprescription sun glasses, contact lens solution, and other types of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., ordinarily taxable when sold at retail, unless the sales price from those sales are less than $1,000 during the calendar year. Optometrists whose receipts from taxable property, items, and goods equal or exceed $1,000 in a calendar year shall register with the department and obtain a seller's permit. Those whose receipts from taxable property, items, and goods are less than $1,000 shall be

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable property, items, or goods.

(5) HOSPITAL DEFINITION. Section 50.33 (2), Stats., provides the definition of hospital which is to be used for sales tax purposes.

Note: Section Tax 11.17 interprets ss. 77.51 (3pj), (3pm), (7m), and (11m), 77.52 (1) and (2) (a) 1. and 9., and 77.54 (9a), (14), (14m), (14r), (20n), (22b), and (28), Stats.

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.

Note: Refer to s. Tax 11.33 for additional information relating to occasional sales.

Note: The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for needles and syringes used by diabetics became effective November 19, 1975, pursuant to Ch. 102, Laws of 1975; (b) The exemption for oxygen equipment became effective September 1, 1983, pursuant to 1983 Wis. Act 27; (c) The exemption for motorized scooters became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for diabetic apparatus and equipment and supplies for determining blood sugar levels became effective March 1, 1989, pursuant to 1987 Wis. Act 399; (e) The exemption for antiembolism elastic hose and stockings prescribed by a physician became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The purchases by a hospital service insurance corporation under s. 613.80 (2), Stats., became taxable effective September 1, 1985, pursuant to 1985 Wis. Act 29; (g) The exemption for parts and accessories for certain medical equipment became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (h) The sales of meals by hospitals off the hospital's premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemptions for durable medical equipment for home use, mobility−enhancing equipment, and prosthetic devices became exempt October 1, 2009 pursuant to 2009 Wis. Act 2; and (j) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, May, 1978, No. 269, eff. 6−1−78; am. (4) (a) 1. and cr. (4) (b) 5., Register, January, 1983, No. 325, eff. 2−1−83; am. (3), Register, September, 1984, No. 345, eff. 10−1−84; am. (1) (a), Register, August, 1985, No. 356, eff. 9−1−85; am. (1) (b), (2), (3), (4) (b) 4. and (5), Register, March, 1991, No. 423, eff. 4−1−91; am. (1) (a), (3), (4) (a) 2. and (b) 4., renum. (4) (b) 5. to be (4) (b) 6. and am., cr. (4) (b) 5., Register, May, 1993, No. 449, eff. 6−1−93; EmR0924: emerg. am. (1) to (4) (a), (b) (intro.) and 3. to 6., cr. (4) (a) 3., eff. 10−1−09; CR 09−090: am. (1) to (4) (a), (b) (intro.) and 3. to 6., cr. (4) (a) 3. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) to (3), (4) (title), (a) 2., 3. Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (4) (b) 6. Register August 2012 No. 680, eff. 9−1−12.**

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

(2) EXEMPT SALES TO DENTISTS. (a) The sales price from the following sales to dentists are exempt under s. 77.54 (14) or (22b), Stats., when used for a human being:

1. Drugs, including nitrous oxide, oxygen, novocaine, toothpaste, and bone regeneration materials.

2. Gold, silver, amalgam, and other alloys used to fill teeth and cement and bonding agents used in conjunction with fillings.

3. Crowns, bridges, bridgework, dentures, inlays, fillings, and other items, including parts and accessories for those items, which the dentist installs in the human patient's mouth.

4. Bands, brackets, wire, space maintainers, positioners, and other items installed in a patient's mouth to prevent or correct a physical deformity or to support a weak or deformed portion of the body.

(b) The items described in par. (a) include braces and other corrective and supporting devices, such as teeth, mouth, and jaw braces and supports.

(3) TAXABLE SALES TO DENTISTS. (a) The sales price from the following sales to dentists are taxable:

1. Dental equipment and surgical instruments.

2. Office equipment, office supplies, and consumable supplies used by dentists to conduct their business.

(b) Items included in par. (a) include tongue depressors, bandages, tooth brushes, dental floss, and cotton.

Note: Section Tax 11.18 interprets ss. 77.51 (3pj), (11m), (13) (e) and (f), and (15a), 77.52 (2m), and 77.54 (14) and (22b), Stats.

Note: The interpretations in s. Tax 11.18 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for parts and accessories for certain items became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (b) The term "gross receipts" was changed to "sales price" effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1978, No. 275, eff. 12−1−78; am. (1), r. and recr. (2) and (3), Register, April, 1990, No. 412, eff. 5−1−90; am. (1) and (2) (a) 3., Register, May, 1993, No. 449, eff. 6−1−93; EmR0924: emerg. am. (2), (3) (a) (intro.), 2. and (b), cr. (2) (a) 4., r. and recr. (3) (a) 1., eff. 10−1−09; CR 09−090: am. (2), (3) (a) (intro.), 2. and (b), cr. (2) (a) 4., r. and recr. (3) (a) 1. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (b) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.19 Printed material exemptions. (1) GENERAL. All retail sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This section describes exemptions which commonly apply to sales of printed material.

(2) STATUTES. (a) Section 77.52 (2) (a) 11., Stats., imposes the sales and use tax on certain services. However, an exemption is provided for the printing or imprinting of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished by customers, that results in printed materials, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

(b) Section 77.54 (15), Stats., provides an exemption for the sale of newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats., of controlled circulation publications sold to commercial publishers for distribution without charge or mainly without charge or regularly distributed by or on behalf of publishers without charge or mainly without charge to the recipient and of shoppers guides which distribute no less than 48 issues in a 12−month period.

(c) Section 77.54 (25), Stats., provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. This exemption does not include catalogs or the envelopes in which the catalogs are mailed.

(cm) Section 77.54 (25m), Stats., provides an exemption for catalogs, as defined in s. 77.51 (1fr), Stats., and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

(d) Section 77.54 (2m), Stats., provides an exemption for the sales price from the sales of and the storage, use, or other consumption of tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and 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 with charge to the recipient. This exemption applies to newspapers, shoppers guides, and periodicals which are issued at average intervals not exceeding 3 months or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (8), Stats.

(e) Section 77.51 (13h), Stats., provides that a foreign corporation that is a publisher of printed materials is not engaged in business in Wisconsin and is not required to register and collect Wisconsin sales or use tax if its only activities in Wisconsin are:

1. The storage of its raw materials in Wisconsin in or on property not owned by the foreign corporation and delivery of its

raw materials to another person in Wisconsin if the storage and delivery are for printing by that other person. "Raw material" 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.

2. The purchase from a printer of printing services or of printed materials in Wisconsin for the publisher.

3. The storage of the printed material or raw material for any length of time in Wisconsin in or on property owned by a person other than the publisher.

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

(f) Section 77.54 (43), Stats., provides a sales and use tax exemption for raw materials used for the processing, fabricating, or manufacturing of, attaching to or incorporating into, printed materials that are transported and used solely outside Wisconsin.

(3) NEWSPAPERS, SHOPPERS GUIDES, CONTROLLED CIRCULATION PUBLICATIONS AND PERIODICALS DEFINED. (a) Section 77.51 (8), Stats., defines a "newspaper" under ch. 77, Stats., as: *"... those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1) is a newspaper. 'Newspaper' also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A 'newspaper' does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."*

(b) Section 77.54 (15), Stats., defines a shoppers guide as: "*a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals*" and it defines a controlled circulation publication as *"a publication that has at least 24 pages, is issued at regular intervals not exceeding 3 months, that devotes not more than 75% of its pages to advertising and that is not conducted as an auxiliary to, and essentially for the advancement of, the main business or calling of the person that owns and controls it"*.

Example: A taxpayer publishes a quarterly publication which it mails to current and prospective customers. The publication contains articles of interest to customers which contain endorsement of the taxpayer's business and products. The publication also contains advertising of the taxpayer's products as well as products of other vendors. This publication is conducted essentially for the advancement of the taxpayer's business and does not qualify as a controlled circulation publication.

(c) The exemption for periodicals is limited to publications which are sold by subscription and which are regularly issued at average intervals not exceeding 3 months, or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats., each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To qualify for the exemption, the publication must qualify for the periodicals rate under U.S. postal laws and regulations or as a controlled circulation publication.

(d) The newspaper and periodical exemption does not apply to books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so−called "one−shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The exemption also does not apply to catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price or order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

Example: Books sold by the Book of the Month Club or similar organizations do not qualify for the newspaper and periodical exemption.

(4) PRINTED ADVERTISING MATERIALS FOR OUT–OF–STATE USE. (a) Printed advertising materials may be purchased from Wisconsin or out−of−state suppliers without tax pursuant to s. 77.54 (25), Stats., when those materials are purchased and stored for the purpose of subsequently transporting the same outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. This exemption does not apply to catalogs designed to be used by a seller's potential customers. See sub. (5m) for information relating to an exemption for catalogs and the envelopes in which the catalogs are mailed.

(b) The exemption does not apply to printed advertising materials shipped to Wisconsin addresses, except for catalogs and the envelopes in which they are mailed, as provided in s. 77.54 (25m), Stats., parts stock order books, order forms, stocking and purchasing guides, stockholders' annual reports or proxy statements, display racks, 3−dimensional plastic items designed to be used by wholesalers and retailers, matchbooks, desk pads, golf balls, binders, and playing cards. It also does not apply to the following items if they are not designed to advertise or promote the sale of merchandise:

1. Calendars.
2. Calendar pads.
3. Envelopes.
4. Folders.
5. Parts price lists.

(5) RAW MATERIALS INCORPORATED INTO PRINTED MATERIALS. Pursuant to s. 77.54 (43), Stats., Wisconsin sales and use tax is not imposed on raw materials if both of the following conditions are met:

(a) The raw materials are processed, fabricated, or manufactured into, attached to, or incorporated into printed materials.

(b) The resulting printed materials will be transported and used solely outside Wisconsin.

Examples: 1) Company A, a Wisconsin company, publishes catalogs to promote the sale of its products. Company A purchases paper from a company that does not have nexus in Wisconsin. The paper is delivered to a Wisconsin printer that prints the catalogs for Company A. The catalogs are shipped outside Wisconsin for use solely outside Wisconsin.

The paper purchased by Company A for the catalogs is not subject to Wisconsin use tax.

2) Assume the same facts as 1) above, except that the company selling the paper is located in Wisconsin.

The paper purchased by Company A for the catalogs is not subject to Wisconsin sales tax.

(5m) CATALOGS AND THEIR MAILING ENVELOPES. (a) Section 77.54 (25m), Stats., provides an exemption from Wisconsin sales and use tax for the sales price from the sale of and the storage, use, or other consumption of catalogs, and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

(b) "Catalog" is defined in s. 77.51 (1fr), Stats., to mean a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(6) EXEMPT PURCHASERS. Sales of printed material to federal and Wisconsin governmental units, any federally recognized American Indian tribe or band in Wisconsin, Wisconsin public schools, and certain nonprofit religious, charitable, educational, or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to federal and Wisconsin governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained or the governmental unit's certificate of exempt status number is recorded on the bill of sale. Sales to nonprofit organizations holding a certificate of exempt status can be shown to be exempt by recording the certificate of exempt status number on the bill of sale.

Note: Section Tax 11.19 interprets ss. 77.51 (1fr), (8), and (13h), 77.52 (1), (2) (a) 11., 77.54 (2m), (9a), (15), (25), (25m), and (43), and 77.55 (1), Stats.

Note: The interpretations in s. Tax 11.19 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 in sub. (2) (a) became effective March 1, 1970; (b) The exemption for advertising materials used out−of−state in sub. (4) (a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1985 Wis. Act 149; (h) The provision for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336; (i) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (k) The exemption for periodicals sold by subscription by educational associations and corporations which are exempt under s. 77.54 (9a) (f), Stats., became effective December 1, 1997 pursuant to 1997 Wis. Act 27; (L) The exemption for catalogs became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (m) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, August, 1979, No. 284, eff. 9−1−79; am. (2) (c) and (4) (b), Register, December, 1983, No. 336, eff. 1−1−84; am. (2) (b) and (3) (c), cr. (2) (d), r. and recr. (3) (a) and (b), Register, September, 1984, No. 345, eff. 10−1−84; am. (2) (a) and (b), (3) (b) and (4) (a), Register, June, 1990, No. 414, eff. 7−1−90; am. (1), (2) (a), (c) and (d), (3) (d), (4) (a) and (b) and (5), cr. (2) (e), Register, March, 1991, No. 423, eff. 4−1−91; am. (2) (e) and (4) (b), cr. (2) (f) and (5), renum. (5) to be (6), Register, April, 1994, No. 460, eff. 5−1−94; am. (2) (d), (f), (5) (intro.), (b) and (6), Register, June, 1999, No. 522, eff. 7−1−99; EmR0924: emerg. am. (1), (2) (a) to (d), (e) 2., 4., (f), (3) (c), (4) (a), (5) (intro.), (a) and (6), cr. (2) (cm) and (5m), r. and recr. (4) (b), eff. 10−1−09; CR 09−090: am. (1), (2) (a) to (d), (e) 2., 4., (f), (3) (c), (4) (a), (5) (intro.), (a) and (6), cr. (2) (cm) and (5m), r. and recr. (4) (b) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1), (2) (a), (d) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.20 Property used in qualified research and property used to raise research animals. (1) DEFINITIONS. In this section:

(a) "Animals" include bacteria, viruses, and other microorganisms.

(b) "Biotechnology" means the application of biotechnologies, including recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses, that use living organisms or parts of an organism to produce or modify products to improve plants or animals or improve animal health, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

(c) "Biotechnology business" means a business certified, as described in sub. (4), by the department to be primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

(d) "Institution of higher education" means an accredited educational organization providing education after completion of high school, including undergraduate, graduate, and professional education.

(e) "Machinery" has the meaning given in s. 70.11 (27) (a) 2., Stats., and means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but "machinery" does not include a building.

(f) "Person" includes any natural person, firm, partnership, limited liability company, joint venture, joint stock company, association, public or private corporation, the United States, the state, including any unit or division of the state, any county, city, village, town, municipal utility, municipal power district or other governmental unit, cooperative, unincorporated cooperative association, estate, trust, receiver, personal representative, any other fiduciary, any other legal entity, and any representative appointed by order of any court or otherwise acting on behalf of others.

(g) "Primarily" means more than 50 percent.

(h) "Qualified research" means qualified research as defined under section 41 (d) (1) of the Internal Revenue Code.

(i) "Used exclusively" means used to the exclusion of all other uses except for other use not exceeding 5% of total use.

(2) EXEMPTIONS FOR PROPERTY AND ITEMS USED IN QUALIFIED RESEARCH. (a) Sales of the following property and items to a person who is engaged primarily in manufacturing or biotechnology in Wisconsin are exempt:

1. Machinery and equipment, including attachments, parts, and accessories, that are used exclusively and directly in qualified research.

2. Tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., that is consumed or destroyed or loses its identity while being used exclusively and directly in qualified research, including fuel and electricity that is used exclusively and directly in qualified research.

(b) For purposes of determining whether a person is engaged primarily in manufacturing or biotechnology in this state under par. (a), only activities in Wisconsin are considered. When a person conducts activities in Wisconsin in addition to manufacturing or biotechnology, the person must allocate its activities between its manufacturing and biotechnology activities and its other activities using a reasonable and consistent method. If a person's manufacturing and biotechnology activities in Wisconsin are more than 50% of its total activities in Wisconsin, the person is engaged primarily in manufacturing or biotechnology in this state.

Examples: (1) Company A performs research and development services at locations in Wisconsin for its customers. This is Company A's only activity in Wisconsin. Some of the research and development services are biotechnology and some of the research and development services are not biotechnology. Using the sales price of its services as the measure of activity, more than 50% of the total sales price Company A receives for performing all of its research and development services in Wisconsin is derived from biotechnology. Therefore, Company A is primarily engaged in biotechnology in Wisconsin.

(2) Company B performs research and development services at locations outside of Wisconsin. Company B manufactures tangible personal property at a location in Wisconsin. This is Company B's only activity in Wisconsin. The products manufactured in Wisconsin are used by Company B in performing its research and development services at locations outside of Wisconsin. Company B is engaged primarily in manufacturing in Wisconsin since manufacturing is its only activity in Wisconsin.

(3) Company X manufactures machinery at a plant outside of Wisconsin. Company X operates a facility in Wisconsin that is devoted solely to research and development relating to the products Company X manufactures. Although Company X's activities in Wisconsin are research and development activities that constitute qualified research, its activities in Wisconsin are not biotechnology. The research and development activities are Company X's only activities in Wisconsin. Therefore, Company X is not engaged primarily in manufacturing or biotechnology in Wisconsin.

(4) Company Z manufactures products at a plant outside of Wisconsin. Company Z operates a facility in Wisconsin that is devoted solely to research and development. This is Company Z's only activity in Wisconsin. The research and development relates to products Company Z currently manufactures as well as to new products that Company Z may manufacture. Some of its research and development activities in Wisconsin constitute biotechnology and qualified research. Since Company Z only performs research and development activities for itself, it does not have any sales rev-

enue from these activities. Company Z reasonably allocates its costs and expenses incurred in conducting all of these research and development activities in Wisconsin between biotechnology and non−biotechnology. More than 50% of these costs and expenses are for biotechnology. Therefore, Company Z is engaged primarily in biotechnology in Wisconsin.

(5) Company T is a new business located solely in Wisconsin. In its first year of operation, Company T's only activity is developing new products for itself. Some of these development activities are biotechnology. Since Company T only performs development activities for itself, it will not have any sales revenues during its first year of operations. Company T reasonably allocates its costs and expenses incurred in conducting all of its development activities in Wisconsin between biotechnology and non−biotechnology during its first year of operations. More than 50% of these costs and expenses are for biotechnology. Therefore, Company T is engaged primarily in biotechnology in Wisconsin.

(c) For purposes of determining whether an activity is qualified research under par. (a) 1. or 2., the regulations under Treas. Reg. section 1.41−4 apply.

Note: Treas. Reg. section 1.41−4 provides interpretation and guidance concerning what constitutes qualified research under section 41 (d) (1) of the Internal Revenue Code. Treas. Reg. section 1.41−4 is available at www.gpoaccess.gov.

(d) If property or an item purchased without tax by claiming an exemption under par. (a) is used for non−exempt purposes that exceed 5% of total use, that property or item is subject to sales or use tax.

Examples: (1) Company A is engaged primarily in manufacturing in Wisconsin. Company A purchases a machine that it will use directly in conducting qualified research at its manufacturing plant in Wisconsin and purchases it exempt from Wisconsin sales tax claiming the exemption in par. (a). After completing the qualified research and having made no use of the machine other than direct use in qualified research, Company A begins using the machine exclusively and directly in its manufacturing operation, which is another exempt use. Company A does not owe Wisconsin sales or use tax on its purchase of the machine since it only used the machine in an exempt manner.

(2) Company B is engaged primarily in manufacturing in Wisconsin. Company B purchases a machine that it will use directly in conducting qualified research at its manufacturing plant in Wisconsin. More than 5% of Company B's total use of this machine will be for conducting research and development projects that do not meet the definition of qualified research. Company B's purchase of the machine is taxable because it is not used exclusively in qualified research.

(3) Company C is engaged primarily in manufacturing in Wisconsin. Company C develops a new product in an activity that is qualified research. Company C purchases a variety of raw materials. Some of these materials are used exclusively and directly and destroyed in qualified research. Once the qualified research is completed, Company C consumes the remaining raw materials in activities that are not qualified research. Company C's purchases of the raw materials that it uses exclusively and directly and destroys in qualified research are exempt under par. (a) 2. Company C's purchases of the raw materials that it uses in activities that are not qualified research do not qualify for this exemption.

(4) Manufacturer P is engaged primarily in manufacturing in Wisconsin. Manufacturer P contracts with Company D to produce a prototype that is tangible personal property. Manufacturer P's primary objective in this transaction is to obtain the prototype, rather than a research and development service. Company D may purchase the materials used to construct the prototype without tax for resale. Manufacturer P will use the prototype exclusively and directly in one of its research and development activities that constitutes qualified research and may claim the exemption under par. (a) on its purchase of the prototype.

(5) Manufacturer F is engaged primarily in manufacturing in Wisconsin. Manufacturer F contracts with Company E to perform research services. Company E will provide a prototype that is tangible personal property to Manufacturer F along with these services. Manufacturer F's primary objective in this transaction is to obtain the research and development services. Company E's primary activity in Wisconsin is the provision of professional engineering services that do not involve biotechnology. Company E may not claim the exemptions under par. (a), since Company E is not engaged primarily in manufacturing or biotechnology in Wisconsin. In addition, Company E cannot purchase the materials without tax for resale that it uses to construct the prototype, because Company E uses the prototype in performing its research services. The prototype is transferred to Manufacturer F incidental to the research services.

(e) 1. A business claiming an exemption under par. (a) shall maintain records to substantiate that at least 95% of the property or item's total use is direct use in qualified research, including records to establish all of the following:

a. The activity or activities in which the property or item is used.

b. The manner in which the property or item is used in each activity.

c. The activity or activities in which the property or item is used constitute qualified research.

2. If contemporaneous with the research activity or activities performed, documents that may, as required under subd. 1. c., establish an activity or activities that constitute qualified research include the following:

a. Materials explaining the research activities conducted, including brochures, pamphlets, press releases, and other similar documents.

b. Submissions to management, the board of directors, review committees, or other similar groups regarding the research projects, activities, and the expenditures.

c. Documents prepared by, or on behalf of, internal audit, including quarterly and annual reports that refer in any manner to the research activities.

d. Minutes, notes, or other similar recordings from budget, board of director, managerial or other similar meetings concerning the research activities.

e. Project authorizations, budgets, or work orders that initiate a research project.

f. Position and department descriptions of employees identified as providing qualified research.

g. The internal authorization policies for approving a research project.

h. Patent applications.

i. Project summaries and/or project reports and project meeting minutes.

j. Prototype and process testing reports, field and lab verification data/summary data.

k. Papers, treaties, or other published documents regarding the taxpayer's research.

L. Complete copies of contracts, including all modifications, letter agreements, memoranda of understanding, or similar documents for research performed by, or on behalf of, a third party.

Example: This example illustrates records that are generally acceptable as adequate to document the exemptions under par. (a).

Company A is primarily engaged in manufacturing in Wisconsin. Company A attempts to make a new and improved widget. Upon approval of a project, Company A documents the scope and goals of the project, the uncertainties that exist in accomplishing these goals, and the processes by which Company A hopes to eliminate the uncertainties. In addition, contemporaneously with conducting the research project, Company A documents: (1) the location or locations at which the research is conducted, (2) the machinery and equipment used in the project and the manner used, (3) the various materials and supplies used in attempting to produce the improved widget, the purpose and manner in which such items were used, (4) the processes applied, (5) the results achieved throughout the research process, and (6) the point at which Company A either abandons the research project or achieves the goal of eliminating the uncertainties involved with the development of the new widget. Company A purchased various machinery and equipment, and supplies and materials used in conjunction with development of the new widget without tax claiming the purchases are exempt under par. (a). In general, contemporaneous records kept in the manner and detail described will be accepted and used by the department in making its determinations regarding whether the taxpayer is entitled to claim the exemptions under par. (a).

3. A business claiming an exemption under par. (a) shall provide records described in subd. 2. or any other information as required by the department to verify that activities are qualified research or that machinery, equipment, or other property or items are used exclusively and directly in qualified research.

(3) EXEMPTIONS FOR RAISING ANIMALS USED IN QUALIFIED RESEARCH OR MANUFACTURING. (a) Sales of the following property and items to a person who is engaged in the business of raising animals are exempt if all of the animals raised by the seller of the animals are sold primarily to biotechnology businesses, public or private institutions of higher education, and governmental units for exclusive and direct use by those entities in qualified research or manufacturing:

1. Machines and specific processing equipment, including accessories, attachments, and parts for the machines or equipment, that are used exclusively and directly in raising such animals.

2. Seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides and fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, containers for fruits, vegetables, grain, hay, silage and animal wastes, plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage, medicines, semen for artificial

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

insemination, fuel, and electricity, that are used exclusively and directly in raising such animals.

Examples: (1) Company A raises various animals that it sells for use in qualified research. Company A sells more than 50% of the animals it raises to biotechnology businesses for exclusive and direct use in qualified research. All of the feed Company A purchases for exclusive and direct use in raising its animals is exempt.

(2) Company T raises various animals that it sells for use in qualified research. Company T uses cages to raise some of these animals. Company T's purchases of cages are exempt only if more than 50% of all the animals raised by Company T are sold to biotechnology businesses, public or private institutions of higher education, and governmental units for exclusive and direct use by those organizations in qualified research or manufacturing.

(b) For purposes of determining whether an activity is qualified research under par. (a), the regulations under Treas. Reg. section 1.41−4 apply.

Note: Treas. Reg. section 1.41−4 provides interpretation and guidance concerning what constitutes qualified research under section 41 (d) (1) of the Internal Revenue Code. Treas. Reg. section 1.41−4 is available at www.gpoaccess.gov.

(c) A person claiming an exemption under par. (a) shall obtain a "Purchaser's Statement to Seller for Animals Used in Qualified Research or Manufacturing," form S−209, from each of its customers described in par. (a) (intro.) and keep the completed forms as a part of its records to document the number of animals that were raised by the seller and sold to biotechnology businesses, public or private institutions of higher education, and governmental units for exclusive and direct use in qualified research or manufacturing. When completing Form S−209, the purchaser of the animals is attesting to the number of animals purchased and the number of animals used exclusively and directly in qualified research or manufacturing.

Note: Form S−209 is available on the department's web site at www.revenue.wi.gov.

(4) CERTIFICATION OF BIOTECHNOLOGY BUSINESSES BY THE DEPARTMENT. (a) In order to be considered a biotechnology business for purposes of the exemptions under sub. (3), a business shall first obtain certification from the department.

(b) A business seeking certification or renewal of a certification under this subsection shall apply with the department in the manner prescribed by the department. The department may require any business submitting an application under this paragraph to provide additional information, as determined by the department, prior to the department granting or denying the applicant's request for certification or renewal of a certification.

Note: Information concerning the certification process is available on the department's web site at www.revenue.wi.gov.

Example: Additional information that may be requested by the department in processing an application includes documentation of the nature of the business' income and expenses.

(c) A business shall be certified by the department as a biotechnology business for the period described in par. (d) if, during that period, the business' activities are primarily biotechnology.

(d) The certification period under par. (c) shall correspond to the business' tax year as determined for federal income tax purposes, including short years, subject to the following conditions:

1. If a business is certified by the department with respect to a previous tax year, the certification is valid only for the previous tax year.

2. If a business is certified for a current tax year, the certification is valid until the expected end of the tax year unless, during such tax year the business' tax year terminates earlier than expected. When a tax year terminates earlier than expected, the certification is valid until the actual end of the tax year as determined for federal income tax purposes.

(e) Notwithstanding any other provision in this subsection, the department may:

1. Revoke any certification granted under this subsection, but only upon information that either the business' application for certification contained a misstatement as to the business' gross income or expenses and deductions or the business no longer qualifies as a biotechnology business.

2. Require any business seeking certification to be certified only with respect to its previous tax years.

History: CR 12−015: cr. Register July 2012 No. 679, eff. 8−1−12.

Subchapter IV — Sales Price

Tax 11.26 Other taxes in taxable sales price and purchase price. (1) GENERAL RULE. (a) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold at retail are subjected to many direct and indirect taxes prior to reaching a retailer. The taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. The tax may be imposed by Wisconsin, the federal government, or a municipality.

(b) In determining the sales price or purchase price used to compute Wisconsin sales or use taxes, the treatment of a tax for sales tax purposes is identical to the treatment that applies for use tax purposes. The same taxes that are included or excluded from the sales price are also included or excluded from the purchase price.

(2) TAXES INCLUDED AS PART OF SALES PRICE AND PURCHASE PRICE. The following taxes are included in the sales price and the purchase price, except as provided in sub. (3):

(a) The fermented malt beverage tax imposed by s. 139.02, Stats.

(b) The taxes imposed upon intoxicating liquors, including wine, by s. 139.03, Stats.

(c) Any federal stamp tax and manufacturer's or importer's excise tax not imposed directly on the purchaser. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel except motor fuel taxes refunded, tires, firearms, sporting goods, and air or ship transportation.

(d) A federal, county, or municipal fuel tax included in the price of alternate fuels and general aviation fuel subject to sales tax.

Example: Fuel taxes are included in the price of fuel used in aircraft, boats, and for other nonhighway use. The taxes are included in the sales price.

(e) The cigarette tax imposed by ss. 139.31 and 139.33, Stats.

(f) The Canadian or any other country's export gallonage tax on fuels.

(g) The tobacco products tax imposed under ss. 139.76 and 139.78, Stats.

(h) The federal gas guzzler tax imposed under s. 4064 of the internal revenue code.

(3) TAXES EXCLUDED FROM SALES PRICE OR PURCHASE PRICE. Section 77.51 (12m) (b) 3. and (15b) (b) 3., Stats., exclude from the sales price and purchase price any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser. Therefore, the following taxes are excluded from the sales price or the purchase price if they are separately stated on the invoice, bill of sale, or similar document given to the purchaser:

(a) The federal communications tax imposed upon telegraph service and telephone service.

(b) Any tax imposed by the United States, this state, or a Wisconsin municipality upon or with respect to retail sales.

Examples: Taxes which are not included in a retailer's sales price, if they are separately stated on the invoice, bill of sale, or similar document given to the purchaser, include:

1) The room taxes imposed under s. 66.0615, Stats., which municipalities or local exposition districts impose on persons furnishing lodging to transients.

2) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the internal revenue code.

3) The county and stadium sales and use taxes imposed under s. 77.71, Stats.

4) The local exposition district food and beverage and rental car taxes imposed under ss. 77.98 and 77.99, Stats.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

5) The premier resort area taxes imposed under s. 77.994, Stats.

6) The state rental vehicle fee imposed under s. 77.995, Stats.

7) The federal luxury tax imposed under ss. 4001 through 4007 of the internal revenue code.

(c) Federal and Wisconsin motor vehicle excise taxes refunded.

Note: Section Tax 11.26 interprets s. 77.51 (12m) and (15b), Stats.

Note: The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (b) The change of the term "ross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (c) the regional transit authority taxes were authorized by 2009 Wis. Act 28 and repealed by 2011 Wis. Act 32.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; am. (2) (d) and (e) and cr. (2) (f), Register, January, 1983, No. 325, eff. 2−1−83; cr. (2) (g), Register, December, 1983, No. 336, eff. 1−1−84; am. (3) (b), Register, April, 1990, No. 412, eff. 5−1−90; am. (1) (a) and (b), (2) (intro.), (b), (c), (d) and (e) and (3) (a), Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (intro.), (c), (3) (intro.) and (b), Register, December, 1992, No. 444, eff. 1−1−93; am. (2) (c) and (d), cr. (2) (h) and (3) (c), Register, August, 1999, No. 524, eff. 9−1−99; EmR0924: emerg. am. (title), (1) (a), (2) (title), (intro.), (c), (3) (title) and (b), r. and recr. (1) (b) and (3) (intro.), eff. 10−1−09; CR 09−090: am. (title), (1) (a), (2) (title), (intro.), (c), (3) (title) and (b), r. and recr. (1) (b) and (3) (intro.) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) (a), (2) (c), (d), (3) (b) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (3) (Example 1), (Example 3) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.27 Maintenance contracts, insurance, and warranties. (1) DEFINITIONS. In this section:

(a) "Computer software maintenance contract" means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, computer software support services, or both.

(b) "Insurance" means a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(c) "Warranty" means a contract or agreement which promises indemnity against defects in tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sold.

(2) RECEIPTS FROM INSURANCE. The sales price from the sale of insurance, except contracts under s. 77.52 (2) (a) 13m., Stats., are not subject to Wisconsin sales or use tax when separately stated on the invoice provided to the purchaser.

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

2) Company A rents a vehicle to Customer B for $200. On the invoice, Company A shows a charge for vehicle rental of $175 and a charge for insurance of $25. The charge of $175 is subject to Wisconsin sales or use tax. The $25 charge for the insurance is not subject to tax since it is separately stated on the invoice provided to the purchaser.

(3) RECEIPTS FROM MAINTENANCE CONTRACTS AND WARRANTIES. Section 77.52 (2) (a) 13m., Stats., imposes Wisconsin sales tax on the sale of contracts, including service contracts, maintenance agreements, computer software maintenance contracts for prewritten computer software, and warranties, that provide, in whole or in part, for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., unless the sale, license, lease, or rental in this state of the property, items, or goods to which the contract relates is or was exempt, to the purchaser of the contract, from taxation under subch. III of ch. 77, Stats.

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

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

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

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

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

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

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

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

(b) 1. A retailer who provides parts or performs taxable repair services to tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under an insurance plan may purchase the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., in repairing real property under an insurance plan is the consumer of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred.

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

(5) REPAIRS BY RETAILERS UNDER MAINTENANCE CONTRACTS AND WARRANTIES. (a) The sales price from charges by a retailer to a customer for taxable repair parts or taxable services performed under a maintenance contract or warranty and that are not reimbursed by the seller of the maintenance contract or warranty are subject to Wisconsin sales or use tax.

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

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

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

(c) 1. A retailer who provides parts or performs taxable repair services to tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under a maintenance contract or warranty may purchase the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to the customer as part of the repair without Wisconsin sales or use tax as property, items, or goods for resale.

2. A person who provides tangible personal property or items or property, under s. 77.52 (1) (b) or (c), Stats., in repairing real property under a maintenance contract or warranty is the con-

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

sumer of the tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property or items or property, under s. 77.52 (1) (b) or (c), Stats., transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(6) REPAIRS NOT BY RETAILERS. If a retailer does not repair tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under a maintenance contract, warranty, or insurance plan, but instead has another person perform the repairs covered under the maintenance contract, warranty, or insurance plan, the person's sales price from the sale of the repair to the retailer is not subject to Wisconsin sales or use tax provided the retailer gives the person a properly completed exemption certificate. The charge for repairs by the other person is exempt as a sale for resale whether or not the original sale of the property, item, or good to which the maintenance contract, warranty, or insurance plan relates occurred in Wisconsin. The sales and use tax treatment of the charge by the retailer to the customer or plan provider is the same as provided in subs. (4) and (5).

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

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

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

Note: Section Tax 11.27 interprets ss. 77.51 (14) (intro.), (15b), 77.52 (2) (a) 10. and 13m., and 77.54 (8), Stats.

Note: The interpretations in s. Tax 11.27 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) the definitions in sub. (1) and the provisions in subs. (4) (b) 2. and (5) (c) 2. became effective on February 1, 1994; (b) The definition of computer software maintenance contract became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (c) The specific imposition of tax on maintenance contracts and extended warranties became effective October 1, 2009 pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (1), (2) (a) and (b), Register, September, 1984, No. 345, eff. 10−1−84; am. (2) (c), Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. Register, January, 1994, No. 457, eff. 2−1−94; EmR0924: emerg. am. (title), (2), (4), (5) (title), (a), (c), (6) and (7), renum. (1) (a) and (b) to be (1) (b) and (c) and am., cr. (1) (a), r. and recr. (3), eff. 10−1−09; CR 09−090: am. (title), (2), (4), (5) (title), (a), (c), (6) and (7), renum. (1) (a) and (b) to be (1) (b) and (c) and am., cr. (1) (a), r. and recr. (3) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.28 Gifts and other advertising specialties.

(1) DEFINITIONS. (a) Section 77.51 (15a) (b) 2., Stats., provides that "sales, lease, or rental for resale, sublease, or subrent" does not include any sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a purchaser even though the property, items, or goods may be used or consumed by another person to whom the purchaser transfers the property, items, or goods without valuable consideration, such as gifts and other advertising specialties distributed at no charge and apart from the sale of other tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services.

Note: Section 77.51 (14) (k), Stats., was repealed eff. 10−1−09. See s. 77.51, Stats., for the current definitions.

(b) Section 77.51 (15b) (a), Stats., provides that "sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services are sold, licensed, leased or rented, valued in money, whether received in money or otherwise.

Note: Section 77.51 (4), Stats., was repealed by 2009 Wis. Act 2, eff. 10−1−09.

(2) GIFTS AND SALES INCENTIVE PLANS. (a) *General.* Persons who make gifts of taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or distribute tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., at no charge to others are the consumers of the property, items, or goods and the tax shall apply to the sales price from the sale of the property, items, or goods to persons making gifts. Taxable sales include sales of samples, advertising material, display cases, racks, and other similar marketing aids to manufacturers, distributors, jobbers, and wholesalers acquiring the property, items, or goods for the purpose of giving it to retailers for use in selling merchandise to customers.

Examples: 1) A paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint.

2) A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given to customers.

(b) *Grand opening gifts.* A person who sells tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a retailer who uses the property, items, or goods as gifts at a grand opening or similar event, such as an open house, celebrity appearance, or farm days, should charge the retailer the applicable Wisconsin sales or use tax, unless the retailer provides the seller with a fully completed exemption certificate at the time of the sale. In cases where a seller furnishes free property to a retailer for use as gifts at a grand opening or similar event, the seller furnishing the property to the retailer without charge is subject to the sales or use tax on the property donated, unless the property is exempt from use tax under s. 77.56 (3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54 (9a), Stats.

(c) *Gift certificates.* 1. The sales price from the sale of a gift certificate is not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, the transaction is completed and the retailer's tax liability accrues at that time.

Example: Retailer A sells Customer B a gift certificate that is valued at $50. The gift certificate can be used to purchase any items that Retailer A sells. The sale of the gift certificate is not subject to Wisconsin sales tax.

2. The sale of a certificate that entitles the holder of the certificate to redeem the certificate for a specific product follows the tax treatment of the product for which the certificate can be redeemed.

Examples: 1) Retailer A sells Customer B a certificate that can be redeemed for a free radio. The sale of the certificate is subject to Wisconsin sales tax since a radio is subject to tax under s. 77.52 (1) (a), Stats.

2) Retailer X sells Customer Y a certificate that can be redeemed for 10 pounds of fresh fruit for human consumption. The sale of the certificate is not subject to Wisconsin sales tax since the sale of fresh fruit for human consumption is not subject to tax.

(d) *Gifts shipped out−of−state.* When taxable property, items, or goods to be given as a gift are purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to a location outside Wisconsin, the sales price is not subject to Wisconsin sales tax.

(e) *Awards.* Persons transferring tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to salespersons or distributors or both in redemption of awards, such as points, given under a sales incentive plan shall pay the tax on their purchases of the property, items, or goods.

(f) *Gifts originally purchased for resale.* When a person purchases property for resale or for another exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or another exempt purpose and does not donate the property to an entity described in s. 77.54 (9a), Stats., the purchaser shall be liable for tax on its purchase price of the property.

Note: The amount subject to tax is the purchase price as described in s. Tax 11.32.

(3) COUPONS AND PREMIUMS. (a) *Coupons for free property, items, or goods issued and redeemable by a manufacturer or other third party.* When a manufacturer's or other third party's coupons are distributed to consumers and subsequently are redeemed by a retailer for tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., without charge, the transfer of the property, items, or goods by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale upon which the measure of tax is based, if taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is transferred, is the amount the manufacturer or other third party reimburses the retailer for the coupon, less any coupon handling fees, if the following conditions are met:

1. The retailer receives consideration from a third party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

2. The retailer is obligated to pass the price reduction or discount on to the purchaser.

3. The amount of the consideration attributable to the sale is a fixed amount and the retailer is able to determine the amount at the time of the sale.

4. One of the following also applies:

a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim the price reduction or discount, if the coupon, certificate, or other documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse the retailer for the amount of the price reduction or discount.

b. The purchaser identifies himself or herself to the retailer as a member of a group or organization that may claim the price reduction or discount.

c. The retailer provides an invoice to the purchaser, or the purchaser presents a coupon, certificate, or other documentation to the retailer that identifies the price reduction or discount as a third party price reduction or discount.

(b) *Cents−off coupons reimbursed by manufacturers and other third parties.* A common arrangement between manufacturers or other third parties and retailers involves the use of cents−off coupons. The coupons are issued by manufacturers or other third parties and used by consumers toward the purchase of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. The retailer then is reimbursed by the manufacturer or other third party. In this situation, the retailer's taxable sales price includes the amount the retailer receives from the customer. The retailer's taxable sales price also includes the amount the retailer receives from the manufacturer, less any coupon handling fees paid by the manufacturer to the retailer, if the conditions in par. (a) 1. to 4. are met.

(c) *Coupons issued and redeemable by retailers.* 1. When a retailer distributes coupons which its customer may use to obtain free tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, the following shall apply:

a. When purchasing taxable products, including services, which will be given away to customers who make a required purchase consisting of only nontaxable products, a retailer may not purchase the free products without tax for resale. The retailer is deemed the consumer of the free products as provided in s. 77.52 (21) (a), Stats. If the free products were acquired without tax for resale, the retailer shall report the tax on its purchase price of those products.

Example: A retailer purchases key chains that it will give to customers who purchase eight gallons of gasoline. The gasoline is exempt from sales tax. The retailer is required to pay Wisconsin sales or use tax on its purchase of the key chains.

Note: See s. Tax 11.985 for additional information concerning bundled transactions.

ag. When purchasing taxable products, including services, which will be given away to customers who make a required purchase consisting of only taxable property, items, or goods, a retailer may purchase the free products without tax for resale. The retailer is deemed to be selling both the required property, item, or good and the product being provided free, as provided in s. 77.52 (21) (b), Stats.

Example: A retailer purchases bicycles that it will give to customers who purchase a sofa. The retailer may purchase the bicycles without tax for resale because the customer must purchase the sofa in order to receive the bicycle.

ar. When purchasing taxable products, including services, which will be given away to customers who make a required minimum purchase that may consist of both taxable and nontaxable property, items, and goods, the retailer may owe tax on its purchase of the free products. If the sales price of all of the taxable products sold equals or exceeds the required minimum purchase, the retailer may purchase the free products without tax for resale. If the sales price of all of the taxable products sold does not equal or exceed the required minimum purchase, the retailer owes tax on its purchase price of the free products to the extent that nontaxable products are included in the required minimum purchases. The retailer may make a reasonable allocation to compute the tax due on its purchase price of the free products. If the retailer does not want to make this allocation, the retailer shall pay tax on its purchase price of the products provided free of charge.

Examples: 1) A retailer provides a free soft drink to each customer that purchases at least $20 worth of property. A customer purchases $15 of taxable property and $5 of nontaxable property and receives the free soft drink. The retailer purchased the soft drink from its supplier for $1. Since 75% of the selling price of the minimum required purchase is from taxable property ($15/$20 minimum purchase requirement = 75%), the retailer is only required to pay tax on the remaining 25% of its $1 purchase price of the soft drink it gave away to this customer.

2) Same as Example 1, except that the customer purchases $5 of taxable property and $15 of nontaxable property and receives the free soft drink. Since 25% of the selling price of the minimum required purchases is from taxable property ($5/$20 minimum purchase requirement = 25%), the retailer is only required to pay tax on the remaining 75% of its $1 purchase price of the soft drink it gave away to this customer.

3) Same as Example 1, except that the customer purchased $15 of taxable property and $30 of nontaxable property and receives the free soft drink. Since 75% of the minimum required purchases is from taxable property ($15/$20 minimum purchase requirement = 75%), the retailer is only required to pay tax on the remaining 25% of its $1 purchase price of the soft drink it gave away to this customer.

4) Same as Example 1, except that the customer purchases $25 of taxable property and $30 of nontaxable property and receives the free soft drink. Since at least 100% of the $20 minimum required purchase is from taxable property, the retailer does not owe any sales or use tax on its purchase of the soft drink that it gave away to this customer.

Note: Additional examples can be obtained in *Wisconsin Tax Bulletin* 174 (January 2012) available on the Department's web site at www.revenue.wi.gov.

b. A retailer may not use an exemption certificate when purchasing taxable products which the retailer knows, or should know, are to be given away to customers without a required purchase. If the product that is given away was acquired without tax for resale, the retailer shall report the tax on its purchase price of the product.

Example: A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier an exemption certificate claiming resale, the retailer is liable for tax on its purchase price of the key chains given away.

2. The taxable sales price of retailers, who issue cents−off coupons which reduce the price of merchandise they sell, and who receive no reimbursement from a manufacturer or other third party, is the reduced amount charged the customer.

(4) COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS. (a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of the receipts to the participating retailers.

Example: Coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games.

(b) A sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d),

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Stats., or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property, items, goods, or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

(c) Retailers are subject to the sales and use tax on taxable property, items, or goods transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies.

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods including rolls, bagels, muffins, and bread, ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A's customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods, ground coffee beans, and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items under s. 77.54 (20n), Stats. Motel A's purchases of the napkins, plastic utensils, and paper plates and cups are subject to sales or use tax because no exemption applies.

(5) TRADING STAMPS. (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of the material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable sales price may not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of the stamps.

(6) MANUFACTURER REBATES. A manufacturer's rebate to a person who purchases tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services from a retailer is not a reduction of the retailer's sales price or purchase price for the item for sales or use tax purposes.

Examples: 1) An automobile manufacturer gives an automobile dealer's customer a cash rebate of $1,500 for an automobile purchased by a customer for $15,000. The taxable sales price of the dealer from the sale of the automobile is $15,000.

2) An automobile manufacturer gives an automobile dealer's customer the option of receiving a $1,500 cash rebate or allowing the $1,500 rebate to be applied against the price of the automobile ($15,000) by assigning the right to the rebate to the dealer. The customer chooses to assign the rebate to the dealer and apply the rebate against the price paid for the automobile and pays the dealer $13,500 ($15,000 – $1,500) for the automobile. The manufacturer subsequently reimburses the dealer $1,500. The taxable sales price from the sale of the automobile is $15,000.

(7) CERTAIN DRUGS FURNISHED WITHOUT CHARGE. No sales or use tax is owed on drugs furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the drug may not be dispensed without a prescription.

Example: A drug manufacturer furnishes drug samples to doctors without charge. The drug samples may not be dispensed without a prescription. The drug manufacturer does not owe sales or use tax on its cost of the ingredients for the drug samples.

Note: Section Tax 11.28 interprets ss. 77.51 (1f), (3pf), (11d), (15a), and (15b), 77.52 (20) and (21), 77.54 (14) (f), 77.56 (3), and 77.57, Stats.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (c) Section 77.57, Stats., was amended to remove the portion of the statute that allowed a purchaser to use the lesser of the cost or fair market value of an item that was purchased exempt and whose first taxable use occurred more than 6 months after it was purchased, pursuant to 2009 Wis. Act 2; (d) The requirements for a third party reimbursement to be considered part of the sales price or purchase price of a product are effective October 1, 2009, pursuant to 2009 Wis. Act 2; (e) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (f) The tax treatment of products provided for free by retailers became effective September 1, 2011 pursuant to 2011 Wis. Act 32.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (2) (intro.) and (a), Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. (1) (a) and (b) and (2) (intro.), am. (2) (a) and (d), (3) (a), (b) and (c) 2., and (4) (a), cr. (2) (e) and (6), Register, March, 1991, No. 423, eff. 4−1−91; am. (1) (a), renum. (2) (intro.) (a) to (e) to be (2) (a) to (f) and am. (2) (b) and (e), (3) (b), (4) (c) and (5), r. and recr. (3) (c), Register, December, 1996, No. 492, eff. 1−1−97; am. (2) (b), (c) and (f), (3) (c) 1. b. and (4) (b) and (c), cr. (7), Register, May, 1999, No. 521, eff. 6−1−99; EmR0924: emerg. am. (1), (2) (a) to (e), (3) (a) (title), (b), (c), (4) (b), (c), (5) (b), (6) and (7), renum. (3) (a) to be (3) (a) (intro.) and am., cr. (3) (a) 1. to 4., eff. 10−1−09; CR 09−090: am. (1), (2) (a), (b), (d), (e), (3) (a) (title), (b), (c), (4) (b), (c), (5) (b), (6) and (7), renum. (2) (c) and (3) (a) to be (2) (c) 1. and (3) (a) (intro.) and am., cr. (2) (c) 2. and (3) (a) 1. to 4. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (f), (3) (c) 1. a., b. Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (3) (c) 1. (intro.), a., cr. (3) (c) 1. a. (Example), ag., ar., am. (3) (c) 1. b., r. (3) (c) 1. b. (Example 1), renum. (3) (c) 1. b. (Example 2) to (Example) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.29 Leases, licenses and rentals of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats.

(1) DEFINITIONS. (a) "Lease or rental," as defined in s. 77.51 (7) (a), Stats., means any transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for a fixed or indeterminate term and for consideration and includes:

1. A transfer that includes future options to purchase or extend.

2. Agreements related to the transfer of possession or control of motor vehicles or trailers, if the amount of any consideration may be increased or decreased by reference to the amount realized on the sale or other disposition of such motor vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

(b) "Lease or rental," as defined in s. 77.51 (7) (a), Stats., does not include:

1. A transfer of possession or control of tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., after making all required payments.

2. A transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under any agreement that requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., after making all required payments and after paying an option price that does not exceed the greater of $100 or one percent of the total amount of the required payments.

3. Providing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., along with an operator, if the operator is necessary for the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(c) The definition of "lease or rental" provided in pars. (a) and (b) first applies to lease and rental contracts entered into on October 1, 2009 and has no effect on lease or rental contracts entered into prior to October 1, 2009 until such lease or rental contract is renewed, extended, or modified on or after October 1, 2009.

(d) "Receive" as provided in s. 77.522 (1) (a) 1., Stats., means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., or taking possession or making first use of digital goods under s. 77.52 (1) (d), Stats., whichever comes first. "Receive" does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., on a purchaser's behalf.

(e) "Transportation equipment" as provided in s. 77.522 (1) (a) 2., Stats., means any of the following:

1. Locomotives and railcars that are used to carry persons or property in interstate commerce.

2. Trucks and truck tractors that have a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are registered under the interna-

tional registration plan under s. 341.405, Stats., and operated under the authority of a carrier that is authorized by the federal government to carry persons or property in interstate commerce.

3. Aircraft that are operated by air carriers that are authorized by the federal government or a foreign authority to carry persons or property in interstate or foreign commerce.

4. Containers that are designed for use on the vehicles described in subds. 1. to 3. and component parts attached to or secured on such vehicles.

(2) GENERAL RULES. (a) The sales price from the lease, license, or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall be subject to the sales and use taxes to the same extent that the sales price from the sale of the same property, item, or good would be subject to the tax. A lease is a continuing sale in Wisconsin under s. 77.51 (14) (j), Stats., and a lessor or licensor shall pay tax on the lease, license, or rental receipts sourced to Wisconsin under s. 77.522, Stats., even though the property, item, or good may have been acquired, used, or both previously by the lessee or licensee in another state.

Note: See s. Tax 11.32 for information explaining what is included in the "sales price."

(b) 1. Transfers described in sub. (1) (a) are leases, licenses, or rentals regardless of whether such transfer is considered a lease, license, or rental under generally accepted accounting principles, or any other provision of federal, state, or local law.

2. Transfers described in sub. (1) (b) are not leases, licenses, or rentals, regardless of whether such transfer is considered a lease, license, or rental under generally accepted accounting principles, or any other provision of federal, state, or local law.

(c) 1. If a transaction does not meet the definition of "lease or rental" because title to the property, item, or good transfers to the lessor or licensor under a security or deferred payment plan upon completion of the required payments, the transaction shall be treated as a sale of the property, item, or good and the retailer is liable for the tax on the sales price at the time the property, item, or good is received by the purchaser.

2. The retailer may exclude from the sales price, as provided in s. 77.51 (15b) (b) 2., Stats., the interest and financing charges if they are separately stated on the invoice, bill of sale, or similar document that the retailer gives to the purchaser.

Example: Company A purchases a piece of equipment for $10,000. On October 1, 2009, Company A enters into an agreement with Company B, whereas Company B will make 24 monthly payments of $625 each, for a total of $15,000, relating to the equipment. Company B receives the equipment on November 10, 2009. Once Company B makes the last payment, title to the equipment will transfer from Company A to Company B. Since title to the equipment transfers as soon as Company B makes the last payment, the transaction is not treated as a lease, but instead is treated as a sale. Therefore, Company A's purchase of the equipment may be made without any Wisconsin sales or use tax because it is for resale. Company A's charges to Company B ($15,000) are subject to Wisconsin sales or use tax at the time Company B first receives the piece of equipment (November 10, 2009). Company A may exclude from tax that portion of the $15,000 that is related to interest or financing charges if the amount of the interest or financing charges are separately stated on the invoice, bill of sale, or similar document provided by Company A to Company B.

3. If the retailer in a transaction described under subd. 1., has properly reported and paid to Wisconsin the tax due on its sales price from the transaction and the retailer has not excluded from the sales price an amount for interest or financing as described in subd. 2., if the retailer subsequently allows a reduction in the payments that must be made because the purchaser pays off the balance early, the retailer may claim a deduction on its sales and use tax return for this reduction in the sales price. The deduction is limited to the amount of the sales price that the retailer previously remitted tax on to Wisconsin.

Example: Company X enters into an agreement with Company Y that is not a lease or rental because it meets the requirements provided in subd. 1. The agreement provides that Company Y will provide 12 monthly payments of $1,000. Based on this agreement, Company X reported and paid the 5% Wisconsin sales tax on the $12,000. Company X did not separately state any amounts for interest or financing to Company Y and did not claim a deduction from the sales price related to that. After seven payments of $1,000 have been made to Company X, Company Y decides that it is going to pay off the remaining amounts due. Company X indicates to Company Y that if it pays off the entire balance by a particular date, Company Y only needs to pay an additional $4,700, instead of the full $5,000 that is still due based on the agreement. Company Y pays the $4,700 by the date required. Since Company X had previously reported the tax due based on the full $12,000 at the time the agreement was entered into, Company X may claim the $300 difference between the amount it previously reported as the taxable sales price on this transaction ($12,000) and the discounted sales price of the transaction ($11,700, made up of the $7,000 in monthly payments and the $4,700 early payoff amount). Company X would claim the deduction as a discount allowed.

4. If the property, item, or good to which subd. 1. applies is stored, used, or otherwise consumed in Wisconsin and then relocated to a location outside Wisconsin, no refund or partial refund of the Wisconsin tax paid is allowed since the transaction is treated as a "sale" and the property was first stored, used, or otherwise consumed in Wisconsin.

(d) 1. If a transaction does not meet the definition of "lease or rental" because title to the property, item, or good transfers to the lessor or licensor under an agreement that requires transferring title to the property, item, or good after all required payments have been made and after paying an option price that does not exceed the greater of $100 or 1% of the total amount of the payments, the transaction shall be treated as a sale of the property, item, or good and the retailer is liable for the tax on the sales price at the time the property, item, or good is received by the purchaser.

2. The retailer may exclude from the sales price, as provided in s. 77.51 (15b) (b) 2., Stats., the interest and financing charges if they are separately stated on the invoice, bill of sale, or similar document that the retailer gives to the purchaser.

Example: Company C purchases a piece of equipment for $20,000. On October 25, 2009, Company C enters into an agreement with Company D, whereas Company D will make 12 monthly payments of $2,000 each, for a total of $24,000, relating to the equipment. In addition, the agreement provides that after all of the $2,000 payments have been made, Company D may pay an option price of $200 and title to the equipment will be transferred to Company D. Company D receives the equipment on November 10, 2009. Since the agreement provides that title to the equipment will transfer to Company D if company D makes all the required payments and then pays an option price of $200 (which is less than 1% of the total amount of the payments), the transaction is not treated as a lease, but instead is treated as a sale. Therefore, Company C's purchase of the equipment may be made without any Wisconsin sales or use tax because it is for resale. Company C's charges to Company D ($24,200) are subject to Wisconsin sales or use tax at the time Company D first receives the piece of equipment (November 10, 2009). Company C may exclude from tax that portion of the $24,200 that is related to interest or financing charges if the amount of the interest or financing charges are separately stated on the invoice, bill of sale, or similar document provided by Company C to Company D.

3. If the retailer in a transaction described under subd. 1., has properly reported and paid to Wisconsin the tax due on its sales price from the transaction and the retailer has not excluded from the sales price an amount for interest or financing as described in subd. 2., if the retailer subsequently allows a reduction in the payments that must be made because the purchaser pays off the balance early, the retailer may claim a deduction on its sales and use tax return for this reduction in the sales price. The deduction is limited to the amount of the sales price that the retailer previously remitted tax on to Wisconsin.

4. If the property, item, or good to which subd. 1. applies is stored, used, or otherwise consumed in Wisconsin and then relocated to a location outside Wisconsin, no refund or partial refund of the Wisconsin tax paid is allowed since the transaction is treated as a "sale" and the property was first stored, used, or otherwise consumed in Wisconsin.

(e) If a transaction constitutes a sale−leaseback transaction, the original sale of the property, item, or good to a purchaser may be made without tax for resale if that purchaser makes no taxable storage, use, or other consumption in Wisconsin of the property, item, or good prior to selling it. The sale of the property, item, or good from the first purchaser to a second purchaser (i.e., the person who will lease the equipment back to the first purchaser), may also be made without tax for resale if the second purchaser makes no taxable storage, use, or other consumption in Wisconsin of the property, item, or good prior to selling, leasing, licensing, or renting the property, item, or good back to the first purchaser. If the transfer of that property, item, or good from the second purchaser back to the first purchaser meets the definition of lease or rental in s. 77.51 (7) (a), Stats., the tax will be due on each payment as described in par. (a). If the transfer of that property, item, or good from the second purchaser back to the first purchaser does not

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

meet the definition of lease or rental in s. 77.51 (7) (a), Stats., the tax will be due on the sales price from the sale of the property, item, or good from the second purchaser back to the first purchaser, as described in pars. (b) to (d).

Example: Company F purchases a piece of equipment for $20,000 from Company X. Prior to making any other use of the equipment, Company F sells the piece of equipment to Company G for $20,000 and immediately enters into an agreement to "lease" it back from Company G based on 12 monthly payments of $2,000 each. Based on the agreement, the "leasing back" of the equipment does not meet the definition of lease or rental contained in s. 77.51(7)(a), Stats., because title to the piece of equipment will transfer to Company F once Company F has made all of the required payments under the agreement to Company G. In this example, Company F may purchase the piece of equipment from Company X without tax because it is for resale. Company G may also purchase the piece of equipment from Company F without tax because it is for resale. However, since the agreement relating to the leaseback of the piece of equipment to Company F does not meet the definition of lease or rental contained in s. 77.51(7)(a), Stats., Company G is required to charge Wisconsin sales or use tax on the sales price of the piece of equipment (that is, the $24,000 required under the agreement), to Company F. Company G may exclude from tax that portion of the $24,000 required under the agreement that is related to interest or financing charges if the amount of the interest or financing charges are separately stated on the invoice, bill of sale, or similar document provided by Company G to Company F.

(3) PURCHASES FOR LEASE, LICENSE, OR RENTAL. (a) A lessor's or licensor's purchase of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to be used solely for lease, license, or rental shall be exempt as a purchase for resale.

(b) A lessor's or licensor's purchase of lubricants, repair parts, and repair services for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., used solely for leasing, licensing, or renting shall also be exempt as a purchase for resale. However, if the same property, items, or goods are purchased by a lessee, licensee, or renter, the purchases shall be taxable.

(c) Charges by a lessor or licensor to a lessee, licensee, or renter under a maintenance contract on leased tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall be taxable.

(4) PROPERTY BOTH RENTED AND USED PERSONALLY. If tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are purchased by a person who uses them part of the time and leases, licenses, or rents them out part of the time, the sale of the property, item, or good to the person shall be taxable. The lessor's or licensor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(5) SERVICE VS. RENTAL OF EQUIPMENT. (a) 1. If an item of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is provided along with an operator that is necessary for the tangible personal property or item, property, or good to operate in the manner for which it is designed and does more than maintain, inspect, or set up the tangible personal property or item, property, or good, the transaction is considered a service and not a lease, license, or rental of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats.

Example: A backhoe and operator are provided to dig a trench. This transaction is the sale of a service and not a rental of the backhoe.

2. The purchaser of tangible personal property or items, property, or goods that are used in a transaction described in subd. 1. to provide a service is the consumer of that property, item, or good.

3. The charge by the person providing the service described in subd. 1. is subject to Wisconsin sales and use tax if the service is specifically identified as a taxable service in s. 77.52, Stats.

Example: Company A provides a tractor with a rototiller attachment and an operator to till up the lawn area around Customer B's new home to prepare the seedbed for planting. Company A charges Customer B $50 per hour for the use of the tractor and rototiller attachment and $25 per hour for the operator. Since Company A is providing the tractor and rototiller along with the operator, this is not a lease or rental of the equipment, but instead is deemed to be a service. The charge by Company A to Customer B is subject to Wisconsin sales tax, since Company A is providing a landscaping service. Company A is also required to pay Wisconsin sales or use tax on its purchase of the tractor and rototiller used in providing the service.

(b) If an item of tangible personal property or item, property or good under s. 77.52 (1) (b), (c), or (d), Stats., is provided along with an operator that only maintains, inspects, or sets up the tangible personal property or item, property, or good, the transaction is considered a lease, license, or rental of the tangible personal property or item, property, or good.

Example: Company A rents scaffolding from Company B. Company B provides a person to set up the scaffolding as requested by Company A and to make sure none of the nuts and bolts holding the scaffolding together have loosened up. The entire charge by Company B to Company A is for the lease or rental of the scaffolding.

(c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks, this shall be considered a service and not a lease or rental of the trucks.

(d) The sales price from the lease, license, or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., incidental to the providing of a nontaxable service shall not be taxable. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is incidental to the providing of a nontaxable service, the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is consumed by the service provider and the service provider is required to pay any applicable sales or use tax.

(6) CREDIT FOR SALES TAX PAID. If a lessor of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., paid a Wisconsin sales tax on the acquisition of the property, item, or good used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or the department or may claim a credit against the tax due on rental receipts from the property, item, or good involved, under s. 77.585 (2), Stats. If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the vendor paid sales tax to Wisconsin.

(7) SOURCING LEASE, LICENSE AND RENTAL PAYMENTS. (a) *First or only payment.* Except as provided in pars. (c) and (e), for lease, license, and rental agreements that only require one payment and for the first payment on lease, license, and rental agreements that require more than one payment, the lease, license, or rental is sourced to the location where the purchaser receives the product, as follows:

1. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is received by the lessee or licensee at the lessor's or licensor's business location, the first or only payment is sourced to the lessor's or licensor's business location.

2. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is not received by the lessee or licensee at the lessor's or licensor's business location, the first or only payment is sourced to the location where the lessee or licensee or the lessee's or licensee's designated donee receives the product. This would include the location indicated by instructions known to the lessor or licensor for delivery to the lessee or licensee or the lessee's or licensee's designated donee. The delivery may be made by the lessor or licensor or by a shipping company hired by the lessee or licensee.

3. If the location cannot be determined under subds. 1. and 2., the first or only payment is sourced to the lessee's or licensee's address as indicated by the lessor's or licensor's business records, if the records are maintained in the ordinary course of the lessor's or licensor's business and if using that address to establish the location of the lease, license, or rental is not in bad faith.

4. If the location cannot be determined under subd. 1., 2., or 3., the first or only payment is sourced to the lessee's or licensee's address as obtained during the consummation of the lease, license, or rental, including the address indicated on the lessee's or licensee's payment instrument, if no other address is available and if using that address to determine the location of the lease, license, or rental is not in bad faith.

5. If the location cannot be determined under subd. 1., 2., 3. or 4., the first or only payment is sourced as follows:

a. For tangible personal property and items and property under s. 77.52 (1) (b) or (c), Stats., except for prewritten computer

software, the first or only payment is sourced to the location from which the property or item was shipped.

b. For prewritten computer software delivered electronically and digital goods under s. 77.52 (1) (d), Stats., the first or only payment is sourced to the location from which the computer software or digital good was first available for transmission by the seller, but not including any location that merely provided the digital transfer of the product sold.

(b) *Subsequent periodic payments.* Except as provided in pars. (d) and (e), subsequent periodic payments on the lease, license, or rental of tangible personal property and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are sourced to the property's, item's, or good's primary location. The primary location is the address of the property, item, or good provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith.

(c) *Motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment.* Leases, licenses, and rentals of motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment are sourced to the primary location of such property as indicated by an address for the property that is provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith, and except that a lease, license, or rental that only requires one payment, shall be sourced as provided in par. (a).

(d) *Intermittent use.* The sourcing of the lease, license, and rental payments as described in pars. (a), (b), and (c) shall not be altered by any intermittent use of the property, item, or good at different locations.

Example: Company A leases laptop computers that are normally kept in State A and the lease payments are sourced to State A. However, when an employee is travelling and consulting with clients in other states, the employee brings the laptop computer to these other states. The intermittent use of the laptop computer in the other states does not affect the sourcing of these lease payments.

(e) *Transportation equipment.* Leases, licenses, and rentals of transportation equipment are sourced to the location determined in par. (a).

(8) SPECIAL RENTAL SITUATIONS. (a) *Demurrage.* The charge a gas supplier makes to a customer−consumer, because a gas cylinder is retained beyond a 30−day or other period, shall be taxable. The "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softeners.* The sales price from the rental of a cylinder type water softener which is periodically removed from a customer's premises for recharging and replaced by another unit shall be taxable.

(c) *Chemical toilets.* A lessor's entire charge for the use of chemical toilets used at fairs and other similar events shall be taxable, including cleaning services provided as part of the total charge.

(d) *Mobile homes and manufactured homes.* Rental of a mobile home as defined in s. 101.91 (10), Stats., and manufactured homes as defined in s. 101.91 (2), Stats., shall be taxable unless:

1. The mobile home or manufactured home is converted to real property by hooking it up to utilities and placing it on a foundation on land owned by the lessor. However, even if it is placed on a foundation and hooked up to utilities, a mobile home or manufactured home shall remain tangible personal property if the lessor does not own the realty on which it is located.

2. The mobile home as defined in s. 101.91 (10), Stats., or manufactured home as defined in s. 101.91 (2), Stats., is rented or leased for a continuous period of one month or more and is used as a residence by the renter or lessee.

(e) *Lease cancellation charge.* A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., shall be taxable. The payment shall be deemed consideration arising from the original lease since it effectively decreases the term of the lease and thereby increases the rental payments for the actual period the property, item, or good was used.

(f) *Delivery and erection.* Lessors of scaffolding or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., who set forth separate charges for transportation, assembly, and disassembly shall pay tax on their total sales price. A lessee rents property, items, or goods when it is assembled and in place and the charges for transportation, assembly, and disassembly shall be deemed part of a lessor's rental receipts.

(g) *Funeral coaches.* The sales price that the owner of a hearse receives when the owner furnishes it without a driver, to a funeral director is subject to tax. However, the sales price the owner of a hearse receives when the owner furnishes it with a driver that does more than maintain, inspect, or set up the hearse is not subject to tax.

(h) *Waste reduction and recycling equipment.* The lease or rental of waste reduction or recycling machinery and equipment shall not be taxable if used exclusively and directly for waste reduction or recycling activities described in s. 77.54 (26m), Stats.

Note: For information regarding the lease or rental of highway vehicles and mobile mixing units, see s. Tax 11.79.

Note: Section Tax 11.29 interprets ss. 77.51 (7), (13) (k), (14) (j), (15a), (15b), 77.52 (1), 77.522 (1) and (3), 77.54 (5) (b) and (d), (8), (26m) and (36), 77.58 (6), and 77.585 (2), Stats.

Note: The interpretations in s. Tax 11.29 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for mobile homes used for lodging for a continuous period of 1 month or more became effective July 1, 1984, pursuant to 1983 Wis. Act 341; (b) The exemption for the lease or rental of incidental property transferred in providing a nontaxable service became effective as a result of *Dept. of Revenue vs. Dow Jones & Company, Inc.,* (COA−District IV, 1/26/89); (c) The exemption for waste reduction and recycling equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (d) The definitions of "lease," "receive," and "transportation equipment" became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (e) The sourcing rules related to leases became effective October 1, 2009 pursuant to 2009 Wis. Act 2; and (f) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, July, 1977, No. 259, eff. 8−1−77; cr. (4) (d), (6) (d) 2. and (h), am. (1), (3), (4) (b), (5) and (6) (a), (d) and (g), Register, June, 1991, No. 426, eff. 7−1−91; correction in (6) (d) 2. made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; correction to numbering of (8) made under s. 13.92 (4) (b) 1., Stats., Register May 2010 No. 653.

Tax 11.30 Credit sales, bad debts and repossessions. (1) CREDIT SALES. (a) *Sales.* If taxable personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are sold on credit, the entire amount of the retailer's sales price from the sale shall be taxable and shall be reported on the tax return for the period in which the sale is made, without any reduction in the amount of tax payable by the retailer by reason of the retailer's transfer at a discount of any open account, note, conditional sales contract, lease contract or other evidence of indebtedness. A sale involving the transfer of ownership of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is completed at the time possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The location to which the sale is sourced is based on s. 77.522, Stats. The tax 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) *Repossessions.* No deduction from the sales price shall be made if property, items, or goods sold on credit are repossessed unless the entire consideration paid by the purchaser is refunded to the purchaser or a deduction for worthless accounts is allowable as a bad debt under s. 77.585 (1), Stats.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(2) BAD DEBTS. (a) *Definition of bad debt.* "Bad debt" is defined in s. 77.585 (1) (a), Stats., to mean the portion of the sales price or purchase price that the seller has reported as taxable and for which the seller has paid the tax under subch. III of ch. 77, Stats., and that the seller may claim as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debts, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

(b) *Deduction from measure of tax.* A seller may claim as a deduction on a return under s. 77.58, Stats., the amount of any bad debt the seller writes off as uncollectible in the seller's books and records and that is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the seller is required to file a federal income tax return. Only a seller who has previously paid sales or use tax to this state on the accounts may claim the bad debt deduction. However, if a seller uses a certified service provider to file the returns and report the taxes due, the certified service provider may claim the bad debt deduction on the seller's behalf if the seller has not and will not claim the same deduction. In either case, the deduction shall be claimed on the return for the period in which the seller writes off the amount of the deduction as uncollectible and the amount is eligible to be deducted as a bad debt for federal income tax purposes. That period is defined as any time within the seller's fiscal or calendar year in which the account is written off. If the seller is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes, which later become worthless, received on the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall be treated in the same manner as other worthless accounts.

(c) *Recovery of bad debts charged off.* If any accounts found worthless and charged off as bad debts are thereafter in whole or in part collected by the seller, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return. The amounts recovered are first applied to the price of the property, item, good, or service and the proportionate share of the sales tax on that property, item, good, or service and then to interest, service charges and other charges related to the sale.

(d) *Amount deductible.* 1. 'Nontaxable receipts.' If an account found worthless and charged off as a bad debt is comprised in part of nontaxable receipts, such as interest, financing, or insurance, and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied proportionately against the various charges comprising the amount the purchaser contracted to pay.

2. 'Expenses of collection.' No deduction is allowable for expenses incurred by the seller in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(e) *Special situations.* 1. A purchaser of receivables is not entitled to a bad debt deduction for the receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

3. A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., used to fulfill the construction contract.

4. A retailer permitted to report the sales price on the cash receipts basis may not claim a bad debt deduction.

(f) *Repossessions.* When property, items, or goods on which a receivable exists are repossessed, a bad debt deduction is allowable only to the extent that the seller sustains a net loss of the sales price upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, item, or good attributable to the cash sales price of the property, item, or good, is less than the cash sales price upon which sales or use tax was paid.

Example: At the time when the tax rate is 5%, a motor home is purchased on January 1 of a year for a cash price of $15,000 and sales tax of $750. A down payment of $2,150 is made at the date of purchase, leaving a balance to finance of $13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totaling $6,800, the motor home is repossessed. The wholesale value of the property is $6,000 on the date of repossession. The deductible bad debt loss upon repossession of the motor home is computed as follows:

	Cash Sales Price	Sales Tax	Finance Charge	Total
1. Sales price and tax	$15,000.00	$750.00	–	$15,750.00
2. Down payment allocation (1)	2,047.62	102.38	–	2,150.00
3. Balance to finance	$12,952.38	$647.62	–	$13,600.00
4. Add: Finance charge			1,360.00	1,360.00
5. Contract balance	$12,952.38	$647.62	$1,360.00	$14,960.00
6. Payments on contract (2)	5,887.45	294.37	618.18	6,800.00
7. Contract balance — date of repossession	$7,064.93	$353.25	$741.82	$8,160.00
8. Wholesale value of repossession (2)	5,194.81	259.74	545.45	6,000.00
9. Deductible loss	$1,870.12			$1,870.12
10. Nondeductible loss		$93.51	$196.37	289.88
11. Total loss				$2,160.00
12. Percentage of sales price and tax (Line 1)	95.2381%	4.7619%		100%
13. Percentage of contract balance (Line 5)	86.5801%	4.3290%	9.0909%	100%

(1) The down payment on line 2 is allocated between the total cash sales price of the motor home and the sales tax thereon on the basis of the percentage of each to their total. The percentages are shown on line 12.

(2) The payments on the contract on line 6 and the wholesale value on the date of repossession of the property repossessed on line 8 are allocated on the basis of the contract balances on line 5. The percentages thereof are shown on line 13.

(3) TAX RATE CHANGE. If a deduction for bad debts is being claimed in a period when the tax rate is different from the tax rate in effect when the sale or sales were reported on tax returns, an adjustment to the deduction shall be made to compensate for the tax rate differential.

Example: If tax was reported on a $1,000 sale when the tax rate was 4%, $40 tax was reported. If a bad debt deduction is taken for the sale in a 5% tax rate period, only 80% of the $1,000, or $800, may be taken as a bad debt, resulting in a tax credit of $40. Four percent divided by 5% equals 80%.

Note: Section Tax 11.30 interprets ss. 77.51 (14) (c), (15b), 77.52 (6), 77.522, 77.58 (6m), and 77.585 (1), (4) and (8), Stats.

Note: The interpretations in s. Tax 11.30 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) the 4% tax rate was increased to 5% on May 1, 1982; (b) The deduction for bad debts was revised effective October 1, 2009 pursuant to 2009 Wis. Act 2; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (2) (a) and cr. (3), Register, September, 1984, No. 345, eff. 10−1−84; am. (2) (c) 1. and (d) 1., Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. am. (1), r. and recr. (2), eff. 10−1−09; CR 09−090: am. (1), r. and recr. (2) Register May 2010 No. 653, eff.

6–1–10; CR 10–094: am. (2) (a), (d) 1. Register November 2010 No. 659, eff. 12–1–10.

Tax 11.32 "Sales price" and "purchase price". **(1)** GENERAL. The amount to which the sales and use tax rate is applied is the "sales price" for sales tax and the "purchase price" for use tax. Both "sales price" and "purchase price" mean the total amount of the consideration for the sale, license, lease or rental from retail sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, valued in money, whether received in money or otherwise.

(2) DELIVERY, HANDLING AND SERVICE CHARGES. A retailer's charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments, shipping, postage, crating, packing, fuel surcharges, and similar charges for services related to retail sales, are included in the sales price derived from the sale of taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services. Cancelled order charges are not taxable if there is no transfer of merchandise to a customer. For orders that include property and items that are subject to tax and property and items that are not subject to tax, the amount of the delivery charge that the seller allocates to the property and items subject to tax shall be based either upon the total sales price of property and items that are subject to tax as compared to the total sales price of all of the property and items included in the shipment or on the weight of the property and items subject to tax compared to the total weight of all of the property and items included in the shipment.

(3) CASH DISCOUNTS OR PRICE REBATES. (a) Cash discounts, term discounts and coupons that are not reimbursed by a third party and which are allowed by a retailer directly to customers reduce the sales price subject to the tax. The customer must receive the discount for the retailer to exclude it from the sales price.

Example: A payment made to a nonprofit organization based on a percentage of the purchases made by the group's members is not a cash discount for sales and use tax purposes.

(b) A retail cooperative's rebates to members, which are made after the net profit is determined at the end of a year, are patronage dividends rather than cash discounts, and are not deductible from the cooperative's sales price.

(c) A manufacturer's cash rebate to a person who purchases tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services from a retailer is not a reduction in the retailer's sales price or purchase price for the item, regardless of whether the rebate is paid in cash or is used to reduce the selling price.

Example: An automobile is sold for a sticker price of $18,000. The manufacturer offers a $1,500 rebate with the purchase. Regardless of whether the customer pays the retailer $18,000 and later receives $1,500 from the manufacturer or the customer pays the retailer $16,500 ($18,000 sticker price less $1,500 rebate), the retailer shall report a taxable sales price of $18,000 from the sale.

(d) "Sales price" and "purchase price" include consideration paid by third parties if all of the following apply:

1. The seller actually receives consideration from a third party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

2. The seller is obligated to pass the price reduction or discount to the purchaser.

3. The amount of the consideration that is attributable to the sale is a fixed amount and the seller is able to determine that amount at the time of the sale to the purchaser.

4. One of the following applies:

a. The purchaser presents a coupon, certificate or other documentation to the seller to claim the price reduction or discount, if the coupon, certificate or other documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse the seller for the amount of the price reduction or discount.

b. The purchaser identifies himself or herself to the seller as a member of a group or organization that may claim the price reduction or discount.

c. The seller provides an invoice to the purchaser, or the purchaser presents a coupon, certificate or other documentation to the seller that identifies the price reduction or discount as a third party price reduction or discount.

(3m) LEASE, LICENSE, AND RENTAL RECEIPTS. (a) The following charges related to the lease, license, or rental of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are also included in the "sales price" or "purchase price":

1. Personal property taxes, including any personal property tax administration fee, imposed on the lessor or licensor that are passed on to the lessee or licensee.

Example: Company A leases a piece of equipment to Company B. Taxing Authority C imposes property tax of $125 on Company A on the piece of equipment that Company A is leasing to Company B. The lease agreement provides that Company B is required to pay Company A the amount of property taxes imposed on Company A on that piece of equipment. Therefore, the $125 payment that Company B is required to make to Company A for the property taxes imposed on the piece of equipment is part of the sales price subject to tax.

2. Contract documentation or administration fees.

3. Disposal and return fees.

Examples: 1) Lessor X leases a motor vehicle to Company Y. As part of the lease agreement, Company Y agrees to pay Lessor X, at the end of the lease term, a fee to prepare the vehicle for sale. This disposition fee is to cover costs incurred by Lessor X for cleaning the motor vehicle, tuning up the vehicle and performing final maintenance on the vehicle before it is sold. The disposition fee is part of the "sales price" of the lease of the motor vehicle.

2) Lessor A leases laptop computers to Company B. As part of the lease agreement, Company B agrees to pay Lessor A a fee to remove all data from the hard drive of the laptop computer at the end of the lease term after Company B returns the computer to Lessor A. The fee charged by Lessor A to Company B for removing all of the data from the hard drive is part of the "sales price" of the lease of the laptop computer.

4. Service contract charges, warranty charges, and maintenance agreement charges.

(b) The following charges related to the lease, license, or rental of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are not included in the "sales price" or "purchase price" if they are separately stated on the invoice, bill of sale, or similar document provided to the lessee or licensee:

1. Personal property taxes imposed directly on the lessee or licensee.

Example: Company A leases a piece of equipment to Company B. Taxing Authority C imposes property tax of $100 on Company B on that piece of equipment. The lease agreement provides that Company B is responsible for any property taxes imposed on that piece of equipment. Since the $100 of property taxes are imposed directly on Company B, as opposed to being imposed on Company A, the property taxes imposed on the piece of equipment are not part of the sales price and are not subject to tax.

2. Title and registration fees.

3. Late payment fees that do not extend the term of the lease, license, or rental.

4. Returned check fees.

5. Insurance charges, including credit life and accident, casualty, theft, and loss, and gap insurance, as provided in s. 77.54 (8), Stats.

(4) SALES TAX COLLECTED FROM CUSTOMERS. (a) Section 77.585 (7), Stats., provides in part that if a retailer establishes to the department's satisfaction that the sales tax has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed. Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies. The notification may be by any one of the following methods:

1. Providing the customer a receipt which separately itemizes the tax or states "Prices Include Sales Tax."

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

2. Conspicuously posting the bracket system card, form S−213 or S−218, issued by the department.

3. Conspicuously posting a sign which states "Prices Include Sales Tax."

Example: A tavern, located in a county which has a combined 5.5% Wisconsin state and county sales and use tax rate in effect, conspicuously posts a sign stating "Prices Include Sales Tax." The tavern's sales price from sales of food and beverages are $10,000 for the month. When filing its sales and use tax return, form ST−12, the tavern may deduct $521.33 of sales tax to arrive at taxable receipts of $9,478.67 ($10,000 ÷ 1.055 = $9,478.67). The tax payable by the tavern is determined by multiplying its taxable receipts times the tax rate ($9,478.67 x .055 = $521.33 tax payable).

(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible using the straight mathematical computation described in sub. (5) (a) or under the bracket systems set forth in sub. (5) (b), no part of the retailer's sales price may be treated as tax collected from customers.

Example: A vending machine retailer whose only receipts are from sales of 5¢ items is unable to collect any sales tax from customers, and the tax applies to the total sales price.

(c) If a vending machine retailer sells taxable property at a price such that a sales tax is collectible using either the straight mathematical computation described in sub. (5) (a) or the bracket systems set forth in sub. (5) (b), part of the sales price from these sales shall include sales tax if customers are advised that the vending machine prices include sales tax.

(5) STRAIGHT MATHEMATICAL COMPUTATION. (a) A retailer shall determine the amount of tax due on a transaction by combining the applicable tax rates under subchs. III and V, Stats., and multiplying the combined rate times the sales price or purchase price of each item or the total invoice amount. The tax collectible from the customer shall be rounded to the nearest $.0l by using the following rounding procedures:

1. For amounts less than $.005, the amount shall be rounded down to the next lowest penny.

Examples: 1) Tax computed at $.0849999 would be rounded down to $.08.

2) Tax computed at $3.2549 would be rounded down to $3.25.

2. For amounts equal to or greater than $.005, the amount shall be rounded up to the next highest penny.

Examples: 1) Tax computed at $.085000 would be rounded up to $.09.

2) Tax computed at $6.455001 would be rounded up to $6.46.

3) Retailer A sells Customer B three different taxable items in one transaction: Item 1's selling price is $14.70, item 2's selling price is $8.30, and item 3's selling price is $7.10. The aggregate selling price of the taxable items is $30.10. The tax on the invoice provided to the customer may either be calculated by multiplying the 5% tax rate by the selling price of each item individually (($14.70 x 5% = $0.74) + ($8.30 x 5% = $0.42) + ($7.10 x 5% = $0.36) = $1.52) or by multiplying the 5% tax rate by the aggregate selling price ($30.10 x 5% = $1.51).

(b) The following bracket systems represent straight mathematical computations that comply with s. 77.61 (3m), Stats., and may be used by a retailer to determine the amount of tax due on a transaction. When using the bracket system, a retailer shall determine the amount of tax due on a transaction using either the sales price of each item or the total invoice amount.

1. In locations with no county or stadium district taxes the following bracket system may be used.

Amount of Taxable Sale			5% Tax Collectible
$.01	to	$.09	0¢
.10	to	.29	1¢
.30	to	.49	2¢
.50	to	.69	3¢
.70	to	.89	4¢
.90	to	1.09	5¢

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

2. In counties having a county tax, but no stadium tax, the following bracket system may be used.

Amount of Taxable Sale			Combined State and County Tax of 5.5%
$ .01	to	$ .09	0¢
.10	to	.27	1¢
.28	to	.45	2¢
.46	to	.63	3¢
.64	to	.81	4¢
.82	to	.99	5¢
1.00	to	1.18	6¢
1.19	to	1.36	7¢
1.37	to	1.54	8¢
1.55	to	1.72	9¢
1.73	to	1.90	10¢
1.91	to	2.09	11¢

The state and county tax equals 11¢ for each $2.00 of sales, plus the tax shown above for the fractional part of $2.00.

Example: For a sale of $11.50, the 5.5% tax is 63¢, consisting of 55¢ for $10.00 of sales plus 8¢ for $1.50 of sales.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

3. In counties having a stadium tax, but no county tax, the following bracket system may be used.

Amount of Taxable Sale			Combined State and Stadium Tax of 5.1%
$ .01	to	$ .09	0¢
.10	to	.29	1¢
.30	to	.49	2¢
.50	to	.68	3¢
.69	to	.88	4¢
.89	to	1.07	5¢
1.08	to	1.27	6¢
1.28	to	1.47	7¢
1.48	to	1.66	8¢
1.67	to	1.86	9¢
1.87	to	2.05	10¢
2.06	to	2.25	11¢
2.26	to	2.45	12¢
2.46	to	2.64	13¢
2.65	to	2.84	14¢
2.85	to	3.03	15¢
3.04	to	3.23	16¢
3.24	to	3.43	17¢
3.44	to	3.62	18¢
3.63	to	3.82	19¢
3.83	to	4.01	20¢
4.02	to	4.21	21¢
4.22	to	4.41	22¢
4.42	to	4.60	23¢
4.61	to	4.80	24¢
4.81	to	4.99	25¢
5.00	to	5.19	26¢
5.20	to	5.39	27¢
5.40	to	5.58	28¢
5.59	to	5.78	29¢
5.79	to	5.98	30¢
5.99	to	6.17	31¢
6.18	to	6.37	32¢
6.38	to	6.56	33¢
6.57	to	6.76	34¢
6.77	to	6.96	35¢
6.97	to	7.15	36¢
7.16	to	7.35	37¢
7.36	to	7.54	38¢
7.55	to	7.74	39¢
7.75	to	7.94	40¢
7.95	to	8.13	41¢
8.14	to	8.33	42¢
8.34	to	8.52	43¢
8.53	to	8.72	44¢
8.73	to	8.92	45¢
8.93	to	9.11	46¢
9.12	to	9.31	47¢
9.32	to	9.50	48¢
9.51	to	9.70	49¢
9.71	to	9.90	50¢
9.91	to	10.09	51¢

The state and stadium tax equals 51¢ for each $10.00 of sales, plus the tax shown above for the fractional part of $10.00.

4. In counties having a county tax and a stadium tax, the following bracket system may be used.

Amount of Taxable Sale			Combined State, County and Stadium Tax of 5.6%
$ .01	to	$ .08	0¢
.09	to	.26	1¢
.27	to	.44	2¢
.45	to	.62	3¢
.63	to	.80	4¢
.81	to	.98	5¢
.99	to	1.16	6¢
1.17	to	1.33	7¢
1.34	to	1.51	8¢
1.52	to	1.69	9¢
1.70	to	1.87	10¢
1.88	to	2.05	11¢
2.06	to	2.23	12¢
2.24	to	2.41	13¢
2.42	to	2.58	14¢
2.59	to	2.76	15¢
2.77	to	2.94	16¢
2.95	to	3.12	17¢
3.13	to	3.30	18¢
3.31	to	3.48	19¢
3.49	to	3.66	20¢
3.67	to	3.83	21¢
3.84	to	4.01	22¢
4.02	to	4.19	23¢
4.20	to	4.37	24¢
4.38	to	4.55	25¢
4.56	to	4.73	26¢
4.74	to	4.91	27¢
4.92	to	5.08	28¢
5.09	to	5.26	29¢
5.27	to	5.44	30¢
5.45	to	5.62	31¢
5.63	to	5.80	32¢
5.81	to	5.98	33¢
5.99	to	6.16	34¢
6.17	to	6.33	35¢
6.34	to	6.51	36¢
6.52	to	6.69	37¢
6.70	to	6.87	38¢
6.88	to	7.05	39¢
7.06	to	7.23	40¢
7.24	to	7.41	41¢
7.42	to	7.58	42¢
7.59	to	7.76	43¢
7.77	to	7.94	44¢
7.95	to	8.12	45¢
8.13	to	8.30	46¢
8.31	to	8.48	47¢
8.49	to	8.66	48¢
8.67	to	8.83	49¢
8.84	to	9.01	50¢
9.02	to	9.19	51¢
9.20	to	9.37	52¢
9.38	to	9.55	53¢
9.56	to	9.73	54¢
9.74	to	9.91	55¢
9.92	to	10.08	56¢

The state, county and stadium tax equals 56¢ for each $10.00 of sales, plus the tax shown above for the fractional part of $10.00.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(c) The gross sales and use tax payable by a retailer on retail sales is the total of the applicable tax rates under ss. 77.52 (1) and (2), 77.53 (3) and (9m) and 77.71, Stats., times the retailer's taxable sales price, regardless of the amount of tax collected from customers.

(6) EXCHANGING TANGIBLE PERSONAL PROPERTY OR ITEMS, PROPERTY, OR GOODS UNDER S. 77.52 (1) (B), (C), OR (D), STATS. The taxable sales price includes the exchange of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for taxable or nontaxable services, realty, or intangibles if the person providing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., receives the sales price or purchase price valued in money, whether received in money or otherwise.

Example: A restaurant operator exchanges meals having a retail price of $100 for radio or television advertising which has an established price of $100 for this type of advertising service. The restaurant operator and the radio or television station each have to report the sales price of $100 as a result of the transaction since the total sales reported on the sales and use tax return includes both taxable and nontaxable transactions.

The radio station may, however, deduct the $100 from its total sales reported on its sales and use tax return, if the advertising service that it is selling is not subject to Wisconsin sales or use tax. The restaurant operator's sales of these meals are taxable. Therefore, no deduction may be taken on the restaurant operator's sales and use tax return relating to these meals.

(7) MANUFACTURED HOMES. (a) The sales price and purchase price do not include 35% of the amount from the sale of a new manufactured home as defined in s. 101.91 (11), Stats., not including leases and rentals.

(b) If the exclusion under par. (a) applies to the sale of a manufactured home, no reduction in the sales price or purchase price is allowed for trade−ins.

(c) Sales of manufactured homes as defined in s. 101.91 (2), Stats., to a contractor−consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

(8) MODULAR HOMES. (a) The sales price and purchase price from the sale of a "modular home," as defined in s. 101.71 (6), Stats., that is tangible personal property when sold, may be reduced by one of the following:

1. 35% of the sales price.

2. An amount equal to the sales price minus the cost of the materials that become an ingredient or component part of the modular home.

(b) No credit is allowed for trade−ins if the sales price or purchase price is reduced under par. (a).

(c) Once a retailer reduces the sales price or purchase price by the amount in par. (a) 1. or 2., the retailer shall continue to use that method of reduction for all sales of modular homes, that are tangible personal property when sold, until such time as the department approves in writing the use of the other method.

Example: Building Manufacturer sells a modular home, as defined in s. 101.71 (6), Stats., in Wisconsin to Dealer. Dealer will affix the modular home to real property in Wisconsin for Customer under a contract between Dealer and Customer. This is the first modular home, as defined in s. 101.71 (6), Stats., sold by Building Manufacturer pursuant to a contract entered into on or after December 1, 1997. Additional facts are as follows:

• $40,000 is the cost of materials purchased by Building Manufacturer that become an ingredient or component part of the modular home.

• $65,000 is the sales price of the modular home by Building Manufacturer to Dealer.

The amount subject to sales tax on the sale of the modular home to Dealer is one of the following:

(1) $42,250, which is the $65,000 sales price reduced by $22,750 (35% of the sales price).

(2) $40,000, which is the $65,000 sales price reduced by $25,000 (the sales price minus the cost of materials).

If Building Manufacturer chooses the method under (1) for computing the sales price from the sale of this modular home, it must use the method under (1) for computing the sales price from all future sales of modular homes, until the department approves in writing the use of the method under (2).

(d) Sales of modular homes as defined in s. 101.71 (6), Stats., to a contractor−consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

Note: Section Tax 11.32 interprets ss. 77.51 (12m) (a) (intro.) and 2., 3. and 4., (b) 1., 5., 7. and 8. and (c), (15a), (15b) (a) (intro.), 2., 3., and 4., (b) 1., 5., 7. and 8. and (c), 77.54 (8), 77.585 (7), and 77.61 (3m), Stats.

Note: The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (d) The reduction of gross receipts and sales price for sales of manufactured buildings, as defined in s. 101.71 (6), Stats., became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The term "manufactured building" was changed to "modular home" and the term "mobile home" was changed to "manufactured home" effective January 1, 2008 pursuant to 2007 Wis. Act 11; (f) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (g) The exemption for modular homes and manufactured homes used in real property construction activities outside Wisconsin became effective September 1, 2011 pursuant to 2011 Wis. Act 32.

History: Cr. Register, December, 1977, No. 264, eff. 1−1−78; am. (4) (a) and (b), (5) (b) and (c), r. and recr. (5) (a), Register, January, 1983, No. 325, eff. 2−1−83; am. (3) (c), Register, December, 1983, No. 336, eff. 1−1−84; emerg. am. (5) (a), eff. 3−24−86; am. (5) (a) and (am), Register, October, 1986, No. 370, eff. 11−1−86; cr. (6), Register, April, 1990, No. 412, eff. 5−1−90; cr. (7), am. (2), (3) (a) and (c) and (5) (d), Register, June, 1991, No. 426, eff. 7−1−91; am. (2), (4) (a) and (c), (5) (a), (am) and (b) and (7), Register, December, 1992, No. 444, eff. 1−1−93; cr. (4) (a) 1., 2., 3. and (6), am. (4) (b) and (c), r. and recr. (5), renum. (4) (a), (6) and (7) to be (4) (a) (intro.), (7) and (8) and am. (4) (a) (intro.), Register, October, 1997, No. 502, eff. 11−1−97; cr. (9), Register, August, 1999, No. 524, eff. 9−1−99; EmR0924: emerg. am. (title), (1) to (3), (4) (a) (intro.), (b) and (c), cr. (3) (d) and (7), r. and recr. (5), r. (6) and (8), renum. (7) and (9) to be (6) and (8) and am., eff. 10−1−09; CR 09−090: am. (title), (1) to (3), (4) (a) (intro.), (b) and (c), cr. (3) (d), (3m) and (7), r. and recr. (5), r. (6) and (8), renum. (7) and (9) to be (6) and (8) and am. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (6) (Example), renum. (7) to be (7) (a), cr. (7) (b), (c), (8) (d) Register August 2012 No. 680, eff. 9−1−12.**

Subchapter V — Occasional Sales

Tax 11.33 Occasional sales. (1) SCOPE. This section describes the general rules for exempt occasional sales.

(2) GENERAL. Sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services are not taxable if they are exempt "occasional sales." However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

(3) STATUTES. (a) "Occasional sale" is defined in s. 77.51 (9), Stats.

(b) Section 77.54 (7), Stats., exempts most occasional sales from the sales and use taxes.

(4) SALES WHICH ARE EXEMPT OCCASIONAL SALES.. Sales which are exempt occasional sales include:

(a) The sale of a motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all−terrain vehicle or aircraft that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin is an exempt occasional sale only if one of the following applies:

1. The sale is to a spouse, parent, stepparent, father−in−law, mother−in−law, child, stepchild, son−in−law, or daughter−in−law, of the transferor provided the property has been previously registered or titled in Wisconsin in the name of the transferor, if required to be registered or titled, and the transferor is not engaged in the business of selling this type of property.

2. The item is a motor vehicle and the transferor sells the motor vehicle to a corporation owned solely by the transferor or the transferor's spouse, provided the motor vehicle has been previously registered or titled in Wisconsin in the name of the transferor, if required to be registered or titled, and the transferor is not engaged in the business of selling motor vehicles. Transferor for purposes of this subdivision means a natural person.

3. The motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all−terrain vehicle or aircraft is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(b) Any sale of a boat that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin or under the laws of the United States, is an exempt occasional sale only if one of the following applies:

1. The sale is to a spouse, parent, stepparent, father−in−law, mother−in−law, child, stepchild, son−in−law, or daughter−in−law, of the transferor provided the property has been previously registered or titled in Wisconsin in the name of the transferor, if required to be registered or titled, and the transferor is not engaged in the business of selling boats.

2. The boat is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(c) Except as provided in pars. (a) and (b), five or fewer auctions that are the sale of personal farm property or household goods and that are held by the same auctioneer at the same location during the year. For indoor locations, "location" means a building, except that in the case of a shopping center or shopping mall, "location" means a store.

Note: Refer to s. Tax 11.50 (4) and (5) regarding exempt occasional sales at auction of personal farm property and household goods.

(d) Except as provided in pars. (a) and (b), sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., by an individual who operates a sole proprietorship and who holds or is required to hold a seller's permit, which have not been used in the course of the person's business and the sales are not the type of property, items, or goods sold in the course of the person's business. However, all tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sold by a corporation or partnership which holds or is required to hold a seller's permit shall be considered to be used or sold in the course of the organization's business activities and are taxable.

Example: A taxpayer operates a service station as a sole proprietor and holds a seller's permit for the purpose of selling cigarettes and repairing motor vehicles. The sales price from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the sales price from the sale of a desk and refrigerator which were used in the service station's business activities are subject to the sales tax.

(e) Except as provided in pars. (a) and (b), the sale of a business or business assets, not including inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services at that location.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(f) Except as provided in pars. (a) and (b), sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services by a person who does not hold and is not required to hold a seller's permit, if the total taxable sales price from sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services are less than $1,000 during the calendar year. However, purchases of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person. This paragraph does not apply to nonprofit organizations.

Examples: 1) If the sales price from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than $1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (g). However, purchases by the seller of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which are sold are taxable.

2) Sales of soft drinks by employee groups are not taxable if the sales price from soft drink sales does not exceed $1,000 per year. These groups are deemed consumers and the supplier's sales to them are taxable retail sales.

(g) Sales by nonprofit organizations meeting the requirements in s. 77.54 (7m), Stats.

Note: Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

(5) SALES WHICH ARE NOT EXEMPT OCCASIONAL SALES. Sales which are not exempt occasional sales, except as provided in sub. (4), include:

(a) Sales by a person who holds or is required to hold a seller's permit.

Example: Sales of used equipment by a retail store or vending machine retailer are not occasional sales and would be subject to sales or use tax.

(b) Sales of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the sales price reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

Example: The sale by a sole proprietor holding a seller's permit of a motor vehicle used in the sole proprietor's business is taxable unless it qualifies as an exempt occasional sale under s. Tax 11.33 (4) (a) 1. or 2.

(c) Sales of motor vehicles, aircraft, boats, recreational vehicles as defined in s. 340.01 (48r), Stats., snowmobiles, trailers, semitrailers and all−terrain vehicles. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, recreational vehicle as defined in s. 340.01 (48r), Stats., snowmobile, trailer, semitrailer or all−terrain vehicle is registered or titled within Wisconsin.

(d) Sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part−time business as a seller of this property.

(e) Sales of bingo supplies to players or the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(f) Sales by persons engaged primarily in the business of making nontaxable sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., such as manufacturers and wholesalers. Since these persons are in the business of selling tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

Note: Section Tax 11.33 interprets ss. 77.51 (9), 77.52 (1) and (2) (a) 2. and 77.54 (7) and (7m), Stats.

Note: The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3) (b) became effective March 1, 1979; (b) Non−retailer sales of all−terrain vehicles as described in sub. (4) (c) became taxable and the sale of an all−terrain vehicle as described in sub. (3) (c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for the sale of a business or business assets in sub. (3) (e) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; (d) The exemption for transfers of motor vehicles, boats, etc., to in−laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (e) The occasional sales exemption for 5 or fewer auctions became effective January 1, 2000, pursuant to 1999 Wis. Act 9; (f) The term "mobile home" was changed to "recreational vehicle, as defined in s. 340.01 (48r), Stats." effective January 1, 2008, pursuant to 2007 Wis. Act 11; and (g) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91; am. (2), (4) (c) and (g), Register, April, 1993, No. 448, eff. 5−1−93; am. (4) (a) and (g), Register, August, 1999, No. 524, eff. 9−1−99; EmR0924: emerg. am. (2), (4) (a) to (d), (f), (g), (5) (b) to (d) and (f), eff. 10−1−09; CR 09−090: am. (2), (4) (a) to (d), (f), (g), (5) (b) to (d) and (f) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (4) (c) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: r. and recr. (4), am. (5) (title), cr. (5) (b) (Example) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.34 Occasional sales exemption for sale of a business or business assets. (1) SCOPE. This section describes the exemption under s. 77.54 (7) (a), Stats., for the occasional sale of a business or business assets as described in s. 77.51 (9) (a) and (am), Stats.

(2) GENERAL. (a) The sale of business assets, consisting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., by a person who holds or is required to hold a seller's permit at the time of the sale is subject to sales tax, except as provided in sub. (3) (c).

(b) Except as provided in sub. (3) (c), the tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.

2. A single transaction or series of transactions prior to termination of a business.

3. Piecemeal sales, whether part of a continuing business or prior to termination.

(c) The tax does not apply to merchandise inventory sold to another retailer who purchases it for resale and sells it in the regular course of that retailer's business.

(3) EFFECT OF HOLDING A SELLER'S PERMIT. (a) Pursuant to s. 77.51 (9) (a) and (am), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim that a sale of a business asset is an occasional sale, except as provided in par. (b).

(b) A sale, other than a sale described in par. (bg) or (br), is exempt from sales and use tax as an occasional sale if all of the following conditions are met:

1. The sale is of personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., other than inventory held for sale, previously used by a person to conduct a trade or business at a location.

2. The sale occurs after the person ceased actively operating in the regular course of business as a seller of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services at that location.

(bg) A sale of a motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all−terrain vehicle or aircraft that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin, is subject to tax unless s. Tax 11.33 (4) (a) 1. or 2. apply.

Example: A business has four business locations in Wisconsin and has ceased all of its business activities at one location. All of the business assets at the location where the business has ceased operating, including one motor vehicle that it used in its business, are being sold. The business is required to continue to hold a seller's permit for its other three locations. The motor vehicle is sold, but the purchaser is not a person described in s. Tax 11.33 (4) (a) 1. or 2. The sale of the motor vehicle is not an exempt occasional sale of a business asset and the seller is required to collect tax on its sale of the motor vehicle.

(br) A sale of a boat that is registered or titled or required to be registered or titled in Wisconsin or under the laws of the United States is subject to tax unless s. Tax 11.33 (4) (b) 1. applies.

(c) A sale meeting the conditions in par. (b) is exempt from sales or use tax even though the person holds a seller's permit for one or more other locations.

(d) The holder of a seller's permit shall wait until ceasing business before requesting the inactivation of the permit because a person may not continue regular business operations without a permit.

(4) INACTIVATION OF SELLER'S PERMIT. (a) A permit holder may request that the department inactivate its seller's permit by providing the department with the permit holder's name, address, seller's permit number, and the date the permit holder ceased business. The request may be made in any one of the following ways:

1. A permit holder may make a written request for seller's permit inactivation. The department shall presume that the request was made at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the request, the permit holder may use certified mail, return receipt requested.

Note: A person making a written request for seller's permit inactivation should send its request to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708−8902.

2. A permit holder may make a request for seller's permit inactivation by telephone. The department shall presume that the request was made at 12:01 a.m. on the day the department received the telephone call.

Note: A person requesting seller's permit inactivation by telephone should call (608) 266−2776.

3. A permit holder may make a request for seller's permit inactivation by electronic mail. The department shall presume that the request was made at 12:01 a.m. on the day the department received the electronic mail message.

Note: A person requesting seller's permit inactivation by electronic mail should send its request to sales10@revenue.wi.gov.

4. A permit holder may make a request for seller's permit inactivation in person at one of the department's income, sales and excise tax division offices. The department shall presume that the request was made at 12:01 a.m. on the day the department received the request.

(b) A person who has requested inactivation of its seller's permit may not qualify for the occasional sale exemption if the person contemplates resumption of those activities which would require that the person hold a seller's permit, unless the person qualifies for exemption under sub. (3) (b).

(c) The fact that a business ceases operating and no longer conducts its day−to−day sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services does not result in the automatic inactivation of its seller's permit.

(5) CANCELLATION OF SELLER'S PERMIT. (a) Although a seller's permit may be deemed to have been delivered and canceled on a postmark date under sub. (4), cancellation shall not be effective prior to the postmark date.

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sales exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption if the person contemplates resumption of those activities which would require that person to hold a seller's permit.

(c) The fact that a business ceases operating and no longer conducts its day−to−day sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services may not result in the automatic cancellation of a seller's permit.

Note: Refer to s. Tax 11.33 regarding the general occasional sales exemption. Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

Note: Section Tax 11.34 interprets ss. 77.51 (9) (a) and (am) and (14g) (h), 77.52 (12) and 77.54 (7), Stats.

Note: The interpretations in s. Tax 11.34 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The procedure in sub. (3) became effective May 4, 1976, and reflects the Wisconsin supreme court's decision in Three Lions Supper Club, Ltd. vs. Dept. of Revenue (May 4, 1976), 72 Wis. 2d 546; (b) The exemption described in sub. (2) (b) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; (c) The requirement that a person surrender its seller's permit within 10 days after the last sale of tangible personal property for the sale of business assets to qualify as an occasional sale was repealed effective August 12, 1993, pursuant to 1993 Wis. Act 16; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (b) 2., 3. and (5) (c), r. (3) (b) 3., Register, April, 1994, No. 460, eff. 5−1−94; EmR0924: emerg. am. (2) (a), (3) (b) 1., 2., (4) (a) and (5) (c), eff. 10−1−09; CR 09−090: am. (2) (a), (3) (b) 1., 2., (4) (a) and (5) (c) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (3) (d), r. and recr. (4) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (1), (3) (a), (b) (intro.), cr. (3) (bg), (br) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.35 Occasional sales by nonprofit organizations. (1) SCOPE. This section describes the occasional sales exemption for nonprofit organizations as provided in s. 77.54 (7m), Stats.

(2) DEFINITIONS. In this section:

(a) "Admission event" means that access to the event involving entertainment is generally restricted to only those who pay a required fee, who make a required donation or who are required to make a purchase of some kind such as a meal or raffle ticket.

(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

aggregate more than $500 per event by all persons for performing, for reimbursement of expenses or for prize money.

(c) "Nonprofit organization" includes a neighborhood association, church, civic group, garden club, social club or similar organization not operated or organized for profit where no part of the net income inures to the benefit of any private shareholder or individual. A governmental unit described in s. 77.54 (9a), Stats., is considered a "similar organization" for purposes of this paragraph.

(d) "Sales price" means sales price as defined in s. 77.51 (15b), Stats., from all sales in Wisconsin of otherwise taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and services after subtracting allowable exemptions.

(3) GENERAL. A nonprofit organization shall charge Wisconsin sales tax on sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to the sales price from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(4) STANDARDS. Under s. 77.54 (7m), Stats., a nonprofit organization shall meet all of the following standards for its sales to qualify as exempt occasional sales:

(a) The organization is not engaged in a trade or business.

(b) Entertainment is not involved at an event for which charges by the organization constitute admissions.

(c) The organization does not have and is not required to have a Wisconsin seller's permit, except for conducting bingo.

(5) NOT ENGAGED IN A TRADE OR BUSINESS. A nonprofit organization is not engaged in a trade or business for purposes of sub. (4) (a) if it meets at least one of the following:

(a) Its sales of otherwise taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

Example: A boy scout troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the 20−day test, the troop should use the days of delivery rather than days orders are taken.

(b) Its taxable sales price for tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services for the calendar year are $25,000 or less, regardless of the number of days on which its sales or events occur. Sales that are nontaxable are not included for purposes of the $25,000 sales price test.

Examples: 1) A church sells frozen pizzas. Since sales of frozen pizzas are exempt from sales tax, the sales of the frozen pizzas are not counted as part of the sales price for purposes of the $25,000 receipts test.

2) A nonprofit organization, which sells hundreds of Christmas trees, sells 5 Christmas trees for $100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., exempt from sales tax. As a result, this $100 exempt sale to the school is not counted as part of the sales price for purposes of the $25,000 receipts test.

(6) ENTERTAINMENT. (a) For a nonprofit organization's sales to qualify as exempt occasional sales, entertainment may not be involved at an event for which charges by that nonprofit organization constitute admissions.

Examples: 1) Four different bands are paid $200 each to perform at various times during a 3−day event. There is an admission charge for access to the event. Since the total payment for entertainment ($800) exceeds the $500 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

2) Two nonprofit organizations co−sponsor an admission event at which a band is hired to perform. Each organization pays the band $300. Since the total payment for entertainment ($600) exceeds the $500 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

3) A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of the $500 limit in sub. (2) (b). There is no separate admission charge. However, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the nonprofit organization at this event are taxable.

4) A nonprofit organization holds a pig roast at the city park and hires a band to play at the park gazebo so that patrons, if they so wish, can be entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. Entertainment is deemed not to be involved. Therefore, the sales by the nonprofit organization may still qualify as exempt occasional sales.

5) Nonprofit Organization A sponsors an admission event at which a band is hired to perform. The band is paid more than $500. Nonprofit Organization A allows Nonprofit Organization B, a separate entity, to sell soft drinks and food at the event for consumption on the premises of the event. Although Nonprofit Organization A's sales at the event do not qualify for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

(b) A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may obtain a seller's permit from the department for the day or days involving entertainment, pay the sales tax on that event and request inactivation of its seller's permit after the event, and still have exempt occasional sales on days not covered by the seller's permit. Days and receipts from events involving admissions to entertainment for which a seller's permit was obtained are included with all other sales in determining the 20−day test and the $25,000 taxable receipts test described in sub. (5). A nonprofit organization that obtains a seller's permit for an event and does not request inactivation of its seller's permit after the event does not qualify for the occasional sale exemption while the seller's permit is active, regardless of the number of days and dollar amount of its sales.

Examples: 1) A nonprofit organization plans 5 events covering 3 days each for the year for a total of 15 days. Entertainment will be involved at one event only. The sales by the nonprofit organization would qualify as exempt occasional sales, except for the involvement of entertainment at the one event. The nonprofit organization may obtain a seller's permit for the one event involving entertainment and request inactivation of its seller's permit after the event; thus allowing the other 4 events to qualify as exempt occasional sales.

2) A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a seller's permit because entertainment is involved, collects sales tax on its receipts of $5,000 from that event and requests inactivation of its seller's permit after the event. Taxable receipts from its other events must be combined with the $5,000 of receipts from the event for which it held a seller's permit for purposes of determining whether the $25,000 taxable receipts test is met.

(7) HOLDING A SELLER'S PERMIT. (a) A nonprofit organization is not required to hold a seller's permit if its sales are exempt from sales and use taxation by meeting the provisions of sub. (4) (a) and (b). However, an organization required to hold a seller's permit solely for the purpose of conducting bingo games may still qualify for the occasional sales exemption on nonbingo sales if it otherwise qualifies under the provisions of sub. (4) (a) and (b).

(b) If a nonprofit organization holds a seller's permit in the current year, but intends or believes in good faith that its activities in the following year would qualify as exempt occasional sales except for its holding of a seller's permit, it may request inactivation of its seller's permit and its sales in the following year will qualify as exempt occasional sales provided it meets the standards in sub. (4) (a) and (b) in that following year.

Example: A nonprofit organization has held seven 3−day events for a total of 21 days each year for the past 5 years. Receipts were always over $25,000, and there were no admissions to entertainment events. One event has lost money for the past 2 years. The organization intends to discontinue that event for the following year; thus, it may anticipate coming under the 20−day standard and request inactivation of its seller's permit in good faith.

(c) If a nonprofit organization did not hold or was not required to hold a seller's permit or requested inactivation of its seller's permit in good faith but later, due to unforeseen circumstances, exceeds the standards, only the sales occurring after the standards are exceeded do not qualify as exempt occasional sales and are subject to tax.

Examples: 1) A church held 18 days of events or sales in the current year. Receipts for the events equaled $30,000 and no entertainment was involved. The church expects to hold the same 18 days of events in the following year. It requests inactivation of its seller's permit. However, in the middle of the following year, the church garage is destroyed by fire. An additional 4−day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

2) A garden club is organized in the current year. The garden club is not required to hold a seller's permit and does not apply for one. In the following year, the garden club holds 22 days of events with taxable receipts from the events of $30,000. Only receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

(d) If a nonprofit organization has sales in the current year and then requests inactivation of its seller's permit, sales made in the current year before requesting inactivation of the seller's permit do not qualify as exempt occasional sales, even if the standards for exempt occasional sales in sub. (4) (a) and (b) are met.

Example: A nonprofit organization holds 15 days of sales in the current year. The organization holds a seller's permit, files sales and use tax returns and pays sales tax on all its receipts in the current year. At the end of the current year, the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. The organization may not claim a refund of taxes paid while it held a seller's permit.

(8) WHEN SALES DO NOT QUALIFY FOR OCCASIONAL SALES EXEMPTION. If a nonprofit organization has sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, and the sales do not qualify as exempt occasional sales, it is required to obtain a seller's permit and collect and remit sales tax on its taxable sales.

Note: To obtain a seller's permit, a nonprofit organization shall file Wisconsin form BTR−101, Application for Business Tax Registration, with the department. Form BTR−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 53708−8902, telephone (608) 266−2776.

Note: The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to 1987 Wis. Act 399; except that (a) the $25,000 receipts standard and the $500 entertainment standard became effective January 1, 2006 pursuant to 2005 Wis. Act 25 and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

Note: Section Tax 11.35 interprets ss. 77.51 (9) and 77.54 (7m), Stats.

History: Cr. Register, June, 1991, No. 426, eff. 7−1−91; renum. (1) and (2) to be (2) and (1) and am. (2) (b), am. (3), (5) (b) and (6) (a), Register, October, 1997, No. 502, eff. 11−1−97; EmR0924: emerg. am. (2) (b), (3), (4) (c), (5) (a), (b), (6) (b), (7) (d) and (8), r. (2) (c), renum. (2) (d) to be (2) (c) and am., cr. (2) (d), eff. 10−1−09; CR 09−090: am. (2) (b), (3), (4) (c), (5) (a), (b), (6) (b), (7) (d) and (8), r. (2) (c), renum. (2) (d) to be (2) (c) and am., cr. (2) (d), Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (4) (b), (6) (b), (7) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (1) Register August 2012 No. 680, eff. 9−1−12.**

Subchapter VI — Manufacturers and Producers

Tax 11.38 Fabricating, processing, and printing. **(1)** SALES OF FABRICATING, PROCESSING, AND PRINTING SERVICES. The producing, fabricating, processing, printing, or imprinting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting is subject to Wisconsin sales or use tax unless:

(a) The printing or imprinting is done on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed materials that are exempt under s. 77.54 (25), Stats., or catalogs and their mailing envelopes that are exempt under s. 77.54 (25m), Stats.

Example: Printer ABC prints an advertising flyer for Company DEF. Company DEF furnishes the paper and the ink. Company DEF will send the flyer to its customers outside Wisconsin. The charge by Printer ABC for printing the advertising flyer is not subject to Wisconsin sales tax provided Company DEF provides Printer ABC with a properly completed exemption certificate.

(b) An exemption under s. 77.54 or 77.55, Stats., applies.

Examples: 1) Company GHI is in the business of cleaning used oil. A Wisconsin municipality contracts with Company GHI to have all used oil it collects from residents cleaned by Company GHI. The charge by Company GHI to the municipality for cleaning the oil is not subject to Wisconsin sales or use tax because sales to Wisconsin municipalities are exempt from Wisconsin sales tax under s. 77.54 (9a), Stats.

2) The charge by a feed mill to grind a farmer's corn that the farmer will use as feed is not subject to Wisconsin sales or use tax because the sale of feed to a farmer is not subject to Wisconsin sales or use tax under s. 77.54 (3m), Stats. The farmer must provide the feed mill with a properly completed exemption certificate.

3) The charge by a cooperative to age a cigar manufacturer's tobacco is not subject to Wisconsin sales or use tax because a sale of tobacco to a cigar manufacturer is not subject to Wisconsin sales or use tax under s. 77.54 (2), Stats. The cigar manufacturer must provide the cooperative with a properly completed exemption certificate.

(c) The producing, fabricating or processing is for resale.

Example: Company JKL is in the business of custom making cabinets. A customer orders a cabinet from Company JKL. Due to time constraints, Company JKL is unable to make the cabinet. Therefore, Company JKL contracts with Company MNO to make the cabinet from materials provided by Company JKL. Company MNO is not subject to Wisconsin sales or use tax on the charge to Company JKL for making the cabinet if Company JKL provides Company MNO with a properly completed exemption certificate claiming resale.

(2) EXAMPLES OF FABRICATING AND PROCESSING SERVICES. Fabricating and processing services, where materials are furnished directly or indirectly by the customer, that are subject to Wisconsin sales or use tax include, except as provided in sub. (1) (a) through (c):

(a) Application of coating to pipe.

(b) Assembling kits to produce a completed product.

(c) Bending glass tubing into neon signs.

(d) Bookbinding.

(e) Caterer's preparation of food.

(f) Cleaning used oil.

(g) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers, often called "millending."

(h) Cutting or crushing stones, gravel or other construction materials.

(i) Drying, planing or ripping lumber.

(j) Dyeing or fireproofing fabric.

(k) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to specifications of a particular construction job.

(L) Firing of ceramics or china.

(m) Heat treating or plating.

(n) Laminating identification cards.

(o) Making a fur coat from pelts, gloves or a jacket from a hide.

(p) Making curtains, drapes, slip covers or other household furnishings.

(q) Production of a sound recording or motion picture.

(r) Retreading tires.

(s) Tailoring a suit.

(t) Threading pipe or welding pipe.

(3) PURCHASES BY FABRICATORS OR PROCESSORS. Persons providing fabricating, processing and printing services, including those services listed in sub. (2), may qualify as manufacturers. If the service provider qualifies as a manufacturer as provided in s. 77.51 (7h) (a), Stats., the following items may be purchased by the service provider without Wisconsin sales or use tax:

(a) Machinery and equipment used exclusively and directly in manufacturing.

Example: Company PQR is in the business of heat treating metal for steel manufacturers. Company PQR uses its machinery and equipment only in providing this heat treating to steel manufacturers. Company PQR is performing a manufacturing process in acting as a submanufacturer. Since the machinery and equipment is used exclusively and directly in manufacturing, it may be purchased without Wisconsin sales or use tax provided Company PQR gives its supplier a properly completed exemption certificate.

(b) Tangible personal property or items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and which becomes an ingredient or component part of the property or item destined for sale or is consumed or destroyed or loses its identity in the manufacture of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., in any form destined for sale, except for fuel and electricity as provided in s. 77.54 (30) (a) 6., Stats.

Example: Company VWX is an electroplater. Company STU is a manufacturer of car bumpers. Company STU hires Company VWX to electroplate the bumpers. Company VWX may purchase the caustic soda, boric acid, etc., that is consumed or destroyed in the electroplating without Wisconsin sales or use tax when acting as a submanufacturer. These items are consumed or destroyed in the manufacture of tangible personal property, bumpers, destined for sale.

Note: Section Tax 11.38 interprets ss. 77.51 (14) (f) and (h), 77.52 (2) (a) 10. and 11., 77.54 and 77.55, Stats.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Note: For information regarding what is manufacturing and exemptions for machinery and equipment and other items used in manufacturing, refer to ss. Tax 11.39, 11.40 and 11.41.

Note: The interpretations in s. Tax 11.38 are effective under the general sales and use tax law on and after September 1, 1969 except that (a) The exemption for catalogs and the envelopes in which they are mailed became effective April 1, 2009 pursuant to 2007 Wis. Act 20; and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, October, 1976, No. 250, eff. 11−1−76; r. and recr. Register, June, 1993, No. 450, eff. 7−1−93; EmR0924: emerg. am. (title), (1) (title), (intro.), (a), (2) (e) and (3) (b), eff. 10−1−09; CR 09−090: am. (title), (1) (title), (intro.), (a), (2) (e) and (3) (b) Register May 2010 No. 653, eff. 6−1−10; correction in (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653.

Tax 11.39 Manufacturing. (1) DEFINITIONS. (a) 1. Manufacturing means the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing.

2. Manufacturing does not include storing raw materials or finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

(b) "Plant" as defined in s. 77.51 (10b), Stats., means a parcel of property or adjoining parcels of property, including parcels that are separate only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer. Plant inventory does not include unsevered mineral deposits as provided in s. 77.51 (10c), Stats.

(2) SCOPE OF MANUFACTURING. (a) Manufacturing:

1. Begins with conveying of raw materials and supplies from plant inventory to the place where the work is performed in the same plant and ends with conveying finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to the point of first storage in the same plant.

2. Includes conveying work in progress directly from one manufacturing operation to another in the same plant.

3. Includes testing or inspecting, throughout the manufacturing process, the new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is being manufactured.

4. Includes storing work in progress in the same plant where the manufacturing occurs.

5. Includes assembling finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

6. Includes packaging a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., if the manufacturer or another person on the manufacturer's behalf performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

(b) Manufacturing does not include storing raw materials or finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., delivery to or from the plant, repairing or maintaining facilities, or research and development.

(3) MANUFACTURERS. Manufacturers ordinarily include the following:

(a) Asphalt plants.
(b) Bakeries.
(c) Battery makers.
(d) Breweries and soda water bottling plants.
(e) Candy factories.
(f) Cement and concrete plants.
(fr) Cheese cutting and repackaging plants.
(g) Chemical processing plants.
(h) Concrete block and tile producers.
(i) Creameries and instant milk producers.
(j) Dairies and cheese plants.
(jd) Dental labs.
(jr) Ductwork fabricators.
(k) Electric generating companies.
(L) Flour and feed mills, including mobile units.
(m) Food processing plants, canning and freezing.
(n) Foundries.
(o) Glass making plants.
(oc) Grain dryers.
(om) Heat treaters and metal platers performing these services on semi−finished products furnished by manufacturers.
(os) Hide curers.
(p) Limestone calcination plants.
(q) Machine and equipment producers.
(r) Malting plants.
(s) Meat packing and processing plants.
(t) Motor vehicle and aircraft factories.
(u) Oil refineries.
(v) Paint factories.
(w) Paper making plants.
(wd) Persons engaged in snowmaking for a ski hill.
(wr) Photofinishers.
(x) Printers.
(y) Sawmills.
(z) Scrap processors.
(za) Shoe and clothing factories.
(zb) Smelting and steel mills.
(zc) Tanneries.
(zd) Tool and die making plants.
(ze) Persons engaged in crushing, washing, grading and blending sand, rock, gravel and other minerals.
(zf) Persons engaged in ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.
(zg) Tire retreaders.

(4) NONMANUFACTURERS. Nonmanufacturers ordinarily include the following:

(a) Contractors, when engaged in real property construction activities and installing or repairing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.
(b) Butcher shops.
(c) Farmers.
(d) Fish hatcheries.
(e) Freezer and locker plants.
(f) Highway truckers.
(g) Hotels.
(h) Laundries and dry cleaners.
(i) Repairpersons.
(j) Restaurants.
(k) Television and radio stations.
(L) Persons engaged in:
1. Corn shelling.
2. Experimental and development activities.
3. Logging and forestry operations.
4. Mining.
5. Paper recycling.
6. Photography.
7. Popping corn.
8. The business of raising and breeding animals.
9. Real property construction activities.
10. Custom slaughtering of animals.
11. Vending machine operations.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Note: Section Tax 11.39 interprets ss. 77.51 (7h), (10b), and (10c) and 77.54 (2) and (6) (a), Stats.

Note: The interpretations in s. Tax 11.39 are effective under the general sales and use tax law on and after September 1, 1969 except that (a) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., and certain leased property affixed to real property under s. 77.52 (1) (c), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (3) (j), (4) (c) and (r) 13., cr. (3) (om), Register, June, 1983, No. 330, eff. 7−1−83; am. (1), (3) (f), cr. (3) (ze), (zf) and (zg), r. (4) (p), (q) and (r) 10., Register, September, 1984, No. 345, eff. 10−1−84; am. (3) (f), Register, July, 1987, No. 379, eff. 8−1−87; correction in (4) (m) made under s. 13.93 (2m) (b) 5., Register, April, 1994, No. 460; correction in (2) (a) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1995, No. 478**;** am. (2) (a), (3) (m), (ze), (zf), (4) (intro.), cr. (3) (fr), (jd), (jr), (oc), (os), (wd), (wr), r. (4) (a), (d), (r), 2. and 4., renum. (4) (b), (c), (e), (f), (g), (h), (i), (j), (k), (L), (m), (n), (o) and (r) to be (4) (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (L), (m) and (n) and am. (4) (a) and (k), Register, October, 1997, No. 502, eff. 11−1−97; EmR0924: emerg. r. and recr. (1) and (2), am. (4) (intro.) and (a), r. (4) (h) and (i), renum. (4) (j) to (n) to be (4) (h) to (L), eff. 10−1−09; CR 09−090: r. and recr. (1) and (2), am. (4) (intro.) and (a), r. (4) (h) and (i), renum. (4) (j) to (n) to be (4) (h) to (L) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.40 Exemption of machines and processing equipment. (1) GENERAL. (a) Section 77.54 (6) (a), Stats., exempts the sales price from the sale of and the storage, use or other consumption of machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., and safety attachments for those machines and equipment. "Exclusively", as used in s. 77.54 (6) (a), Stats., and in this section, means that the machines and specific processing equipment and repair parts or replacements thereof are used solely by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. This exemption is to be strictly construed.

(b) Section 77.51 (7h) (a), Stats., provides that manufacturing means the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., with a different form, use, and name from existing materials by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., to the point of first storage in the same plant.

(c) In determining whether a particular machine or piece of processing equipment is included in the exemption under s. 77.54 (6) (a), Stats., ss. 77.51 (7h) and 77.54 (6) (a), Stats., must be considered together.

(d) Section 77.54 (5) (d), Stats., provides an exemption for mobile mixing and processing units and the motor vehicle or trailer on which they are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units.

(e) Section 77.54 (5) (c) and (26m), Stats., provide exemptions for certain motor vehicles, machinery and equipment used in waste reduction and recycling processes.

Note: See s. Tax 11.11 for more information on waste reduction and recycling exemptions.

(2) CONDITIONS FOR EXEMPTION AND EXAMPLES. The exemption under sub. (1) (a) shall apply if all the following conditions are met:

(a) Machines and processing equipment shall be used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities.

Example: Machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor producer of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(b) Machines and processing equipment shall be used exclusively in manufacturing.

Example: A forklift truck used on a production line to move products from machine to machine and used regularly or frequently in a warehouse to move and stock finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used directly in manufacturing. The exemption shall not apply if machines and processing equipment are not used directly in the step−by−step processes by which an end product results, even though the machine and equipment are indirectly related to the step−by−step processes. Machine foundations are real property improvements rather than personal property and do not qualify for exemption.

Example: Machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications; lighting, safety, fire protection or prevention; research; storage; or delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing.

(3) OTHER EXAMPLES OF THE EXEMPTION. Other examples of application of the exemption are as follows:

(a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment". Small tools include hand tools such as drills, saws, micrometers and hammers. However, if the items are also used for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by the manufacturer to produce tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

Example: A lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of the machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed.

Example: Machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities or equipment, research, or crating or packaging of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., for shipment are not exempt.

(e) The exemption does not apply to tangible personal property or an item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., which is not machinery or equipment, but is used in a manufacturing plant.

Example: Sweeping compounds are factory supplies rather than processing equipment.

(4) REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT. The sales price from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment is exempt.

Example: Conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns used as replacement parts for exempt machines and processing equipment are exempt.

Note: Section Tax 11.40 interprets ss. 77.51 (7h) and 77.54 (5) (c) and (d), (6) (a), (6r), and (26m), Stats.

Note: The interpretations in s. Tax 11.40 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Mobile mixing units are exempt effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Vehicles and machines used in waste reduction and recycling are exempt effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) Motor vehicles or trailers upon which mobile mixing units are mounted are exempt effective July 20, 1985, pursuant to 1985 Wis. Act. 29; (d) Safety attachments became exempt effective June 1, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption in s. 77.54 (6), Stats., shall be strictly construed effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The definition of "manufacturing" and what is included in the scope of manufacturing is effective October 1, 2009, pursuant to 2009 Wis. Act 28; and (g) The change of the term "gross receipts"

to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (4) (e), Register, October, 1979, No. 286, eff. 11−1−79; am. (1) (a), (2) (b), (3) (a) to (c), Register, November, 1981, No. 311, eff. 12−1−81; am. (1) (a), Register, June, 1990, No. 414, eff. 7−1−90; am. (1) (a) and (c), (2), (3) (a), (b), (d), and (4), cr. (1) (d) and (e), Register, March, 1991, No. 423, eff. 4−1−91; reprinted to restore dropped copy in (1) (a), Register, April, 1994, No. 460; EmR0924: emerg. am. (1) (a) to (c), (2) (a), (3) (b), (c), (e) and (4), eff. 10−1−09; CR 09−090: am. (1) (a) to (c), (2) (a), (3) (b), (c), (e) and (4) Register May 2010 No. 653, eff. 6−1−10; correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653; CR 10−094: am. (4) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.41 Exemption of property and items consumed or destroyed in manufacturing. (1) GENERAL. (a) Tangible personal property and items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale is exempt from Wisconsin sales or use tax under s. 77.54 (2), Stats., except as provided in s. 77.54 (30) (a) 6., Stats.

(b) Manufacturing is defined in s. 77.51 (7h), Stats., to mean the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., to the point of first storage in the same plant.

(2) PROPERTY AND ITEMS EXEMPT. (a) The following property and items are within the exemption provided by s. 77.54 (2), Stats., if the property or item is used exclusively and directly by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and is consumed, destroyed, or loses its identity in manufacturing the property or item that is destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining exempt manufacturing machinery whether used while the machinery is operating or while the machinery is idle.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.
15. Gloves and other wearing apparel, including hair nets, beard nets and facemasks used by employees working on the production line to prevent contamination of the product while it is being manufactured.

Examples: 1) Employees of Manufacturer A wear gloves and aprons while grading, weighing, and slicing meat products within the scope of manufacturing as defined in s. Tax 11.39 (2). The gloves and aprons are used only in this manner and prevent the meat products being manufactured from being contaminated. The gloves and aprons worn by the employees to protect the meat products from contamination are used directly in manufacturing and qualify for exemption from Wisconsin sales and use tax under s. 77.54 (2), Stats.

2) Employees of Manufacturer B wear gloves and aprons while they are working on the production line. The gloves and aprons are used only in this manner. The gloves and aprons are worn to protect the employees' clothing rather than to prevent contamination of the product while it is being manufactured. Although the gloves and aprons are used exclusively in manufacturing, the gloves and aprons are not used directly in manufacturing and do not qualify for exemption from Wisconsin sales and use tax under s. 77.54 (2), Stats.

(b) Tangible personal property and items under s. 77.52 (1) (b), Stats., used exclusively and directly by a manufacturer and which become an ingredient or component part of tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale as tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., is exempt from Wisconsin sales or use tax.

Examples: 1) Property and items sold to an automobile repair shop or other repair business to repair a customer's product does not qualify for exemption under s. 77.54 (2), Stats., because the property or items are not used exclusively and directly by a manufacturer in manufacturing.

2) A manufacturer−contractor is not entitled to the exemption when purchasing tangible personal property or items under s. 77.52 (1) (b), Stats., consumed, destroyed or losing its identity in manufacturing building components which it, as a contractor, will affix to real property in a real property construction activity, because the item or property is not sold by the manufacturer−contractor as tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats.

(3) PROPERTY AND ITEMS NOT EXEMPT. (a) An exemption under sub. (1) (a) is not allowed for property or items consumed or destroyed or losing their identity in manufacturing if any of the following apply:

1. The activity is not manufacturing or is not within the scope of manufacturing.
2. The property or item manufactured is not destined for sale as tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats.
3. The property or item is not used exclusively and directly by a manufacturer in manufacturing.

(b) The following property and items are not within the exemption provided by s. 77.54 (2), Stats., although the property or item may be exempt under s. 77.54 (6) (a), Stats., if the property or item is a machine or specific processing equipment, or a part for that machine or equipment, used exclusively and directly in manufacturing, as described in s. Tax 11.40:

1. Machine drills and auger bits.
2. Milling cutters.
3. Grinding wheels.
4. Chucks, jigs, and dies.
5. Saw blades.
6. Machine tool holders.
7. Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels, and spray guns.
8. Wearing apparel for the comfort or welfare of the employee or for the protection of the employee's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur−lined boots and jackets.

Example: Employees of Manufacturer C wear hard hats, as required by federal regulations, while working within the scope of manufacturing as defined in s. Tax 11.39 (2). The hard hats are worn to protect the employees. The hard hats are not used directly in manufacturing and do not qualify for exemption from Wisconsin sales and use tax under s. 77.54 (2), Stats.

9. Chemicals and cleaning agents used to clean the room where manufacturing takes place, including walls, ceilings, floors, drains, windows, and doors, even if the cleaning is required in order to meet sanitation standards required by state and federal regulatory agencies.

(4) FUEL AND ELECTRICITY. (a) Fuel and electricity are specifically excluded from the exemption provided by s. 77.54 (2), Stats. However, an exemption is provided in s. 77.54 (30) (a) 6., Stats., for fuel and electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in this state.

(b) Fuel includes:

1. Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

2. Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey−iron produced.

3. Gasoline, fuel oil, kerosene, natural gas, liquid propane gas, also called LPG, or other natural or synthetic liquids used as fuel.

Note: Since "fuel" is not defined in the sales and use tax statutes, it shall be given its ordinary meaning as provided in a dictionary. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire.

Note: Section Tax 11.41 interprets ss. 77.51 (7h) and 77.54 (2), (6) (a), (6r), and (30) (a) 6., Stats.

Note: The interpretations in s. Tax 11.41 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) The exemption for wood residue was effective on September 1, 1987, pursuant to 1987 Wis. Act 27; (b) The exemption for fuel and electricity consumed in manufacturing was effective January 1, 2006 pursuant to 2003 Wis. Act 99; (c) The requirement that property and items which qualify for exemption under s. 77.54 (2), Stats., be consumed exclusively and directly by a manufacturer in manufacturing property and items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., and certain leased property affixed to real property under s. 77.52 (1) (c), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; cr. (3) (a) 15. and am. (4) (h), Register, October, 1979, No. 286, eff. 11−1−79; am. (3) (a) 4., Register, July, 1987, No. 379, eff. 8−1−87; am. (5) (intro.), Register, April, 1990, No. 412, eff. 5−1−90; am. (2) (intro.), (3) (b) and (4) (intro.), cr. (5) (c), Register, March, 1991, No. 423, eff. 4−1−91; r. and recr. (1), r. (2), (3) (b), cr. (2) (a) 4. b., (b), (4) (b) (intro.), renum. (3) (a) (intro.), 1. to 15., (4), (5) (intro.), (a), (b) and (c) to be (2) (a) (intro.), 1. to 4. a., 5 to 15., (3), (4) (a), (b) 1. to 3. and am. (2) (a) 4. a., (3) (intro.), (4) (a), Register, October, 1997, No. 502, eff. 11−1−97; am. (1) (b) 2. b., (3) (b) and (h), Register, August, 1999, No. 524, eff. 9−1−99; EmR0924: emerg. am. (title), (1) (a), (2) (title), (a) (intro.), (b) and (4) (a), r. and recr. (1) (b) and (3), eff. 10−1−09; CR 09−090: am. (title), (1) (a), (2) (title), (a) (intro.), (b) and (4) (a), r. and recr. (1) (b) and (3) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (a) (intro.), 15., (3) (a) (intro.), r. and recr. (2) (a) 4., cr. (3) (a) 3., (b) 9. Register November 2010 No. 659, eff. 12−1−10.

Subchapter VII — Types of Retailers

Tax 11.45 Sales by pharmacies and drug stores.

(1) TAXABLE SALES. All sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c) and (d), Stats., by a pharmacy or drug store are taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) DRUGS AND PRESCRIPTION DRUGS. (a) "Drug" is defined in s. 77.51 (3pj), Stats., to mean a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

1. It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them.

2. It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.

3. It is intended to affect a function or structure of the body.

(b) Drugs are exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient, who is a human being, for treatment and dispensed on prescription filled by a registered pharmacist in accordance with law.

(c) Drugs described in par. (b) which are exempt from the tax include:

1. Pills and capsules.

2. Powders.

3. Liquids, including sterile water and irrigation solutions.

4. Salves and ointments.

5. Insulin.

6. Other preparations consumed orally, injected or applied, including dermal fillers.

7. Parenteral nutrition formulas.

8. Enteral nutrition formulas that contain a drug facts box.

9. Suppositories.

10. Radioactive isotopes such as implanted seeds.

11. Dyes and other contrast media.

12. Other items which remain or dissolve in the body, such as birth control implants including intra−uterine devices (IUD).

13. Gases − medical grade, such as oxygen and nitrous oxide.

14. Vitamins.

15. Vaccines.

16. Oral contraceptives.

17. Medicated dressings.

(d) This exemption does *not* include:

1. Prosthetic devices, mobility−enhancing equipment, or durable medical equipment.

2. Non−medicated bandages, pads, compresses, supports, or dressings.

3. Alcoholic beverages.

4. Casts and casting materials.

5. Food and food ingredients, including dietary supplements and soft drinks.

(3) PROSTHETIC DEVICES. The exemption for prosthetic devices under s. 77.54 (22b), Stats., applies to sales of all prosthetic devices, including repair and replacement parts, that are used for a human being. The exemption also includes accessories for exempt prosthetic devices.

(a) "Prosthetic device" is defined in s. 77.51 (11m), Stats., to mean a device, including repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility−enhancing equipment and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

(b) "Prosthetic devices" include the following items, as well as repair and replacement parts and accessories for those items, if they are implanted or worn on the body:

1. Trusses; post−operative shoes; orthopedic shoes, shoe lifts, inserts, arch supports, and heel protectors; braces including ankle, knee, neck, and back braces; knee immobilizers; traction devices; cervical collars; head halters; abdominal belts, binders, and supports; slings; suspensories; and bone pins, plates, nails, screws, wax, and cement.

2. Antiembolism elastic hose and stockings, and compression stockings and sleeves.

3. Pressure garments, including edema gloves, mast pants, and burn garments.

4. Artificial limbs; skin, shoulder, elbow, tendon, testicular, penile, hip, and knee implants and acetabular cups for hip implants; neuro, spinal, and joint membranes implants; adhesion barriers; artificial eyes; ocular, orbital, ear, nose, and throat implants; cochlear implants; maxillofacial devices; hands and feet implants; orthobiologics implants; surgical mesh implants; vena cava filters; artificial heart valves; artificial larynx; trachea tubes; grafts; sphincters; stump shrinkers; gastric bands and intragastric balloons; nasogastric tubes; stents; pacemakers and leads that are implanted or worn; defibrillator and leads that are implanted; and hearing aids and batteries.

5. Contact lenses and corrective eyeglasses (prescription and non−prescription).

6. Ostomy adhesives, barriers, catheters, collection bags and pouches, drain tubes, stoma caps, tubing, belts, hernia belts, and valves, but not barrier prep wipes, barrier powder, or lubricants.

7. Feeding, drainage, urinary and dialysis catheters, access ports, drains, and shunts.

8. Collagen implants, implanted tissue expanders, breast implants and prosthesis, and mastectomy surgical bras.

9. Casts and casting materials, splint and splint materials, staples, sutures, and suture alternatives.

10. Bone growth stimulators, CPAP machines, infuser pumps, programmable drug infusion devices, insulin pumps, penile pumps, electronic speech aids and tracheostomy speaking valves, tens units, and nerve stimulators implanted with leads.

(4) MOBILITY–ENHANCING EQUIPMENT. The exemption for mobility−enhancing equipment under s. 77.54 (22b), Stats., applies to all mobility−enhancing equipment, including repair and replacement parts, that is for human use. The exemption also includes accessories for exempt mobility−enhancing equipment.

(a) "Mobility−enhancing equipment" is defined in s. 77.51 (7m), Stats., to mean equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a person who has normal mobility. "Mobility−enhancing equipment" does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer. "Mobility−enhancing equipment" does not include durable medical equipment.

(b) "Mobility−enhancing equipment" includes the following items, as well as repair and replacement parts and accessories for those items:

1. Raised toilet seats and tub and shower stools.

2. Canes, crutches, walkers, wheelchairs including motorized wheelchairs and scooters, specialty chairs such as all terrain wheelchairs and pool wheelchairs, and wheelchair ramps.

3. Swivel seats which enable a handicapped person to rotate his or her body, while seated, in order to get into position to rise from a chair.

4. Handrails and grab bars to assist in rising from the commode, tub, or shower.

5. Lift chairs, patient lifts, bed pull−ups including trapeze bars, and transfer belts and benches.

6. Mobility enhancing car seats which are car seats that provide restraint and support (five point harness) for disabled children who have outgrown standard size child car seats but still need the restraint and support provided by car seats.

(5) DURABLE MEDICAL EQUIPMENT. The exemption for durable medical equipment under s. 77.54 (22b), Stats., applies to all durable medical equipment, including repair and replacement parts, that is for use in a person's home, if the equipment is used for a human being. The exemption also includes accessories for exempt durable medical equipment.

(a) "Durable medical equipment" is defined in s. 77.51 (3pm), Stats., to mean equipment, including the repair parts and replacement parts for the equipment that is primarily and customarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" does not include mobility−enhancing equipment.

(b) 1. "Use in a person's home" means that the equipment is sold to an individual for use where they are living, regardless of whether the individual resides in a single family home, apartment building, nursing home, assisted living center, convalescent home or school dormitory.

2. Durable medical equipment is not for use in a person's home if it is purchased by a hospital, clinic, nursing home, assisted living center, convalescent home, dental office, chiropractor or optician's office. In addition, purchases of durable medical equipment by a nursing home, assisted living center and convalescent home are not for use in a person's home even if the equipment is purchased for use by the residents of the nursing home, assisted living center or convalescent home.

(c) "Durable medical equipment" includes the following equipment, as well as repair and replacement parts for the equipment if it is primarily and customarily used for a medical purpose related to a person, can withstand repeated use, is not generally useful to a person who is not ill or injured, and that is not placed in or worn on the body:

1. Anesthesia machines and ventilators; anti−thrombolytic pumps; artificial inhalation equipment; audiology equipment including audiometers and acoustic impedance meters or bridges; automatic external defibrillators; autotransfusion equipment; billie lights; bone growth stimulators that are not worn; cardiology machines; cauterization equipment; chair and sling scales; continuous passive motion devices; crash carts; exam and surgical tables and stirrups; electroencephalogram equipment; heat lamps and bulbs; intraaortic balloon pump; kidney dialysis machines and dialyzers; lithotripters; mammography equipment; monitors; MRI/CT machines; needleless drug delivery system injection guns; nerve stimulator programmer; external pacemakers; pacemaker programmers and transmitters; percussors; platelet separators; drug infusion pumps; radiology and ultrasound equipment; pulse oximetery equipment and blood parameter monitors; respiratory equipment; resuscitators; staplers; stretchers; suction regulators; tens units; tourniquets; traction equipment; vaporizers; and medical atomizers and instruments.

2. Apnea monitors and CPAP machines that are not worn.

3. Alternating pressure beds, incubators, hospital beds, kinetic therapy beds, kodel bed pads, pressure reduction therapy beds; blanket cradles, patient positioners, and overbed tables and trays.

4. Abduction, cervical, and orthotic pillows.

5. Enteral and parenteral feeding bags that are generally used for up to 24 hours which will encompass numerous feedings and are then disposed, and enteral and parenteral connectors, pumps, stands, and tubing and feeding plugs.

6. IV poles, stands and reusable therapy arm boards, but not disposable arm boards.

7. Oxygen delivery equipment, oxygen tents or beds, nebulizers, and respiratory bags.

8. Electronic speech aids.

9. Therapeutic heating or cooling pads or compresses or packs.

10. Thermometers; glucose meters; scopes and lasers including stethoscopes, ophthalmoscopes, otoscopes, and endoscopes; and blood pressure equipment.

11. Commodes and collection basins including bed pans, urine containers, and emesis basins.

12. Wheelchair cushions that are braces or supports that are not attached and do not become a component part of the wheelchair itself.

13. Portable over−the−tub whirlpool devices that are not available for sale to the general public and are specifically manufactured for a medical purpose.

(6) MEDICARE CLAIMS. The administrator of Medicare claims, such as surgical care−blue shield, is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills the administrator directly in full or in part, the portion paid by the administrator is a tax exempt sale to the United States. If the provider of a taxable item bills an individual in full or in part who then seeks reimbursement from Medicare, the portion paid by the administrator to the individual is not an exempt sale to the United States.

Note: Section Tax 11.45 interprets ss. 77.51 (3pj), (3pm), (7m), and (11m) and 77.54 (14), (14m), (22b), and (28), Stats.

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

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for anti-embolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Sales of parts and accessories for certain medical items became exempt effective August 15, 1991, pursuant to 1991 Wis. Act 39; (f) The definitions of "drug," "durable medical equipment," "mobility−enhancing equipment," and "prosthetic devices" and the exemptions for these items became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (g) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, October, 1976, No. 250, eff. 11−1−76; r. (2) (c) 5., am. (3) (intro.) and (e), Register, September, 1984, No. 345, eff. 10−1−84; am. (3) (d), Register, July, 1987, No. 379, eff. 8−1−87; am. (3) (a) and (b) and (4), cr. (3) (c), renum. (3) (c) to (3) (d), renum. (3) (d) to (3) (e), renum. (3) (e) to (3) (f) and (g) and am., renum. (3) (f) to (3) (h), Register, March, 1991, No. 423, eff. 4−1−91; am. (1), (2) (a), (b) (intro.), (c) (intro.), (3) (intro.) to (e) and (4), r. and recr. (3) (h), Register, May, 1993, No. 449, eff. 6−1−93; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10.

Tax 11.46 Summer camps. (1) DEFINITIONS. In this section:

(a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable, or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual.

Example: The YMCA and Boy Scouts of America are agency camps.

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) TAXABLE RECEIPTS. Receipts from the following are taxable, except as provided in sub. (4) or (5):

(a) Prepared foods, as defined in s. 77.51 (10m), Stats., soft drinks, as defined in s. 77.51 (17w), Stats., candy, as defined in s. 77.51 (1fm), Stats., dietary supplements, as defined in s. 77.51 (3n), Stats., and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(c) Taxable services under s. 77.52 (2), Stats.

(3) EXEMPT RECEIPTS. Receipts from the following are exempt, except as provided in sub. (5):

(a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Food and food ingredients, as defined in s. 77.51 (3t), Stats., excluding candy, soft drinks, dietary supplements, and prepared foods.

(4) OCCASIONAL SALES. (a) The sales price from the sale of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c) and (d), Stats., or taxable services by agency camps not engaged in a trade or business and not otherwise required to hold a seller's permit are exempt from Wisconsin sales tax if entertainment, as defined in s. 77.54 (7m), Stats., is not provided.

(b) An agency camp is not engaged in a trade or business if its sales of otherwise taxable tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or services or its events occur on 20 days or less during the calendar year or if its taxable receipts for the calendar year are $25,000 or less.

Note: See Wisconsin publication 206, sales tax exemption for nonprofit organizations, for more detailed information about when one is engaged in a trade or business or required to hold a seller's permit.

(5) COMBINED CHARGE. (a) A summer camp's charge for meals, lodging, and program access for one nonitemized price is not subject to tax. The exemption in s. 77.54 (51), Stats., applies.

(b) It is presumed that the price for the lodging, meals, and other taxable products provided by the summer camp is 10 percent or less of the total price of all the products in the transaction. It is also presumed that true object of the transaction is not just one of the items provided. Therefore, the transaction is not a bundled transaction as defined in s. 77.51 (1f), Stats.

Note: See s. Tax 11.985 for more information on bundled transactions.

(c) Summer camps are the consumers of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services provided as part of the combined charge. As consumers, summer camps are subject to Wisconsin sales or use tax on their purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or taxable services.

Example: Summer Camp A provides a 4−week long summer program. The camp costs each participant $4,000. The $4,000 charge is one nonitemized price that includes all camp activities, lessons, meals, lodging, and a tee shirt. The taxable products included in the transaction are the lodging services, the meals, and the tee shirt. Summer Camp A may presume that the taxable products included in the transaction are less than 10 percent of the total sales price or purchase price of all the products included in the transaction and therefore the transaction is not a bundled transaction. Summer Camp A's $4,000 charge is not subject to Wisconsin sales or use tax, but Summer Camp A is the consumer of the items it purchases and uses or provides to each person attending the camp and is required to pay Wisconsin sales or use tax on its purchases of these items.

Note: Section Tax 11.46 interprets ss. 77.51 (1f), (1fm), (3n), (3t), (10m), and (17w), 77.52 (1), (2) (a) 1., and (20), and 77.54 (7m) and (51), Stats.

Note: The interpretations in s. Tax 11.46 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The provisions of sub. (4) became effective January 1, 1989, pursuant to 1987 Wis. Act 399; (b) The amount shown in sub. (5) (b) became effective January 1, 1991. From September 15, 1970 to December 31, 1990, the rate was $3 per person per night and prior to September 15, 1970, the rate was $2 per person per night; (c) The $25,000 receipts standard became effective January 1, 2006, pursuant to 2005 Act 25; and (d) The definitions of "bundled transactions," "candy," "dietary supplements," "prepared food," and "soft drinks" and the change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; am. (1) (intro.) and (a) and (2) (intro), cr. (4), renum. (4) to be (5) and am., Register, June, 1991, No. 426, eff. 7−1−91; r. and recr. (3) (c) and am. (5) (intro.), Register, December, 1996, No. 492, eff. 1−1−97; EmR0924: emerg. am. (2) (a), (3) (c) and (4), r. and recr. (5, eff. 10−1−09; CR 09−090: am. (2) (a), (3) (c) and (4), r. and recr. (5) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) (a), (2) (intro.), (3) (intro.), cr. (2) (c), r. and recr. (5) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.47 Commercial photographers and photographic services. (1) TAXABLE SALES. Taxable services and sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., of commercial photographers and others providing photographic services, including video taping, include charges for:

(a) Taking, reproducing, and selling photographs and videos.

(b) Processing, developing, printing, and enlarging film.

(c) Enlarging, retouching, tinting, or coloring photographs.

(d) Processing exposed film into color transparencies, mounted or unmounted.

(e) Reproducing copies of documents, drawings, photographs, videos, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

(f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) AMOUNTS INCLUDED IN SALES PRICE. (a) The sales price subject to the tax includes charges for photographic and video materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from the sales price subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES. (a) Commercial photographers and others providing photographic services, including video services, may purchase, without paying sales or use tax, any tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., which will be resold or which becomes a component part of an article of tangible personal property, or item or property under s. 77.52 (1)

(b) or (c), Stats., destined for sale if a properly completed exemption certificate is given the seller. These items include:

1. Mounts, frames, and sensitized paper used in the finished photograph and transferred to the customer.

2. Videos and film, including colored transparencies and movie film, in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

3. Containers, labels, or other packaging and shipping materials used to transfer merchandise to customers.

(b) Except as provided in par. (bm), photographers and others providing photographic services, including video services, are required to pay tax when purchasing tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which is used, consumed or destroyed in providing photographic services. These items include:

1. Chemicals.
2. Trays.
3. Film, other than exempted in par. (a) 2.
4. Plates.
5. Proof paper.
6. Cameras.
7. Other photographic equipment.
8. Video tape, other than exempted in par. (a) 2.

(bm) The items and property listed in par. (b) are exempt from tax if used by a manufacturer in manufacturing, as defined in s. 77.51 (7h), Stats., and the requirements for the exemptions provided in s. 77.54 (2), (2m), or (6), Stats., are met.

(c) If a photographer or other person providing photographic services, including video taping, gives an exemption certificate for property, items, or goods to a seller and then uses the property, item, or good for a taxable purpose, the photographer or other person providing photographic services shall be liable for use tax at the time the property, item, or good is first used in a taxable manner.

Note: Section Tax 11.47 interprets ss. 77.51 (7h), (13) (e) and (f), and (15a) (b) 3., 77.52 (2) (a) 7., (2m) (b), and (13), 77.53 (10), and 77.54 (2), (2m), and (6) (a), Stats.

Note: The interpretations in s. Tax 11.47 are effective under the general sales and use tax law on and after September 1, 1969, except (a) The exemption for property resold by a photographer is effective September 1, 1983, pursuant to 1983 Wis. Act 27 and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; am. (3) (a) (intro.), 2. and (b) 3., cr. (3) (c), Register, March, 1991, No. 423, eff. 4−1−91; am. (1) (intro.), (a) and (e), (2) (a), (3) (a) (intro.), 2., (b) (intro.) and 3. and (c), cr. (3) (b) 8., Register, January, 1992, No. 433, eff. 2−1−92; EmR0924: emerg. am. (1) (title), (intro.) to (c), (e), (2), (3) (a), (b) (intro.) and (c), cr. (3) (bm), eff. 10−1−09; CR 09−090: am. (1) (title), (intro.) to (c), (e), (2), (3) (a), (b) (intro.) and (c), cr. (3) (bm) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.48 Landlords, hotels and motels. (1) LANDLORDS. (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances, or other items of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by them for use by their tenants in leased or rented living quarters. The sales and use tax applies to a landlord's purchases of all these items. The sales price from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The sales price from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for the parking, docking, or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking, or storage space, and if similar units are rented at a reduced price if the parking, docking, or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking, or storage.

(c) 1. The furnishing of rooms or lodging through the sale of any kind of time−share property is not taxable.

2. The sale, furnishing or use of recreational facilities on a periodic basis and of other recreational rights, including membership rights, vacation services and club memberships, with respect to time−share property, is not taxable, if the facilities are not available to persons who have not purchased the time−share property, other than guests.

Example: If a golf course is available to the general public for a fee, charges for access to the golf course are taxable, even if the charges are made in connection with the sale or use of time−share property.

(d) The rental for a continuous period of one month or more of a mobile home, as defined in s. 101.91 (10), Stats., or a manufactured home, as defined in s. 101.91 (2), Stats., used as a residence is exempt from the sales and use tax, whether the mobile home or manufactured home is classified as real or personal property.

(2) HOTELS AND MOTELS. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators, and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing at one location for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business, including a trucking company, railway, or airline, to be used by its employees for layover is not taxable.

(b) The rental of space for meetings, conventions, and similar activities that are not amusement, athletic, entertainment, or recreational in nature, is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the type of use.

Example: The rental of a motel sleeping room by a salesperson from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Sales of lodging by hotels, motels, and inns to governmental agencies and nonprofit organizations described in s. 77.54 (9a), Stats., and the federal government or to their employees are exempt from sales and use tax if the following 3 conditions are met, regardless of whether the agency or the employee pays for the lodging:

1. The hotel, motel, or inn issues the invoice or billing document for the lodging in the name of the governmental agency or nonprofit organization.

2. The hotel, motel, or inn receives any of the following:

a. A purchase order or similar written document from the governmental agency.

b. The certificate of exempt status, CES, number of the nonprofit organization. The hotel, motel, or inn shall enter the CES number on its copy of the invoice or billing document.

3. The hotel, motel, or inn keeps a copy of the documents in subds. 1. and 2. to substantiate that the sale was exempt.

(d) Separately stated charges by hotels, motels, and inns for the rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., including televisions and refrigerators, are taxable.

(e) Hotels, motels, and inns are the consumers of all the property, items, and goods used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies, items, and property consumed by the occupants of a room as part of the lodging service. The tax applies to their purchases of all these items.

(3) MOTELS LEASED TO OPERATORS. (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., as opposed to the realty and intan-

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

gible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to the lessor's total gross investment in all real and personal property being leased to that operator, except as provided in par. (c). This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department for reasonableness.

(b) The numerator of the ratio in par. (a) is the purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by the lessor, except as provided in par. (c). This includes furniture, furnishings, equipment, or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio, and other indoor and outdoor areas; beds, bedding, linen, and towels; vending machines; and maintenance equipment.

Example: If the lessor's purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., is $100,000, and the lessor's gross investment is $500,000 for all real and personal property, items, and goods, taxable lease receipts shall be determined by applying a ratio of 20% ($100,000 ÷ $500,000) to the gross lease receipts for each sales tax reporting period.

(c) For purposes of par. (a), if the lessor of the property under s. 77.52 (1) (c), Stats., is also the lessor of the real property to which the property under s. 77.52 (1) (c), Stats., is affixed, the numerator of the ratio described in par. (a), does not include the lessor's gross investment in such property, but the lessor is liable for the sales or use tax on its purchases of such property.

Note: Section Tax 11.48 interprets ss. 77.51 (13) (n), 77.52 (1), (2) (a) 1., 2., and 9., and (2m), and 77.54 (36), Stats.

Note: The interpretations in s. Tax 11.48 are effective under the general sales and use tax law on and after September 1, 1969, except (a) The provisions of sub. (1) (c) 1. are effective on or after August 9, 1989, pursuant to 1989 Wis. Act 31 and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (1) (a) and (b), (2) (a) and (b) and (3) (b), cr. (1) (c) and (d), (2) (c) and (d), renum. (2) (c) to be (2) (e) and am., Register, March, 1991, No. 423, eff. 4−1−91; correction in (1) (d) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. am. (1), (2) (intro.) to (b), (c) (intro.), 2. (intro.), b., 3., (d), (e) and (3), cr. (3) (c), eff. 10−1−09; CR 09−090: am. (1), (2) (intro.) to (b), (c) (intro.), 2. (intro.), b., 3., (d), (e) and (3), cr. (3) (c) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.49 Service stations and fuel oil dealers. **(1)** TAXABLE SALES. Sales by service station operators and fuel oil dealers subject to the sales tax include the following:

(a) The sale of furnace or heating fuel to customers, other than for residential or farm use.

(b) The repair, service, alteration, fitting, cleaning, painting, coating, inspection, and maintenance of motor vehicles, including the total amount charged for parts and labor and including motor vehicles and truck bodies owned by nonresidents except as provided in sub. (2).

(c) The towing of motor vehicles, which includes the hauling of motor vehicles by a tow truck, as defined in s. 340.01 (67n), Stats.

Examples: 1) The charge to a customer for towing a vehicle to a repair facility is taxable.

2) The charge to a customer by a towing company for towing the customer's vehicle from a no parking zone is taxable.

3) The charge to a customer by a towing company for towing a demolished vehicle to a junkyard is taxable.

4) The charge to a Wisconsin governmental unit by a towing company for towing is exempt from tax.

5) The charge to a repair facility by a towing company for towing a vehicle to the facility for repair which will be passed on to the customer is not taxable provided the repair facility gives the towing company a properly completed exemption certificate claiming resale. However, the charge for the towing service to the customer by the repair facility is taxable.

(d) Retail sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including motor oil, antifreeze, motor vehicle parts and supplies, tobacco products, candy, and soft drinks by service stations except as provided in sub. (2).

(e) Charges for car washes, whether automated or not.

(f) Providing parking for motor vehicles. Providing temporary storage of a motor vehicle is considered parking if the vehicle is ready and available for immediate use.

(2) EXEMPT SALES. Sales by service station operators and fuel oil dealers not subject to the sales tax include the following:

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. If motor fuel or special fuel is purchased without tax under s. 77.54 (11), Stats., because it is subject to the excise tax imposed under ch. 78, Stats., and then the excise taxes are later refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle upon the public highways, the fuel is subject to the tax, unless otherwise exempt under s. 77.54 (1), (3), (5), (6) (c), (9a), (12), (13), (30) (a), Stats., or other exemptions in subch. III of ch. 77, Stats.

(b) Sales made directly to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk−Sharing Plan Authority, and the Fox River Navigational System Authority; any county, city, village, town, or school district in this state; a county−city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats. Sales to a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, are exempt from sales and use tax if the cemetery company or corporation uses the items exclusively for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States. Sales to employees of these entities are not exempt, even though the entity may reimburse the employee for the expenditure.

(c) Sales of accessories, attachments, parts, supplies, and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers, and semi−trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.38, Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus or truck with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of parts and repairs for tractors or farm machines used exclusively and directly in farming, but this

exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales to farmers of fuel used in farming.

(f) Sales of general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54 (5) (a), Stats.

(g) Sales of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste, wood, and biomass as defined in s. 196.378 (1) (ar), Stats., used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) (q) 2. and 3.

(h) Sales of repairs, services, alterations, fitting, cleaning, painting, coating, towing, inspection, and maintenance services to common or contract carrier vehicles exempt under sub. (2) (c), mobile mixing and processing units and the vehicle or trailer on which they are mounted, and motor vehicles not required to be licensed for highway use which are exclusively and directly used in conjunction with waste reduction or recycling activities.

(i) Sales of accessories, attachments, parts, supplies, and materials for mobile mixing and processing units and the vehicle or trailer on which they are mounted, including highway fuel for units operated on public highways.

(j) Sales of any residue used for fuel in a business activity that results from the harvesting of timber or the production of wood products including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or wood residue.

(k) Sales of fuel consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin.

(L) Sales of fuel consumed in operating an industrial waste treatment facility.

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase, without tax, "for resale", repair parts and materials used in the work which are physically transferred to their customers. This includes auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers, and welding rods.

(b) A service station operator's purchases of equipment, tools, supplies, and other property, items, or goods not physically transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives, and other property or items used or consumed in performing motor vehicle repair service are taxable.

Note: Section Tax 11.49 interprets ss. 77.52 (2) (a) 8m., 9., and 10. and (2m) (b) and 77.54 (3), (5), (9a), (11), and (30), Stats.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1, 1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985; (d) The repair of motor vehicles used in waste reduction or recycling processes is exempt pursuant to 1983 Wis. Act 426, effective July 1, 1984; (e) The repair of mobile mixing and processing units and the vehicle or trailer on which mounted, as well as parts, accessories, attachments, supplies and materials are exempt pursuant to 1985 Wis. Act 29, effective July 20, 1985; (f) Peat and solid waste fuel cubes sold for residential use are exempt pursuant to 1985 Wis. Act 149, effective April 2, 1986; (g) Wood residue sold for fuel use in a business activity is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (h) Repair to nonresident vehicles not otherwise exempt is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (i) The exemption for fuel used in farming, other than in machines, became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (j) All towing services became taxable effective May 1, 1993; (k) Fuel consumed in manufacturing became exempt effective January 1, 2006, pursuant to 2003 Wis. Act 99; (L) Towing by a tow truck as defined in s. 340.01 (67n), Stats., became taxable effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (m) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1978, No. 265, eff. 2−1−78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2−1−83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7−1−83; am. (2) (a), Register, July, 1987, No. 379, eff. 8−1−87; correction in (2) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1990, No. 412; am. (1) (b) and (d), (2) (b), (c) and (f) and (3) (a), cr. (2) (g), (h) and (i), Register, March, 1991, No. 423, eff. 4−1−91; am. (1) (b) and (2) (d), renum. (1) (c) (intro.) and (2) (e) to (i) to be (1) (c) and (2) (f) to (j) and am. (1) (c), r. (1) (c) 1. to 3., cr. (1) (f) and (2) (e), Register, April, 1993, No. 448, eff. 5−1−93; EmR0924: emerg. am. (1) (b) to (e), (2) (a) to (c), (g) to (j) and (3), cr. (2) (k) and (L), eff. 10−1−09; CR 09−090: am. (1) (b) to (e), (2) (a) to (c), (g) to (j) and (3), cr. (2) (k) and (L) Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: am. (2) (b), (d) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.50 Auctions. (1) STATUTE. Section 77.51 (13) (b), Stats., provides that every person engaged in the business of making sales at auction of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., owned by the person making the sale or others is a "retailer". The definition of "sale" contained in s. 77.51 (14) (a), Stats., includes any sale at an auction.

(2) RETAILER. If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are responsible for reporting the sales tax on auction receipts even if the owner of the property has a seller's permit.

(3) TAXABLE AUCTION RECEIPTS. Taxable receipts from auctions include the sales price received from:

(a) Auction sales of heavy equipment and going−out−of−business auction sales of retail stores, motels, wholesalers, manufacturers, contractors, and service enterprises, but not certain sales of personal farm property, as explained in sub. (4) (a). The household goods exemption does not apply to these sales.

(b) Auction sales, including radio and television auction sales held at a location where the auctioneer holds more than 5 auctions during the calendar year.

(c) Auctions sponsored by a nonprofit organization, except as provided in sub. (4) (c). The household goods exemption does not apply to these auctions.

(d) Auction sales of antiques and works of art except when sold with other household goods of which they were a part.

(e) Auction sales of professional or business inventories or equipment, except certain personal farm property as explained in sub. (4) (a), even though they may consist of household goods.

(f) Sheriffs' sales and other auction sales made pursuant to orders of a Wisconsin court.

(g) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

(h) All other auction sales which are not specifically exempt under the law.

(4) EXEMPT AUCTION RECEIPTS. The receipts from the following auction sales are exempt:

(a) Except as provided in sub. (5), auction sales of personal farm property or household goods which are held at a location where the auctioneer holds 5 or fewer auctions during the calendar year. In this paragraph:

1. "Household goods" includes tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which is associated with maintaining a household and is for family use. "Household goods" does not include:

a. Highway motor vehicles or trailers, snowmobiles, all−terrain vehicles, mini bikes, aircraft and boats.

b. Professional or business inventory or equipment.

Example: Household goods include furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus household goods include goods removed from a family home, such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars, sporting goods or hobby equipment including bats, balls, tennis racquets,

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

golf clubs, guns and ammunition, and related hunting equipment, fishing equipment, camping equipment, photographic equipment, tools, bicycles, and personal collections of those items.

2. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used by the owner in the business of farming. "Personal farm property" does not include racing, pleasure riding, or show horses, pets or other recreational animals not used in farming, highway vehicles and boats.

(b) Sales for resale or sales that are otherwise exempt. If such a sale is made at an auction, the person conducting the auction should obtain a properly completed exemption certificate from the purchaser.

(c) Auction sales by religious, charitable, educational, or civic organizations and other nonprofit organizations that conduct a fund raising event, if both of the following apply:

1. The auctioneer is not the retailer, because the auctioneer's services are donated.

2. The sales qualify as exempt occasional sales under s. Tax 11.35 (4).

(5) AUCTION SALES OF MOTOR VEHICLES, BOATS, SNOWMOBILES, RECREATIONAL VEHICLES AS DEFINED IN S. 340.01 (48R), STATS., TRAILERS, SEMI−TRAILERS, ALL−TERRAIN VEHICLES, AND AIRCRAFT. (a) An auctioneer shall collect, report, and remit tax on its sales of any of the following items if the auctioneer is a retailer, unless an exemption applies:

1. Motor vehicles.
2. Boats.
3. Snowmobiles.
4. Recreational vehicles as defined in s. 340.01 (48r), Stats.
5. Trailers.
6. Semi−trailers.
7. All−terrain vehicles.
8. Aircraft.

(b) 1. A buyer who purchases any of the items listed in par. (a) 1. to 8. from an auctioneer who is a retailer shall pay the tax to the auctioneer, unless an exemption applies. If the buyer does not pay the tax to the auctioneer, the buyer shall file a return and pay the tax, as prescribed by the department, prior to registering or titling the item in Wisconsin.

2. Auction sales of the items listed in par. (a) 1. to 8. do not qualify for exemption as occasional sales of personal farm property or household goods if the items are registered or titled or required to be registered or titled in Wisconsin. Auction sales of boats also do not qualify for exemption as occasional sales of personal farm property or household goods if the boats are registered or titled or required to be registered or titled under the laws of the United States.

Note: Section Tax 11.50 interprets ss. 77.51 (9) (e), (13) (b), and (14) (intro.) and (a), 77.52 (1), 77.54 (7), and 77.61 (1), Stats.

Note: The interpretations in s. Tax 11.50 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The standard in sub. (4) (d) 2. became effective January 1, 1989, pursuant to 1987 Wis. Act 399; (b) The occasional sale exemption for five or fewer auctions at a location became effective January 1, 2000, pursuant to 1999 Wis. Act 9; (c) The requirement for auctioneers to collect, report, and remit tax on sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semi−trailers, all−terrain vehicles, and aircraft, regardless of whether the auctioneer is a dealer of such items became effective October 1, 2009; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1978, No. 265, eff. 2−1−78; am. (3) (e), Register, December, 1983, No. 336, eff. 1−1−84; am. (4) (d) 3., Register, April, 1985, No. 352, eff. 5−1−85; am. (4) (d) 3., Register, December, 1987, No. 384, eff. 1−1−88; am. (2), (3) (a), (b), (c), (d) and (h) and (4) (a) (intro.), 1. (intro.), a. and 2. and (d) (intro.), 1. and 2., r. (4) (d) 3., renum. (4) (c) to be (3) (i), Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10.

Tax 11.51 Grocers' guidelist. (1) GENERAL. (a) All sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats., are taxable except when a specific exemption applies. One of the exemptions is for "food and food ingredients," which generally exempts all food and food ingredients for human consumption, except candy, soft drinks, dietary supplements, and prepared food. This exemption also does not include many items normally available in grocery and food stores, such as soft drinks, alcoholic beverages, tobacco products, paper products, and detergents.

(b) "Food and food ingredients" is defined in s. 77.51 (3t), Stats., to mean a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

(c) The lists in sub. (2) shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

(2) GUIDELISTS. (a) *Taxable sales by grocers.* Taxable sales include sales of the following items:

Adhesive tape.
Air fresheners.
Albums.
Alcoholic beverages.
Almond bark.
Ammonia.
Anti−acid products.
Anti−freeze.
Appliances.
Ash trays.
Aspirin.
Auto supplies.
Baby needs, except food.
Bags of all kinds.
Bakeware.
Baking chips, sweetened.
Baking chocolate that contains a sweetener in the form of bars, drops, or pieces.
Barbecue supplies.
Baskets.
Batteries, except hearing aid batteries.
Beauty aids.
Beer.
Binders.
Bird food and supplies.
Bleach.
Blueing.
Bobby pins and rollers.
Books.
Bottled water, sweetened.
Bottles.
Bowl cleaner.
Breath mints, unless they contain flour.
Breath sprays and strips.
Brooms.
Brushes.
Bubble bath.
Butterscotch chips.
Cake decorations, non−edible.
Cake decorations that are candy.
Calcium tablets.
Cameras and supplies.
Can openers.
Candy.
Candy apples.

Canning and freezer supplies.
Caramel apples.
Caramel corn.
Cat food and supplies.
Cereal bars, unless they contain flour.
Charcoal and starter.
Chewing gum.
Chocolate chips and other flavored chips, if sweetened.
Chocolate covered potato chips, unless they contain flour.
Chocolate covered raisins and nuts.
Cigarette lighter fluid, wicks, flints.
Cigarettes.
Cigars.
Cleaning equipment and supplies.
Cleansers.
Clocks.
Clothes lines.
Clothespins.
Clothing.
Cocktail mixes containing 50% or less fruit or vegetable juice.
Cod liver oil.
Coffee drinks that contain sweeteners, unless it also contains milk or milk products.
Cold remedies.
Combs and brushes.
Confections that are candy.
Cough drops.
Crayons.
Deli items, as explained in sub. (3) (e) 2.
Dental aids.
Deodorants.
Deodorizers.
Detergents.
Diapers.
Dietary supplements.
Dinnerware.
Disinfectants.
Distilled spirits.
Dog food and supplies.
Dolls.
Drain cleaners.
Dried fruit with sweeteners.
Drug sundries.
Dry cleaners.
Dry ice.
Dye.
Electrical supplies.
Facial tissues.
Farm and garden implements.
Feminine hygiene needs including napkins and tampons.
Fermented malt beverages.
Fertilizers.
Film.
First aid products.
Flaked coconut with sweetener.
Flash bulbs.
Flatware.
Floor care products.
Flowers and seeds.
Foil, aluminum and similar products.
Foot care products.
Frames.
Fruit drinks that contain a sweetener and have 50 percent or less fruit juice by volume.
Fruit roll−ups.
Fuel and lubricants.
Furniture polish.
Games.
Garbage bags and cans.
Garden needs.
Gifts, non−food and nonexempt food.
Ginseng sold as a dietary supplement.
Glassware.
Gloves.
Glue.
Granola bars, unless they contain flour.
Greeting cards.
Grilling supplies.
Grooming aids.
Gum.
Hair care products.
Hardware.
Health and beauty aids.
Heated foods and beverages, as explained in sub. (3) (c).
Honey roasted and honey coated nuts.
Hosiery.
Household equipment and supplies.
Hygiene products.
Ice blocks.
Insect and pest control products.
Insulated containers.
Internal remedies.
Intoxicating liquor.
Iron tablets.
Jewelry.
Juices that contain sweeteners and 50% or less fruit or vegetable juice by volume.
Laundry products.
Lawn furniture.
Licorice, unless it contains flour.
Light bulbs and fuses.
Lozenges.
Lunch boxes.
Lye.
Magazines.
Manicure needs.
Marshmallows, unless they contain flour.
Mason jars.
Matches.
Medicinal preparations.
Milk of magnesia.
Mineral tablets.
Nail polish and remover.
Nails.
Napkins.
Nonalcoholic beer that contains a sweetener.
Notebooks.
Nursery stock.
Nuts that are candy, such as honey roasted cashews.
Pails.
Paint and paint supplies.
Paper products, including tissues, plates, cups, towels, napkins, and writing paper.
Peanuts that are candy, such as honey roasted peanuts.
Pens and pencils.
Periodicals.
Pet food and supplies.
Plants.
Plastic utensils.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Polishes.
Popcorn that is candy, such as caramel corn.
Pots and pans.
Powder, face and body.
Prepared foods as explained in sub. (4).
Raisins that are candy, such as yogurt coated raisins.
Razors and blades.
Records.
Root beer.
Rotisseries.
Rubber bands.
Salt, water softener.
Sandwiches that are prepared food.
Sanitary goods.
School supplies.
Scissors.
Sewing aids.
Shampoo and rinse.
Shaving supplies.
Shelf coverings.
Shoe laces and polishes.
Soaps.
Soft drinks.
Sponges.
Starch.
Stationery.
Steel wool.
Stockings.
Sun glasses.
Sun tan lotion.
Tableware.
Taffy apples.
Tape.
Tea drinks that contain sweeteners.
Thread.
Tobacco products.
Toilet tissue.
Tonics.
Tools.
Tooth brushes.
Toothpaste and powders.
Toothpicks.
Toys.
Utensils.
Vegetable juices that contain a sweetener and 50% or less juice by volume.
Video rentals.
Vitamins.
Wash cloths.
Waste baskets.
Watches.
Water, sweetened.
Water conditioners.
Wax paper.
Waxing.
Wearing apparel.
Wine making supplies.
Wrap, foil, plastic and waxed paper.
Writing supplies.
Yogurt covered raisins and nuts.
Zippers.

(b) *Exempt sales by grocers*. Exempt sales include sales of the following items, but not if the items meet the definition of candy, soft drinks, dietary supplements, or prepared foods:

Apple cider, sweet.
Baby food.
Bakery goods.
Baking powder and soda.
Barbecue potato chips.
Barbecue sauces.
Barbecue sunflower seeds.
Berries.
Beverage powders, unless they are a dietary supplement.
Beverages that contain milk.
Biscuit mix.
Bouillon cubes.
Bread and rolls.
Breakfast cereals.
Breakfast pastries.
Brownies.
Butter.
Cake mixes and flour.
Cakes, prepared, mixes and snack type.
Candy bars containing flour.
Canned foods, except candy, soft drinks, dietary supplements, and prepared foods.
Catsup.
Cereal and cereal products.
Cereal bars containing flour.
Cheese.
Chicken.
Chip dip.
Chips, potato, corn and similar items.
Chocolate, unsweetened or not sold in form of bars, drops, or pieces.
Citrus fruits.
Cocoa.
Coffee beans, grounds, freeze dried and coffee substitutes.
Coffee drinks that contain no sweeteners or that contain a milk or milk product.
Condiments.
Cookies and crackers.
Cooking oils.
Cones, ice cream cups.
Cotton candy not sold as prepared food.
Cream.
Dairy products.
Deli items, as explained in sub. (3) (e).
Desserts and toppings.
Dinners, frozen.
Doughnuts.
Dressings.
Dried fruits, unsweetened.
Dried milk products.
Eggs.
Fish and fish products.
Flaked coconut without sweetener.
Flavoring extracts.
Flour.
Food coloring.
Frosting in containers.
Frozen desserts.
Frozen fruit juices.
Frozen fruits and vegetables.
Frozen juice bars.
Frozen pizza.
Frozen TV dinners.
Fruit.
Fruit juices that contain more than 50% fruit juice by volume.
Garlic.

Gelatin.
Granola bars that contain flour.
Gravy extracts and mixes.
Grits.
Hash.
Honey.
Ice cream.
Ice cream bars and similar products.
Ice cream in cones.
Ice cubes.
Icing in tubes.
Jams.
Jellies.
Juices that contain more than 50% fruit or vegetable juice by volume.
Ketchup.
Licorice containing flour.
Lobster.
Luncheon meats.
Macaroni.
Malted milk powder.
Maraschino cherries.
Margarine.
Marshmallow creme.
Marshmallows that contain flour.
Mayonnaise.
Meal.
Meat and meat products.
Meat extracts and tenderizers.
Melons.
Milk and milk products.
Mustard.
Newspapers, as defined in s. 77.51 (8), Stats.
Noodles.
Nuts, except as provided in par. (a).
Oil, cooking, salad.
Oleomargarine.
Olives.
Pancake mix.
Pasta.
Peanut butter.
Peanuts, in shell or canned, salted or not, except as provided in par. (a).
Pectins.
Pepper.
Pickles.
Pie and pie fillings.
Pie crust and mixes.
Popcorn, that is not candy as defined in sub. (3) (a).
Popcorn, unpopped.
Popsicles.
Potato chips.
Potato salad, as explained in sub. (3) (e).
Poultry and poultry products.
Powdered drink mixes, except dietary supplements.
Preserves.
Pretzels.
Puddings.
Raisins, except as provided in par. (a).
Ravioli.
Relishes.
Rice.
Rolls and biscuits.
Salad dressing.
Salt and salt substitutes.
Salted nuts.
Sardines.
Seafood.
Seasonings.
Sherbet.
Shortening.
Soup.
Spaghetti products.
Spices.
Spreads.
Sugar.
Sugar cubes.
Sweeteners.
Syrup.
Tea, bags, leaves or instant.
Tea and ice tea beverages that are not sweetened.
Trail mix.
Turkey.
Vanilla and vanilla extract.
Vegetable juices that contain more than 50% juice by volume.
Vegetables.
Vinegar.
Waffle mix.
Water, carbonated, unsweetened.
Water, flavored, unsweetened.
Water, unsweetened.
Yeast.
Yogurt and yogurt bars, cones and sundaes.

(3) EXPLANATIONS OF SOME TAXABLE AND EXEMPT SALES BY GROCERS. For purposes of sub. (2):

(a) 1. "Candy" is defined in s. 77.51 (1fm), Stats., to mean a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include a preparation that contains flour or that requires refrigeration.

2. This definition is intended to be used when a person is trying to determine if a product that is commonly thought of as "candy" is in fact "candy." The definition is not intended to be applied to every type of food product sold.

Example: Many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables are not commonly thought of as "candy." The candy definition is not applicable to products such as these since they are not commonly thought of as candy.

Note: The definition of candy would be applied in a situation where a person is trying to determine if a product is "candy" as opposed to a cookie.

Note: A listing that determines whether various products meet the definition of "candy" was prepared by the Streamlined Sales Tax Governing Board (SSTGB) and can be found in the Rules and Procedures of the SSTGB at http://www.streamlinedsalestax.org.

3. Candy must be a "preparation" that contains certain ingredients, other than flour. A "preparation" is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the candy definition. For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

4. Candy must be sold in the form of bars, drops, or pieces.

a. A "bar" is a product that is sold in the form of a square, oblong, or similar form.

Example: Company A sells one pound square blocks of chocolate. The blocks of chocolate are "bars."

b. A "drop" is a product that is sold in a round, oval, pear−shaped, or similar form.

Example: Company B sells chocolate chips in a bag. Each individual chocolate chip contains all of the ingredients indicated on the label. The chocolate chips are "drops."

c. A "piece" is a portion that has the same make−up as the product as a whole. Individual ingredients and loose mixtures of items that make up the product as a whole are not pieces. Exception: If a loose mixture of different items that make up the product

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

as a whole are all individually considered candy and are sold as one product, that product is also candy.

Examples: 1) Company C sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a "piece" or "drop."

2) Company D sells trail mix in a bag. The product being sold (e.g., trail mix), is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make−up the trail mix are not "pieces," but instead are the ingredients, which when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.

3) Company E sells a product called "candy lover's mix." "Candy lovers mix" is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.

5. In order for a product to be treated as containing "flour," the product label must specifically list the word "flour" as one of the ingredients. There is no requirement that the "flour" be grain−based and it does not matter what the flour is made from.

Examples: 1) The ingredient list for a breakfast bar lists "flour" as one of the ingredients. This breakfast bar is not "candy" since it contains flour.

2) The ingredient list for a breakfast bar lists "peanut flour" as one of the ingredients. This breakfast bar is not candy because it contains flour.

3) The ingredient list for a breakfast bar that otherwise meets the definition of "candy" lists "whole grain" as one of the ingredients, but does not specifically list "flour" as one of the ingredients. This breakfast bar is candy because the word "flour" is not included in the ingredient list.

4) Company E sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not candy since flour is identified as one of the ingredients on the label.

5) Company F sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, which otherwise meets the definition of "candy," does not identify flour as one of the ingredients. The box of chocolates is candy.

6. "Other ingredients or flavorings", as used in this definition, means other ingredients or flavorings that are similar to chocolate, fruits, or nuts. This phrase includes candy coatings such as carob, vanilla, and yogurt, flavorings or extracts such as vanilla, maple, mint, and almond, and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbecue or cheddar flavor, or herbs which are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of "candy."

Examples: 1) Retailer A sells barbecue flavored peanuts. The ingredient label for the barbecue flavored peanuts indicates that the product contains peanuts, sugar, and various other ingredients, including barbecue flavoring. Since the barbecue flavored peanuts contain a combination of sweeteners and nuts, and flour is not listed on the label and the nuts do not require refrigeration, they are candy.

2) Retailer B sells barbecue potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbecue potato chips are food and food ingredients and not candy. The fact that the ingredient label for the barbecue potato chips indicates that the product contains barbecue seasoning which contains a sweetener does not change the fact that the barbecue potato chips are not commonly thought of as candy.

7. The term "natural or artificial sweeteners" means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

8. A product that otherwise meets the definition of "candy" is not "candy" if it requires refrigeration. A product "requires refrigeration" if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it "requires refrigeration," smaller size packages of the same product are also considered to "require refrigeration." A product that otherwise meets the definition of "candy" is "candy" if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

Examples: 1) A grocery store sells candy bars at room temperature or from a refrigerated display case. Unless the candy bar is required to be refrigerated, it is still candy, even if it was refrigerated when sold.

2) Company A sells sweetened fruit snacks in a bag that contains multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks "require refrigeration" and therefore are not candy.

3) Company A sells sweetened fruit snacks in single serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 2 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate that after opening, the product must be refrigerated. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to "require refrigeration" and therefore are not candy.

4) Company A sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not "require refrigeration."

9. a. Products that are a combination of items that are defined as "candy" and items that are defined as "food and food ingredients" are "bundled transactions" when the items are distinct and identifiable, sold for one non−itemized price, and more than 50 percent of the items are "candy." Such "bundled transactions" are subject to tax. For example, the sale of a bag of multiple types of individually wrapped bars of which more than 50 percent of the bars are "candy" that is sold for one non−itemized price is taxable.

b. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have "flour" listed as an ingredient are "food and food ingredients" and those bars, drops, or pieces which do not have "flour" listed as an ingredient are "candy." The determination of whether the package as a whole meets the definition of a "bundled transaction" is based on the percentage of bars, drops, or pieces that meet the definition of "food and food ingredient" as compared to the percentage of bars, drops, or pieces that meet the definition of "candy." For purposes of this subd. 9. b., the retailer may presume that each bar, drop, or piece contained in the package has the same value and, unless the package clearly indicates otherwise, there is an equal number of each type of product contained in the package.

Examples: 1) Retailer A sells a package that contains 100 total pieces of food and food ingredients. There are 10 different types of foods and food ingredients in the package. Eight of the types of food and food ingredients included in the package meet the definition of "candy," while two of the types included do not meet the definition of "candy." It is a reasonable presumption that 20 (2/10 times 100) of the pieces are not "candy" and 80 (8/10 times 100) of the pieces are "candy." Therefore, since 80 percent of the product is "candy," the sales price of the entire package is taxable as a bundled transaction.

2) Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are "candy" and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer $3.49 per pound. Customer C selects some items that are candy and some that are not and puts them in a bag. Since some of the items in the bag are "candy," the retailer shall treat the entire package as a bundled transaction containing primarily "candy," unless the retailer ascertains that 50 percent or less of the items in the bag are "candy."

c. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in subd. 9. b., and even if the ingredient lists "flour" as an ingredient, the product will be treated as "candy," unless the retailer is able to ascertain that 50 percent or less of the products in the package are "candy." For purposes of this subd. 9. c., the retailer may presume that each bar, drop, or piece contained in the package has the same value and, unless the package clearly indicates otherwise, there is an equal number of each type of product contained in the package.

10. Products whose ingredients are a combination of various unwrapped food ingredients that alone are not candy, along with unwrapped food ingredients that alone are "candy," such as breakfast cereal and trail mix with candy pieces, are considered "food and food ingredients," but not "candy." Sales of these products are not "bundled transactions" because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

(b) 1. "Dietary supplement" is defined in s. 77.51 (3n), Stats., to mean a product other than tobacco, that is intended to supplement a person's diet if all of the following apply:

a. The product contains a vitamin, mineral, herb or other botanical, amino acid, dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake, concentrate, metabolite, constituent, or extract, or any combination thereof.

b. The product is intended for ingestion in tablet, capsule, powder, soft−gel, gel−cap, or liquid form, or, if not intended for ingestion in such forms, is not represented as conventional food and is not represented for use as the sole item of a meal or diet.

c. The product is required to be labeled as a dietary supplement as required under 21 CFR 101.36.

2. Dietary supplements can be identified by the "Supplemental Facts" box found on the label as required by 21 CFR 101.36.

3. Dietary supplements include antioxidants, bee pollen, enzymes, garlic capsules, ginseng, herbal supplements, immune supports, lecithin, metabolic supplements, vitamins and minerals, and zinc lozenges.

(c) "Heated state" means sold at any temperature higher than the air temperature of the room or place where the product is sold.

(d) 1. "Soft drink" is defined in s. 77.51 (17w), Stats., to mean a beverage that contains less than 0.5 percent of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50 percent vegetable or fruit juice by volume.

2. Soft drinks are beverages that are in liquid form and do not include items that are not in liquid form such as powdered fruit drinks, powdered teas and frozen drink concentrates.

3. Natural and artificial sweeteners include corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, maltitol, molasses, evaporated cane juice, rice syrup, barley malt, and honey.

4. a. Water and tea that contain any sweeteners are soft drinks.

b. Water and tea that are unsweetened are not soft drinks, even if carbonated or flavored.

(e) 1. Deli foods sold unheated by weight or volume are exempt, unless utensils are provided, as explained in sub. (4) (d).

2. Deli foods sold in a heated state are prepared foods.

Examples: 1) A grocer's deli sells potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls at room temperature. These items are sold by weight or volume and utensils are not provided. The sale of these items is not taxable.

2) A grocer's deli sells a serving of each of the following for $3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls and provides utensils. The sale is taxable as a sale of prepared food.

3) A grocer's deli sells party trays by weight or volume in an unheated condition and for which utensils are not provided. The types of party trays include shrimp and sauce, meats, fresh vegetables, fresh fruits, cheeses or cookies. The sale of these party trays is not subject to tax.

(4) PREPARED FOOD. "Prepared food" is defined in s. 77.51 (10m), Stats., to mean any of the following:

(a) Food and food ingredients sold in a heated state.

Example: A retailer sells heated sandwiches to a customer. The heated sandwich is prepared food.

(b) Food and food ingredients heated by the retailer, except for the following:

1. Two or more food ingredients that are mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the North American Industry Classification System (NAICS), 2002 edition, published by the federal office of management and budget is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

Example: A food manufacturer classified under industry code 31161 of the North American Industry Classification System (NAICS), 2002 edition, makes hot dogs by mixing and combining 2 or more food ingredients, heating the hot dogs so that they are fully cooked and then packaging the hot dogs for sale once they have cooled. Although the hot dogs were heated by the retailer while they were being manufactured, they are not prepared food because they meet the exception in par. (b) 1., assuming the hot dogs do not meet any of the other definitions of prepared food.

2. Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

Examples: 1) A bakery mixes ingredients together to make a cake. The cake mix is then heated (baked). Once the cake cools, it is decorated and sold to a customer. Although the cake was heated by the retailer, it is not prepared food because it meets the exception in par. (b) 2., assuming the cake does not meet any of the other definitions of prepared food.

2) A bakery mixes 2 or more ingredients together to make a bagel. The bagel is then heated and placed in a heated display case for sale to a customer. The bagel is prepared food since it is sold heated. Although the bagel would meet the exception provided in par. (b) 2., since it is sold heated, it is prepared food.

3. Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by volume or weight.

Example: Grocery Store A prepares potato salad for sale to its customers. Grocery Store A boils the potatoes, cuts the potatoes up, and combines the potatoes with various other ingredients to make potato salad. Once the potato salad has cooled, Grocery Store A sells the potato salad for $2 per pound. Although the potatoes were previously heated by the retailer when the potato salad was being made, the potato salad is not prepared food since it is sold unheated by weight, assuming the potato salad does not meet any of the other definitions of prepared food.

(c) Two or more food ingredients mixed or combined by the retailer for sale as a single item, except if any of the following apply:

1. The retailer's primary classification in the North American Industry Classification System, 2002 edition, published by the federal office of management and budget is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

2. The item is sold unheated and by volume or weight.

3. The item is a bakery item made by the retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

Examples: 1) Restaurant A purchases various food and food ingredients (eggs, flour, sugar, ice cream, fudge, cookie bits, etc.) to make cakes with an ice cream layer. Restaurant A makes a layer of cake using the eggs, flour, sugar, etc. Once the cake layers are baked and cooled, Restaurant A covers one of the cake layers with a layer of fudge and cookie bits. Restaurant A then places another cake layer over the fudge and cookie bits and covers the second cake layer with a layer of ice cream. Restaurant A decorates the top of the cake according to instructions provided by its customer. Although this cake is two or more ingredients mixed or combined by the retailer for sale as a single item, it is excluded from the definition of prepared food because it is primarily a bakery item and is not subject to Wisconsin sales or use tax, assuming the cake does not meet any of the other definitions of prepared food.

2) Restaurant B purchases various food and food ingredients (eggs, flour, sugar, ice cream, fudge, cookie bits, etc.) to make a layered ice cream cake. Restaurant B makes a layer of cake using the eggs, flour, sugar, etc. Once the cake layer is baked and cooled, Restaurant B places the cake layer between two layers of ice cream. Restaurant B decorates the top of the cake according to instructions provided by its customer. This cake is prepared food and subject to Wisconsin sales or use tax since Restaurant B mixed or combined 2 or more ingredients to make the cake, and the ice cream cake is not primarily a bakery item.

4. The food and food ingredients are only sliced, repackaged, or pasteurized by the retailer.

Example: Grocer C sells cheese trays. The cheese trays are put together by the grocer selecting the various types of cheeses and slicing the amount of each type of cheese it wants to include, placing each type of sliced cheese on the tray, and then wrapping the cheese tray. The cheese tray is not prepared food since the cheese on the tray was only sliced and repackaged, assuming the cheese tray does not meet any of the other definitions of prepared food.

5. The item contains eggs, fish, meat, or poultry in raw form that requires cooking by the consumer, as recommended by the food and drug administration in chapter 3, part 401.11 of its food code to prevent food−borne illnesses.

(d) 1. Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, bowls, knives, forks, spoons, glasses, cups, napkins, or straws. However a "plate" does not include a container or packaging used to transport the food and food ingredients. Eating utensils are provided by the retailer if:

a. The eating utensils are available to the purchasers and the retailer's sales of food and food ingredients as described in pars. (a), (b), and (c) and food for which plates, bowls, glasses, or cups are necessary to receive the food are more than 75 percent of the

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

retailer's total sales of all food and food ingredients at that establishment; or

b. The retailer's customary practice is to physically give or hand the utensils to the purchaser, except that plates, bowls, glasses, or cups that are necessary for the purchaser to receive the food and food ingredients need only be made available to the purchaser.

Examples: 1) Deli A has a self−service salad bar. Customers go to the salad bar, pick up a clam shell container at the salad bar, and place the items they would like in the clam shell container. The clam shell container is a plate or bowl necessary for the customer to receive the food and is made available to the customer. Therefore, sales from the self−service salad bar are sales of prepared food.

2) Retailer X has a self−service milk machine. Customers go to the milk machine, pick−up a disposable cup, and fill it with whatever kind of milk they want. The cup is necessary for the customer to receive the milk and is made available to the customer. Therefore, sales of milk in this manner are sales of prepared food.

2. a. The numerator of the percentage described in subd. 1. a. includes only sales of prepared food as defined in pars. (a), (b), and (c) and food for which plates, bowls, glasses, or cups are necessary to receive the food, but not including alcoholic beverages.

b. The denominator of the percentage described in subd. 1. a. includes all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks, but not including alcoholic beverages.

3. a. If the percentage determined under subd. 2. is 75 percent or less, utensils are considered to be provided by the retailer if the retailer's customary practice is to physically give or hand the utensils to the purchaser or, in the case of plates, bowls, glasses, or cups that are necessary to receive the food, to make such items available to the purchaser.

b. If the percentage determined under subd. 2. is greater than 75 percent, utensils are considered to be provided by the retailer if the utensils are made available to the purchaser.

4. a. For a retailer whose percentage determined under subd. 2. is greater than 75 percent, an item sold by the retailer that contains 4 or more servings packaged as one item and sold for a single price does not become prepared food simply because the retailer makes utensils available to the purchaser of the item.

b. For a retailer whose percentage determined under subd. 2. is greater than 75 percent, an item sold by the retailer that contains 4 or more servings packaged as one item and sold for a single price does become prepared food if the retailer physically gives or hands utensils to the purchaser of the item, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food, need only be made available to the purchaser.

c. For purposes of subd. 4. a. and b., serving sizes are based on the information contained on the label of each item sold, except that, if the item sold has no label, the serving size is based on the retailer's reasonable determination.

5. a. Except as provided in subd. 5. b., if a retailer sells food items that have a utensil placed in a package by a person other than the retailer, the utensils are considered to be provided by the retailer.

b. Except as provided in subds. 3. and 4., if a retailer sells food items that have a utensil placed in a package by a person other than the retailer and the person's primary classification in the North American Industrial Classification System (NAICS), 2002 edition, published by the federal office of management and budget, is manufacturing under subsector 311, the utensils are not considered to be provided by the retailer.

6. a. For purposes of subd. 1. a., a retailer shall determine the percentage for the retailer's tax year or business fiscal year based on the retailer's data from the retailer's prior tax or business fiscal year as soon as practical after the retailer's accounting records are available, but no later than 90 days after the day on which the retailer's tax or business fiscal year begins.

b. For retailers with more than one establishment in Wisconsin, a single determination under subd. 1. a. that combines the information for all of the retailer's establishments in Wisconsin shall be made annually, and will apply to all of the retailer's establishments in Wisconsin.

c. If a retailer has no prior tax or business fiscal year in Wisconsin, the retailer shall make a good faith estimate of its percentage under subd. 1. a. for the retailer's first tax or business fiscal year and shall adjust the estimate prospectively after the first 3 months of the retailer's operations if the actual percentage is materially different from the estimated percentage.

(5) FEDERAL SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP). A grocer's receipts from SNAP, formerly known as the federal food stamp program, are not subject to sales tax even if the items purchased by the consumer are not exempt food or food ingredients under s. 77.54 (20n), Stats.

Note: Section Tax 11.51 interprets ss. 77.51 (1fm), (3n), (3t), (10m), and (17w), 77.52 (1), and 77.54 (15) and (20n), Stats.

Note: The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975; (b) Magazines and periodicals sold over−the−counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27; (c) The definitions of "meals" and "sandwiches" and the tax treatment of prepackaged food combinations became effective August 1, 1997, pursuant to 1997 Wis. Act 237; The definitions of "candy," "dietary supplement," "food and food ingredient," "prepared food," and "soft drink," and the exemption for food and food ingredients became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, December, 1977, No. 264, eff. 1−1−78; am. (2) (b), Register, June, 1983, No. 330, eff. 7−1−83; am. (2) (a) and (b), Register, September, 1984, No. 345, eff. 10−1−84; am. (1), (2) (a), (b) and (c) (intro.), 2., 3., and 4., cr. (2) (c) 5. and (3), Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (a) and (b), Register, December, 1992, No. 444, eff. 1−1−93; am. (1) and (2) (a) and (b), Register, December, 1996, No. 492, eff. 1−1−97; am. (1) and (2) (a) and (b), r. (2) (c) (intro.), renum. (2) (c) 1. to 4. to be (3) (a) to (d), (2) (c) 5. to be (3) (g) 1., (3) to be (4) and am. (3) (c) and (d), (3) (g) 1.; cr. (3) (intro.), (e), (f), (g) 2. and (h), Register, October, 1999, No. 526, eff. 11−1−99; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; correction in (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653; CR 10−094: am. (2) (a), (3) (a) 2., (d) 3., (e) 2., (5) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (2) (a), (b), r. and recr. (3) (a) 2., cr. (3) (a) 3. to 10., am. (4) (b) 1. (Example), 2. (Example 1), cr. (4) (b) 3. (Example), (c) 3. (Examples), 4. (Example), am. (4) (d) 1. (intro.), a., b., cr. (4) (d) 1. b. (Examples) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.52 Coin−operated vending machines and amusement devices. (1) SCOPE. This section applies to all sales from coin−operated machines, except those located on army, air force, navy, or marine corps exchanges where the operator leases the machines to those exchanges which acquire title to and sell the merchandise through the machines to authorized purchasers from those exchanges.

(2) DEFINITIONS. In this section:

(a) "Heated" means the food or beverages have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

(b) "Operator" has the meaning in s. 77.52 (1m), Stats.

(c) "Retailer" for purposes of this section means either of the following:

1. Any person who owns or possesses coin−operated vending machines or amusement devices, who controls the operations of the machines as by stocking or removing the receipts from the machines or devices, who has access to the machines or devices for any purpose connected with the sale of merchandise or services through the machines or devices, and whose compensation is based, in whole or in part, upon receipts from sales made through the machines or devices.

2. A person who is responsible for providing laundry, dry cleaning, photographic, photocopy, or other taxable services through vending machines.

Note: If there is a question of who is the retailer for a single machine or device, a determination regarding who is the retailer liable for tax may be obtained by writing to: Wisconsin Department of Revenue, PO Box 8902, Madison, WI 53708−8902.

(3) SELLER'S PERMITS. (a) Retailers of tangible personal property, items, property and goods under s. 77.52 (1) (b), (c), and (d),

Stats., and taxable services sold through coin−operated vending machines or devices dispensing taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each retailer.

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) A notice must be affixed to each coin−operated machine or device showing the retailer's name, address and seller's permit number.

(4) TAXABLE RECEIPTS. Taxable receipts include receipts from:

(a) Coin−operated machines dispensing tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., such as:

1. Candy.

2. Chewing gum.

3. Dietary supplements.

4. Heated foods and beverages.

4m. Prepared foods, such as sandwiches prepared by the retailer.

5. Soft drinks.

6. Non−edible items such as:

a. Beauty supplies, such as make−up, hair spray, nail polish, and combs.

b. Cameras, film, and photography supplies.

c. Cigars, cigarettes, other tobaccos products, and lighters.

d. Drugs and other medical supplies, such as aspirin, bandages, and suntan lotion.

e. Hygiene products, such as soap and shampoo.

f. Photocopies.

g. Photographs.

h. Reading materials.

i. Toys and games.

j. Videos.

k. Wearing apparel, such as gloves, hosiery, shoelaces, and sunglasses.

(b) Coin−operated machines which provide a taxable service, such as telephones, car washes, televisions, vacuums, parking meters, shoe shine machines, bowling ball cleaning machines and coin−operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

(c) Coin−operated machines of non−governmental retailers located on army, navy, or air force installations, hospitals, or other facilities of the United States government.

(5) NONTAXABLE RECEIPTS. Receipts from the following are not taxable:

(a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin−operated, self−service machines.

(b) Coin−operated storage lockers, pay toilets, and scales.

(c) Coin−operated hair drying machines.

(d) Hospitals sales from vending machines of food and food ingredients, except soft drinks to patients, staff, or visitors.

(e) Sales from a vending machine of food and food ingredients except, candy, soft drinks, dietary supplements, and prepared foods.

(6) REPORTING AND RECORD KEEPING. (a) The receipts from the sale of taxable property, items, goods, or services from vending machines and amusement devices are subject to sales tax. Thus, taxable receipts include, for example, receipts from property, items, goods, and services selling for one, 5, and 10 cents and more. No deduction shall be permitted for the cost of the property, item, good, or service sold, materials used, labor or service cost, or any other expense, including commissions paid to place machines in an establishment.

(b) Sales tax collected from customers may be deducted from the total receipts before computing the tax payable, if customers are notified the prices include sales tax. If customers are not notified that the prices include sales tax, no deduction shall be allowed. The notification of the customer may be made by either:

1. Conspicuously posting the bracket system charts issued by the department.

2. Conspicuously posting a sign that states "Prices Include Sales Tax."

(c) Each retailer shall maintain adequate and complete records including:

1. The location of each machine.

2. The serial number of each machine.

3. Purchases and inventories of all merchandise sold through machines.

4. Receipts from sales of exempt merchandise.

5. Purchase records of all machines and the cost of all supplies of which the retailer is deemed to be the user or consumer.

Example: Purchase records shall be maintained for a vending machine or juke box, including repairs and parts, and records or compact discs used in the juke box.

(7) SALE, LICENSE, LEASE, OR RENTAL OF MACHINES. (a) Except as provided in par. (b), receipts from the sale, lease, rental, or license to use coin−operated machines and attachments, parts and supplies for the machines are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out−of−state supplier, the purchaser shall remit the use tax directly to the department.

(b) Nontaxable receipts include the lease of coin−operated machines by non−governmental retailers to exchanges of the army, air force, navy, or marine corps which acquire title to and sell merchandise through the machines to authorized purchasers from such exchanges.

(c) Machines purchased exclusively for license, lease, or rental to others may be purchased by the lessor without tax if the lessor gives an exemption certificate to the lessor's supplier. If the lessor intends to make any use of the machines other than license, lease, or rental, an exemption certificate claiming resale may not be given. In either event, the lessor's rental receipts are taxable.

Note: Section Tax 11.52 interprets ss. 77.51 (1fm), (3n), (3t), (13), and (17w), 77.52 (1), (1m), (2) (a) 2., 6., 7., 10., and 11., and (2m), and 77.54 (20n), Stats.

Note: The interpretations in s. Tax 11.52 are effective under the general sales and use tax law on and after September 1, 1969, except the definitions of "candy," "dietary supplement," "food and food ingredient," and "soft drink," the exemption for food and food ingredients, the change of the term "gross receipts" to "sales price," and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1978, No. 265, eff. 2−1−78; am. (3) (a) 1. and r. (4) (c), Register, December, 1983, No. 336, eff. 1−1−84; am. (1) (intro.), (3) (a) 1., (5) (c) 5. and (6) (a), Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; correction to numbering of (4) (a) 4m. made under s. 13.92 (4) (b) 1., Stats., Register May 2010 No. 653.

Tax 11.53 Temporary events. (1) DEFINITION. In this section, "temporary event" means an activity at one place of operation for a brief duration where taxable sales are made. A place of operation includes a fair, carnival, circus, festival or portable roadside stand.

(2) PERMITS FOR TEMPORARY EVENTS. Except as provided in sub. (3), a person conducting business as a retailer at a temporary event shall hold a seller's permit.

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.

(3) EXCEPTION. Persons, other than nonprofit organizations, who do not hold and are not otherwise required to hold a seller's

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

permit who have total taxable sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or taxable services of less than $1,000 during the calendar year are not required to hold a seller's permit. Sales by such persons are exempt occasional sales. However, a person's purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services which when resold are exempt occasional sales under this section, are taxable purchases by that person.

(4) SECURITY. Application for a seller's permit shall be on a form prescribed by the department. The applicant shall be subject to security requirements of s. 77.61 (2), Stats., and may be required to deposit security in an amount determined by the department, but not in excess of $15,000.

(5) RETURNS. Sales and use tax returns due from persons holding seller's permits are subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the returns and shall be due quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under s. 77.52 (19) or 77.58 (1) and (2), Stats., and shall include on the return receipts from all temporary events and other taxable transactions of the permittee during the reporting period.

(6) VIOLATION. Under s. 77.52 (12), Stats., any person required to hold a seller's permit who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

(7) OPERATOR REPORTING REQUIREMENTS. An operator of a swap meet, flea market, craft fair, or similar event shall report to the department for each event, the legal and business name, address, telephone number, e−mail address, tax account number, if available, social security number and federal employer identification number, if applicable, for each vendor selling merchandise at the swap meet, flea market, craft fair, or similar event as provided in s. Tax 11.535.

Note: Section Tax 11.53 interprets ss. 73.03 (38) and (50), 77.52 (1), (7), (9), (11), (12), and (19), 77.58, and 77.61 (2), Stats.

Note: The interpretations in s. Tax 11.53 are effective under the general sales and use tax law effective on and after September 1, 1969, except: (a) The security amounts given in sub. (4) became effective February 1, 1982; (b) The provisions of sub. (7) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, 1965, No. 114, eff. 7−1−65; am. Register, May, 1966. No. 125. eff. 6−1−66; am. (1), Register, June, 1975, No. 234, eff. 7−1−75; renum. from Tax 11.01, Register, January, 1978, No. 265, eff. 2−1−78; r. and recr., Register, January, 1982, No. 313, eff. 2−1−82; am. (1) (c), cr. (3) and (7), renum. (3) to be (4) and am., renum. (4) and (5) to be (5) and (6) and am. (5) (a) 1., Register, March, 1991, No. 423, eff. 4−1−91; r. (1) (a), (b), (e), renum. (1) (c) and (d) to be (1) (a) and (b) and am. (1) (a), r. and recr. (2) and (5), am. (3), (4) and (6), Register, August, 1999, No. 524, eff. 9−1−99; correction in (1) (a) made under 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524; EmR0924: emerg. r. and recr. (1), renum. (2) (intro.) to be (2) and am., r. (2) (a) and (b), am. (3) to (5) and (7), eff. 10−1−09; CR 09−090: r. and recr. (1), renum. (2) (intro.) to be (2) and am., r. (2) (a) and (b), am. (3) to (5) and (7) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.535 Operators of a swap meet, flea market, craft fair, or similar event. (1) PURPOSE. This section clarifies requirements and establishes a time standard for the reports required under s. 73.03 (38), Stats., which authorizes the department to require operators of swap meets, flea markets, craft fairs, and similar events to report to the department specific identifying information of each vendor selling merchandise at these events.

(2) DEFINITIONS. In this section:

(a) "Event" means an occurrence, occasion, activity, or function at which merchandise is sold or traded.

(b) "Operator" means a person who, or an entity such as an association, partnership, corporation, or nonprofit organization, which arranges, organizes, promotes, or sponsors an event.

(c) "Selling merchandise" means the sale, rental, license, lease, exchange, trade or barter of, or taking orders for, merchandise, goods, or products for money or other consideration, or both.

(d) "Similar events" means events which are similar to swap meets, flea markets and craft fairs and includes tradeshows, carnivals, fairs, and fund−raising events.

(e) "Vendor" means a person or entity selling merchandise at retail at an event. An operator might also be a vendor at an event.

(3) REPORT REQUIRED. Each operator shall furnish to the department within 10 days following the close of an event, the name, address, telephone number and e−mail address of the operator; the name of the event; the date or dates of the event; and the location of the event; and the legal name, business name, address, telephone number, e−mail address, tax account number, if available, social security number and the federal employer identification number of each vendor, if applicable.

(4) FORMS. Operators shall report the information required by sub. (3) on forms provided by the department or in a format similar to that form.

Note: Copies of the S−240, Wisconsin Temporary Event Operator and Seller Information reporting form may be obtained at any Department of Revenue office, by calling (608) 266−2776, by electronic mail at sales10@revenue.wi.gov or by writing to Wisconsin Department of Revenue, Post Office Box 8902, Madison, WI 53708.

(5) ALTERNATIVE REPORTING METHOD. Operators of continuing or successive events may report all vendors for each event or may report under an alternative method approved by the department. Any operator may request approval from the department of an alternative method of reporting which will provide the department with the required information on all vendors at each event. The request shall be made in writing to: Wisconsin Department of Revenue, Temporary Events Program, 265 W Northland Avenue, Appleton, WI 54911. It shall list the dates and locations of events to be held during the calendar year and the proposed method for reporting the information required.

Note: Section Tax 11.535 interprets s. 73.03 (38), Stats.

History: Cr. Register, June, 1990, No. 414, eff. 7−1−90; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. am. (title), (1), (2) (b) to (d), (3), and (5), eff. 10−1−09; CR 09−090: am. (title), (1), (2) (b) to (d), (3), and (5) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (c) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.54 Temporary amusement, entertainment, or recreational events or places. (1) DEFINITIONS. In this section:

(a) "Admission" means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment, or recreation is provided.

(b) Pursuant to s. 77.51 (10), Stats., "person" includes any natural person, firm, partnership, limited liability company, joint venture, joint stock company, association, public or private corporation, the United States, the state, including any unit or division of the state, any county, city, village, town, municipal utility, municipal power district, or other governmental unit, cooperative, unincorporated cooperative association, estate, trust, receiver, personal representative, any other fiduciary, any other legal entity, and any representative appointed by order of any court or otherwise acting on behalf of others.

(c) "Places of amusement, entertainment or recreation" include auditoriums, race tracks, street fairs, rock festivals, or other places where there is any show or exhibition for which any charge is made including the sale of tickets, gate charges, seat charges, entrance fees, and motor vehicle parking fees.

(2) GENERAL. The receipts from the sale of admissions to amusement, entertainment, and recreational events or places are subject to sales tax.

(3) ENTREPRENEURS, PROMOTERS, SPONSORS, OR MANAGERS. (a) Entrepreneurs, promoters, sponsors, or managers of an amusement, entertainment, or recreational event shall be regarded as

retailers for the purposes of s. 77.51 (13) (c), Stats., if the entrepreneurs, promoters, sponsors, or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment, or recreation to be offered; deciding the scale of the prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(b) As retailers, the entrepreneurs, promoters, sponsors, or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52 (7), Stats., and may be required to post security as provided in s. 77.61 (2), Stats. The retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

(4) EXCEPTIONS. This section does not apply to:

(a) Traveling attractions which perform in stadiums, theaters, or other places where the permanent management of the stadium, theater, or other location holds a valid seller's permit, controls the sale of tickets or admissions, and assumes the liability for the payment of the sales tax.

(b) Churches or other nonprofit groups which operate within the occasional sale limitations provided in s. 77.54 (7m), Stats.

(c) Sales of admissions or tickets by any baseball team affiliated with Wisconsin department of American legion baseball.

(d) Sales of admissions by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger.

Note: Section Tax 11.54 interprets ss. 77.51 (10) and (13) (c), 77.52 (2) (a) 2., (7), and (19), 77.54 (35), and 77.61 (2), Stats.

Note: The interpretations in s. Tax 11.54 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales by a baseball team of the Wisconsin department of American legion baseball pursuant to 1985 Wis. Act 29, is effective September 1, 1985; and (b) The exemption for certain sales of admissions by a nonprofit organization to participants in sports activities became effective July 1, 2009, pursuant to 2009 Wis. Act 28.

History: Cr. Register, March, 1976, No. 243, eff. 4−1−76; renum. from Tax 11.02; Register, January, 1978, No. 265, eff. 2−1−78; cr. (1) (intro.), (2) and (4) (c), renum. (1) to be (1) (a) and am., renum. (2) and (3) to be (1) (c) and (b) and am., renum. (4), (5) and (6) to be (3) (a), (b) and (4) and am., Register, March, 1991, No. 423, eff. 4−1−91; EmR0924: emerg. am. (title), (1) (a) to (c), (2), (3), (4) (a) and (b), cr. (4) (d, eff. 10−1−09; CR 09−090: am. (title), (1) (a) to (c), (2), (3), (4) (a) and (b), cr. (4) (d) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.55 Agents, consignees, lienors, and brokers. **(1)** UNDISCLOSED PRINCIPAL. A person who has possession of tangible personal property or items, property, or goods under s. 77.52 (1), (b), (c), or (d), Stats., owned by an unknown or undisclosed principal and has the power to transfer title to that property, item, or good to a third person, and who exercises that power, is a retailer whose receipts are subject to the tax.

(2) DISCLOSED PRINCIPAL. (a) The sales price received from the sale of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., made by a person with possession of the property, item, or good who is acting for a known or disclosed principal, is taxable to the principal if the principal is engaged in the full or part−time business of selling tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. If the principal fails to pay the tax, the agent may be liable for it.

(b) A principal shall be deemed disclosed to a purchaser only when the evidence shows that the identity of the principal is made known to the purchaser at the time of the sale, and when the name and address of the principal appear on the books and records of the agent.

(3) ENFORCEMENT OF LIENS. Pawnbrokers, storage persons, and others selling tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to enforce a lien are retailers with respect to such sales, and tax applies to the receipts from such sales.

(4) REPOSSESSIONS. Repossessions of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property, item, or good is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

Note: Section Tax 11.55 interprets s. 77.51 (1), (13) and (14g) (f), Stats.

Note: The interpretations in s. Tax 11.55 are effective under the general sales and use tax law on and after September 1, 1969, except that the change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, May, 1978, No. 269, eff. 6−1−78; EmR0924: emerg. am. (title), (1), (2) (a), (3) and (4), eff. 10−1−09; CR 09−090: am. (title), (1), (2) (a), (3) and (4) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.56 Printing industry. **(1)** DEFINITIONS. In this section:

(a) "Manufacturer" includes a printer or other person who performs any one or more of the processes in manufacturing printed matter, provided that the printer or other person qualifies as being engaged in manufacturing under s. 77.51 (7h), Stats., whether or not the printed matter is sold.

(b) "Manufacturing printed matter" includes either of the following processes by a manufacturer:

1. Initial typesetting and composition, producing a paste−up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate−ready film, and producing an image carrier which is installed on a printing press, or using equivalent prepress technology to produce an image carrier, and the bindery/finishing stage.

2. Using computers, scanners, proofers, typesetters, photographic equipment, film processors, and direct−to−plate equipment exclusively in performing any of the processes listed in subd. 1. "Manufacturing printed matter" does not include using the equipment described in this subdivision to design, write, or compose an original document to be printed.

(c) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes fonts, video display terminals, tape and disc making equipment, computers, and typesetters which are interconnected to operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

(2) PRINTERS' TAXABLE SALES. Taxable receipts of printers include receipts from the following, unless otherwise exempt:

(a) Charges for printing, lithography, photolithography, rotogravure, gravure, letter press, silk screen printing, imprinting, multilithing, mimeographing, photostating, steel die engraving, and similar operations for customers, whether or not the paper and other materials are furnished by the customers. A printer's charge for printing on paper furnished by a customer to produce printed matter not to be sold is subject to the tax.

(b) Charges for services in connection with the sale of printed matter, such as overtime and set−up charges, die cutting, embossing, folding, and binding operations, and charges for painting signs, show cards, and posters, whether the materials are furnished by the printer or by the customer.

(c) Charges for envelopes, but not for separately stated charges for postage in the sale of prestamped envelopes.

(3) TAXABLE SALES BY OTHERS. (a) Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by persons who are not printers, including so−called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binders, or finishers are taxable unless the sales qualify for a statutory exemption, including the following:

1. Section 77.54 (2), Stats., which exempts from tax the sales price of tangible personal property or items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale, except as provided in s. 77.54 (30) (a) 6., Stats.

2. Section 77.54 (2m), Stats., which exempts from tax the sales price of tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and 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. The exemption does not apply to advertising supplements that are not newspapers.

(b) Tangible personal property and items under s. 77.52 (1) (b), Stats., include typed matter, whether or not combined with artwork, such as typeset output, a paste−up, mechanical, assembly, camera−ready copy, flat, or a photoreproduction, including film plates.

(4) NONTAXABLE SALES. (a) Tax does not apply to charges, if stated separately on invoices and in the accounting records, for mailing services such as:

1. Addressing printed matter by hand or mechanically for the purpose of mailing.

2. Enclosing, sealing, and preparing for mailing.

3. Mailing letters or other printed matter.

(b) Tax also does not apply to a printer's sales of:

1. Catalogs, as defined in s. Tax 11.19 (5m) (b), and the envelopes in which the catalogs are mailed.

2. Printed advertising materials for out−of−state use, as provided in s. Tax 11.19 (4) (a).

(5) EXEMPT PRINTING MACHINERY AND EQUIPMENT. Section 77.54 (6) (a), Stats., provides that machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., and safety attachments for those machines and equipment are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements of the machinery and equipment used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

Note: Interpretations of s. 77.54 (6) (a), Stats., are contained in s. Tax 11.40.

(6) PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER FOR SALE. (a) Persons engaged in manufacturing printed matter for sale may purchase the following property and items without tax under the statutes indicated:

1. Section 77.54 (2), Stats. Property and items, such as paper stock or printing ink, used exclusively and directly in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale.

2. Section 77.54 (2), Stats. Property and items such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate−ready film, other positives and negatives, flats, and similar items, used exclusively and directly in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and which are consumed, destroyed, or lose their identity in the manufacture of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., destined for sale.

Example: A printer's purchases of positives and negatives which are used exclusively and directly to produce catalogs and shoppers guides it sells to other persons are exempt from the tax.

3. Section 77.54 (6) (b), Stats. Containers and packaging and shipping materials for use in packing, packaging, or shipping printed matter to their customers.

(b) The exemption under s. 77.54 (2), Stats., described in par. (a) 1. and 2., applies to property and items purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer exclusively and directly in manufacturing tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., to be sold. The exemption under s. 77.54 (2), Stats., does not apply if the manufactured tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., is not to be sold by the manufacturer to its customer or by the customer.

Examples: 1) A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives exclusively and directly to produce printing which the printer sells to the paper manufacturer are exempt from the tax.

2) An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations exclusively and directly to produce advertising material the printer sells to the advertising agency are exempt from the tax.

(7) PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER NOT FOR SALE. (a) The exemption under s. 77.54 (2m), Stats., applies to tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and that become an ingredient or component of the shoppers guides, newspapers, or periodicals or that are consumed or lose their identity in the manufacture of the shoppers guides, newspapers, or periodicals, whether or not they are transferred without charge to a recipient.

Examples: Examples of nontaxable purchases for use in manufacturing printed matter include:

1) A shoppers guide publisher, who distributes the publication without charge, purchases paper and furnishes it to a printer who charges for the printing of the shoppers guide.

2) A shoppers guide publisher purchases paper it uses to print a shoppers guide which it distributes without charge to recipients.

(b) Section 77.54 (43), Stats., provides that Wisconsin sales or use tax is not imposed on raw materials if both of the following conditions are met:

1. The raw materials are processed, fabricated, or manufactured into, attached to, or incorporated into printed materials.

2. The resulting printed materials will be transported and used solely outside Wisconsin.

Examples: 1) Company A, a Wisconsin company, publishes catalogs to promote the sale of its products. Company A purchases paper from a company that does not have nexus in Wisconsin. The paper is delivered to a Wisconsin printer that prints the catalogs for Company A. The catalogs are shipped outside Wisconsin for use solely outside Wisconsin.

The paper purchased by Company A for the catalogs is not subject to Wisconsin use tax.

2) Assume the same facts as 1) above, except that the company selling the paper is located in Wisconsin.

The paper purchased by Company A for the catalogs is not subject to Wisconsin sales tax.

3) Company B purchases finished artwork from an advertising agency. The artwork and paper are provided to a printer who will print catalogs for Company B. The catalogs are provided without charge to customers outside Wisconsin. The charge by the advertising agency to Company B is exempt from Wisconsin sales and use tax even though the printer is not selling tangible personal property because the finished artwork is used for processing, fabricating or manufacturing printed material that is transported and used solely outside Wisconsin.

(bm) Section 77.52 (2) (a) 11., Stats., provides that the tax does not apply to the service of printing or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

Example: Company Z purchases paper that is used to print catalogs that are designed to advertise and promote the sale of Company Z's merchandise. The paper is delivered to Company X, a Wisconsin printer, that prints the catalogs for Company Z. The catalogs are shipped both in and outside Wisconsin. The charge by Company X to Company Z for the printing of the catalogs is not taxable. However, Company Z owes tax on its purchase of the paper that it provides to Company X for those catalogs that are not shipped outside Wisconsin for use solely outside Wisconsin. Company Z's purchase of the paper for those catalogs that are shipped outside Wisconsin is exempt as provided in par. (b).

(c) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats, and similar items if those purchases are used in the manufacture of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., not to be sold, other than items exempt under par. (a) or (b). A printer who does not supply paper used in printing tangible personal property is not selling tangible personal property but rather, is selling a service.

Example: 1) A retailer purchases color separations which are used in its own printing plant to produce advertising material it distributes to its customers in Wisconsin. The sale of the color separations is subject to Wisconsin sales or use tax because the advertising materials manufactured are not destined for sale.

2) Company B purchases finished artwork from an advertising agency. The artwork and paper are provided to a printer who will print flyers that are not catalogs for Company B. The flyers are provided without charge to customers in Wisconsin. The charge by the advertising agency to Company B is subject to Wisconsin sales and use tax. The exemption under s. 77.54 (2), Stats., does not apply because the printer is not selling tangible personal property or an item, or property under s. 77.52 (1) (b) or (c), Stats., and the exemption under s. 77.54 (43), Stats., does not apply because the flyers are used in Wisconsin.

(8) PURCHASES OF FUEL AND ELECTRICITY FOR USE IN MANUFACTURING PRINTED MATTER. Section 77.54 (30) (a) 6., Stats., provides an exemption for fuel and electricity consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., in this state. "Manufacturing" is defined in s. 77.51 (7h), Stats.

Note: Section Tax 11.56 interprets ss. 77.51 (7h), (8), (11), and (14) (h), 77.52 (1) and (2) (a) 11., and 77.54 (2), (2m), (6) (a) and (b), (25), (25m), (30) (a) 6., and (43), Stats.

Note: The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983; (b) The exemption in sub. (3) (b) 2. for ingredients of publications became effective July 2, 1983, pursuant to 1983 Wis. Act 27; (c) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (d) The sales and use tax exemption for raw materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for fuel and electricity consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (f) The exemption for catalogs and the envelopes in which they are mailed became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (g) The requirement that property and items which qualify for exemption under s. 77.54 (2) and (2m), Stats., be consumed exclusively and directly by a manufacturer in manufacturing property and items destined for sale became effective August 1, 2009 pursuant to 2009 Wis. Act 28; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, March, 1983, No. 327, eff. 4−1−83; am. (3) (a), renum. (3) (b) to be (3) (b) 1., cr. (3) (b) 2., r. and recr. (7), Register, September, 1984, No. 345, eff. 10−1−84; am. (3) (a) and (c), (5) and (6) (a) 1., (b) (intro.) 1. and 2. and (7) (b), r. (6) (b) 3., cr. (6) (c), Register, April, 1994, No. 460, eff. 5−1−94; r. (1) (a) and (6) (b) 1. and 2., renum. (1) (b) and (c) to be (1) (c) and (a) and am. (c), (3) (a), (b) 1. and 2. and (c) to be (3) (a) (intro.), 1. and 2. and (b) and am. (a) (intro.) 1. and 2., (6) (b) (intro.) to be (6) (b) and am., (6) (c) and (7) (b) to be (7) (b) and (c) and am., cr. (1) (b), am. (2) (a), (5), (6) (a) 2., Register, January, 1999, No. 517, eff. 2−1−99; EmR0924: emerg. am. (1) (a), (b) 2., (c), (2) (intro.), (b), (3), (5), (6), (7) (a), (b) (intro.), 1., and (c), r. and recr. (4), cr. (7) (bm) and (8), eff. 10−1−09; CR 09−090: am. (1) (a), (b) 2., (c), (2) (intro.), (b), (3), (5), (6), (7) (a), (b) (intro.), 1., and (c), r. and recr. (4), cr. (7) (bm) and (8) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.57 Utilities. (1) TAXABLE SALES. Sales of the following tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services provided by utilities are taxable:

(a) Utility services billed to household, industrial, or commercial customers, with any adjustments for discounts taken by customers in the utility's next reporting period.

Example: An early payment discount is adjusted for in the next reporting period.

(b) Excess use charges and minimum or idle service charges.

(c) The gross amounts received for contacts on poles and excess pole height contributions.

(d) Parking space rentals.

(e) Rentals of transformers located on a customer's property.

(f) Labor and materials to install or repair conversion burners.

(g) The rental of water heaters.

(h) Sales of scrap, gravel, or timber sold for removal.

(i) Sales of tools, used equipment, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to employees or other purchasers.

(j) Pilot relights for furnaces, such as "no heat" calls, or replacing appliance fuses.

(k) Sale of a utility overhead transmission or distribution line in place, if installed under easement or license on land owned by others.

Note: See s. Tax 11.86 for more information.

(L) Charges to builders to put in "temporary services".

(2) NONTAXABLE SALES. The following sales to customers are not subject to the tax:

(a) Connection or reconnection charges for natural gas, electricity, and water.

(b) Utility services delivered to Indians living on an Indian reservation, or services delivered on the reservation to an Indian tribal governing board.

(c) Billings for repairs to persons who damaged utility property.

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

(f) Contributions in aid of construction, such as payments by a customer to have a line extended to the customer's property.

(g) The installation charge for a pole sold to a customer, which is installed on land owned by the customer.

(h) "Wheeling" energy for another utility.

(i) Sales of fuel and electricity for use in farming, including agriculture, dairy farming, floriculture, silviculture, and horticulture.

(im) Sales of fuel and electricity consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin.

(j) Labor charged a customer for the installation of a complete furnace or built−in appliance.

(k) Water delivered to customers through mains.

(L) Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use.

(m) Biomass, as defined in s. 196.378 (1) (ar), Stats., that is used for fuel sold for residential use.

(n) Electricity and natural gas sold during the months of November, December, January, February, March, and April for residential use. For purposes of this exemption, s. 77.54 (30) (b), Stats., provides that electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed. In any event, a qualifying customer shall receive only 6 months of service exempt from taxation during the November through April period.

(o) Low−income assistance fees that are charged under s. 16.957 (4) (a) or (5) (a), Stats.

(p) If fuel or electricity is sold to a person partly for an exempt use and partly for a use that is not exempt, no tax shall be collected by the seller on the portion of the sales price of the fuel or electric-

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

ity that is used for an exempt purpose, as specified on an exemption certificate provided by the purchaser to the seller, as described in par. (q).

(q) 1. Where a building, that contains residential quarters and commercial operations, is heated by one central heating plant, it is necessary to determine the portion of the fuel purchased which qualifies for the "residential use" exemption. The percentage of residential use may be computed by dividing the number of square feet used for residential purposes, excluding common areas, by the total area heated, excluding common areas. If this does not produce a reasonable result, any other reasonable method of estimating may be used. The resulting percentage should be rounded to the nearest 10%.

2. In this subsection, "residential use" means use in a structure or portion of a structure that is a person's permanent principal residence. Use in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting, and other ordinary uses by the purchaser in a residence. Residential use includes use in single−family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, nursing homes, and farm houses, if the structure is used as a person's permanent principal residence. Residential use includes use in apartment houses, nursing homes, and farm houses even though they are on a commercial or rural meter.

3. "Non−residential use" is use other than "residential use" as defined in subd. 2., and includes any use in the conduct of a trade, business or profession, whether the trade, business or profession is carried on by the owner of the premises or some other person. It includes use in secondary residences, motor homes not used as a permanent principal residence, travel trailers, other recreational vehicles, and transient accommodations. "Transient accommodations" include hotels, motels, inns, travel homes, tourist houses, summer cottages, apartment hotels, or resort lodges or cabins, and any accommodation which is rented for a continuous period of less than one month.

Examples: 1) A person owns a home in Wisconsin where he resides for 7 months each year and a cottage, also in Wisconsin, where he resides for 5 months each year. The home is his principal residence and the cottage is his secondary residence.

2) A person is a resident of Florida and has a home in Florida. The person also retains a home in Wisconsin. The person's Florida home is her principal residence and her Wisconsin home is her secondary residence.

4. A "continuous" certification designation is provided on the exemption certificate, form S−211, and, if claimed, the form remains in effect until replaced or revoked. A new certificate shall be filed if there is a change in the percentage of exempt use.

(3) TAXABLE PURCHASES. (a) Persons engaged in the business of providing electrical or gas utility service are consumers of the tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services used in providing the utility services. The tax applies to the sales of the property, items, goods, or services to them, except where a specific exemption applies, such as the exemptions shown in sub. (4).

(b) The purchase, license, lease, or rental of the following property, items, goods, and services by a utility are subject to the tax:

1. Transformers, substation equipment, and other tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., used to construct, improve, or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement, or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others.

Note: See s. Tax 11.86 for more information.

3. Charges for coating pipe or creosoting poles.

4. Charges for X−ray testing of welding joints in the construction of overhead utility facilities.

5. Gas or electricity purchased for resale but used by a utility, but not gas used as a fuel in producing electricity or steam.

6. Charges for aerial photographs and maps.

(4) NONTAXABLE PURCHASES. The following purchases, licenses, leases, or rentals by utilities are not subject to the tax:

(a) Fuel converted to electrical energy, gas or steam by utilities, as provided under s. 77.54 (6) (c), Stats.

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufacturing process begins when the coal starts moving by conveyor directly to the boiler bunker, and it ends at the generator bus duct. An overhead crane used for the installation and repair of a turbine, and a fuel storage tank are not directly used in manufacturing.

(c) Any residue used as a fuel in a business activity that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or wood residue.

(d) Charges for X−ray testing of welding joints in the pipe as part of the construction of underground utility pipelines.

(5) WASTE TREATMENT FACILITIES. The sales price from the sales of and the storage, use or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., which becomes a component part of an industrial waste treatment facility that is exempt or that would be exempt under s. 70.11 (21), Stats., if the property or items were taxable under ch. 70, Stats., is exempt from sales and use tax.

(6) TRANSFER OF TRANSMISSION FACILITIES. Excluded from the definition of "sale," for sales and use tax purposes, is the transfer of transmission facilities, as defined in s. 196.485 (1) (h), Stats., to a transmission company, as defined in s. 196.485 (1) (ge), Stats., after the organizational start−up date, as defined in s. 196.485 (1) (dv), Stats., of such company in exchange for securities, as defined in s. 196.485 (1) (fe), Stats.

Note: Section Tax 11.57 interprets s. 77.54 (3), (6) (a) and (c), (14g) (fm), (17), (26m), and (30), Stats.

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales of coal, fuel oil, propane, steam and wood became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) The six−month exemption for electricity and gas became effective November 1, 1979, pursuant to Chapter 1, Laws of 1979; (c) The exemption for fuel converted to electrical energy, gas or steam by utilities became effective October 1, 1981, pursuant to Chapter 20, Laws of 1981; (d) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption for wood residue became effective September 1, 1987, pursuant to 1987 Wis. Act 27; (f) The exemption for component parts of an industrial waste treatment facility became effective July 1, 1989, pursuant to 1983 Wis. Act 426, later clarified effective May 17, 1988, pursuant to 1987 Wis. Act 399; (g) The sale of gas or other fuel used to heat farm buildings, including greenhouses, that are not exempt machinery under s. Tax 11.12 became taxable July 1, 1991; (h) All fuel used in farming became exempt October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemption for electricity sold for use in farming became effective May 1, 2000, pursuant to 1999 Wis. Act 9; (j) The exclusion from the definition of sale for certain sales of transmission facilities became effective October 29, 1999, pursuant to 1999 Wis. Act 9; (k) The exemption for fuel and electricity consumed in manufacturing became exempt January 1, 2006, pursuant to 2003 Wis. Act 99; (L) The exemption for certain low−income assistance fees became effective July 1, 2007, pursuant to 2005 Wis. Act 141; (m) The exemption for biomass sold for residential use became effective December 1, 2007, pursuant to 2007 Wis. Act 20; and (n) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; cr. (2) (L), Register, January, 1983, No. 325, eff. 2−1−83; am. (2) (a) and (4) (a), Register, June, 1983, No. 330, eff. 7−1−83; cr. (4) (c), Register, April, 1990, No. 412, eff. 5−1−90; am. (2) (e) 1., Register, June, 1990, No. 414, eff. 7−1−90; am. (1) (a), (i), (j) and (k), (2) (f), (g), (i) and (L) 7. and 8., (3) (a) and (b) 1., 2. and 4. and (4) (a), cr. (4) (d) and (5), Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (i), Register, April, 1993, No. 448, eff. 5−1−93; EmR0924: emerg. am. (title), (1) (intro.), (a), (h), (i), (2) (intro.), (a), (i), (3) (a), (b) (intro.), 1., 2., (4) (intro.), (d) and (5), cr. (2) (im), (m) to (q) and (6), r. and recr. (2) (L) and (4) (c), eff. 10−1−09; CR 09−090: am. (title), (1) (intro.), (a), (h), (i), (2) (intro.), (a), (i), (3) (a), (b) (intro.), 1., 2., (4) (intro.), (d) and (5), cr. (2) (im), (m) to (q) and (6), r. and recr. (2) (L) and (4) (c) Register May 2010 No. 653, eff. 6−1−10.

Subchapter VIII — Service Enterprises

Tax 11.61 Veterinarians and their suppliers. **(1)** SALES BY VETERINARIANS. (a) Charges made by veterinarians

which are exempt from the sales tax include charges for the following:

1. Medical services.

2. Hospitalization services.

3. Drugs.

4. Services performed to animals which are livestock or poultry as defined in s. Tax 11.12 (2) (j), or farm work stock as defined in s. Tax 11.12 (2) (e), regardless of whether the service is a veterinary service.

(b) Charges made by veterinarians which are subject to the sales tax include charges for the following activities for animals:

1. Boarding.

2. Grooming.

3. Clipping.

(c) Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by veterinarians which shall be taxable include the following:

1. Leashes, collars, and other pet equipment.

2. Pets.

3. Pet food, other than medicated pet food.

(2) PURCHASES BY VETERINARIANS. (a) Sales to veterinarians of drugs for animals and sales to veterinarians of other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax, except as provided in par. (b).

(b) 1. Veterinarians' purchases of drugs used on farm livestock and farm workstock, are exempt from tax.

2. Veterinarians' purchases of animal identification tags from the Wisconsin department of agriculture, trade and consumer protection are exempt from tax. Purchases of animal identification tags from other suppliers which veterinarians provide to customers in performing professional services to animals are subject to tax.

3. Veterinarians' purchases of property used by the veterinarian in performing custom farming services as defined in s. Tax 11.12 (2) (b), and that qualify for exemption under s. 77.54 (3) (a) or (c), or (3m), Stats., are exempt from tax.

Note: See Publication 224, *Veterinarians: How Do Wisconsin Sales and Use Taxes Affect Your Business?,* for additional information on performing custom farming services by veterinarians. Publication 224 is available on the department's web site at http://www.revenue.wi.gov/html/taxpubs.html#sales.

(c) If the tax on sales to veterinarians is not collected by a supplier, the veterinarians shall be responsible for and shall report and pay a use tax on those purchases directly to the department.

Example: A veterinarian purchases drugs for pets from an out−of−state supplier not registered to collect Wisconsin sales or use tax. The veterinarian is subject to Wisconsin use tax on the purchase price of the drugs.

Note: Section Tax 11.61 interprets ss. 77.51 (3pj) and (13) (m) and (o), 77.52 (2) (a) 10., and 77.54 (42), Stats.

Note: The interpretations in s. Tax 11.61 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Chapter 333, Laws of 1973, effective June 24, 1974, provided that a veterinarian is the consumer of all the animal medicines purchased. Prior to June 24, 1974, those purchases were exempt purchases for resale if sold independent of the performance of veterinarian services; (b) The exemption for medicines used on farm livestock, but not workstock, became effective July 1, 1986, pursuant to 1985 Wis. Act 29; (c) The exemption for animal identification tags purchased from the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16; (d) The definition of "drug" is effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (e) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, August, 1976, No. 248, eff. 9−1−76; am. (2) (a), Register, January, 1978, No. 265, eff. 2−1−78; am. (2) (a), Register, June, 1990, No. 414, eff. 7−1−90; am. (2) (a), renum. (2) (b) to be (2) (c), cr. (2) (b) 1. and 2., Register, April, 1994, No. 460, eff. 5−1−94; EmR0924: emerg. am. (1) (a) (intro.), (c) (intro.), 3., (2) (a) and (b) 1., cr. (1) (a) 3., eff. 10−1−09; CR 09−090: am. (1) (a) (intro.), (c) (intro.), 3., (2) (a) and (b) 1., cr. (1) (a) 3. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) (a) (intro.), (b) (intro.), (c) 1., (2) (a), (b) 1., cr. (1) (a) 4., (2) (b) 3. Register November 2010 No. 659, eff. 12−1−10.

Tax 11.62 Barber or beauty shop operator. (1) NONTAXABLE SALES AND SERVICES. Charges by a barber or beauty shop operator for services on human beings are not subject to sales tax.

(2) TAXABLE SALES AND SERVICES. (a) Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., including packaged cosmetics, hair tonics, lotions, shampoo, wigs, falls, and toupees, and their charges for servicing wigs, hair pieces, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are subject to sales tax. Except as provided in par. (b), a barber or beauty shop operator who engages in sales subject to sales tax under this subsection shall register as a retailer and is responsible for collecting and remitting to the department the tax on taxable sales or charges.

(b) A barber or beauty shop operator's sales are not subject to Wisconsin sales tax if the barber or beauty shop operator does not hold and is not required to hold a Wisconsin seller's permit. A barber or beauty shop operator is not required to hold a seller's permit and register as a retailer to collect Wisconsin sales tax if the barber or beauty shop operator's total taxable receipts from sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services are less than $1,000 during the calendar year.

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.

Note: Refer to s. Tax 11.33 for additional information relating to occasional sales.

(3) TAXABLE AND NONTAXABLE PURCHASES. (a) A barber or beauty shop operator's purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services, which when resold are exempt occasional sales under sub. (2) (b) are taxable purchases of property, items, goods, and services.

(b) Persons who register and collect sales tax under sub. (2) (a) may purchase tangible personal property, such as hair pieces, for resale without paying tax by issuing their supplier a properly completed exemption certificate, claiming resale.

(c) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by a barber or beauty shop operator and used in providing services are subject to sales or use tax.

(d) If a barber or beauty shop operator gives an exemption certificate claiming resale for tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a supplier and then uses or consumes the property, item, or good in providing services, the barber or beauty shop operator is liable for use tax at the time the property, item or good is first used in a taxable manner.

Note: Section Tax 11.62 interprets ss. 77.51 (13) (i), 77.52 (2) (a) 10. and 77.57, Stats.

Note: The interpretations in s. Tax 11.62 are effective under the general sales and use tax law on and after September 1, 1969 except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, August, 1976, No. 248, eff. 9−1−76; am. (1) (b), Register, August, 1985, No. 356, eff. 9−1−85; r. and recr., Register, March, 1991, No. 423, eff. 4−1−91; EmR0924: emerg. am. (2) and (3), eff. 10−1−09; CR 09−090: am. (2) and (3) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.63 Radio and television stations. (1) NONTAXABLE SERVICES. Sales of the following services are not subject to the sales and use tax:

(a) Air time.

(b) Advertising space.

(2) TAXABLE SALES. (a) Charges by a radio or television station for art work, slides, films, tapes, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), and (d), Stats., which the station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. The charges are taxable even though a station may retain possession

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

of the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., because "sale" is defined to include the transfer of not only title to and possession of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., but also the transfer of enjoyment of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. If an advertiser maintains any control over the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., prepared or produced, such as the right to determine when the property, item, or good will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property, item, or good.

(b) Sales from a radio or television auction are subject to the sales and use tax.

Example: A radio station has a program where the announcer places items of merchandise of local retailers or sponsors up for bid to the station's listeners. The successful bidder, chosen by the radio station, delivers the purchase price of the merchandise to the radio station and receives a purchase certificate that allows him to redeem the merchandise from the retailer or sponsor. The purchase money is retained by the radio station, although the retailer is compensated by the station for its participation in the form of radio advertising. The radio station is subject to sales tax on the receipts from the program.

(c) If a radio or television station advertises on behalf of out−of−state persons to sell merchandise, such as records or books, the station is the retailer of the merchandise and shall pay sales tax on the sales if:

1. The advertising message does not clearly identify the out−of−state source of the merchandise; or

2. The merchandise orders are sent directly to the station which accounts for the receipts.

(3) NONTAXABLE PURCHASES. The sale, license, lease, or rental of motion picture films or tape, and motion pictures or radio or television programs for listening, viewing, or broadcast, and the advertising materials related to the motion picture films or tape, and motion pictures or radio or television programs, to a motion picture theater or radio or television station are exempt from the sales and use tax under s. 77.54 (23m), Stats. Sales of blank or raw video or audio tapes to television or radio stations are included in this exemption.

(4) TAXABLE PURCHASES. Radio and television stations are consumers of equipment, materials, and supplies used to conduct their businesses and shall pay sales or use tax on purchases of this tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., except as provided in sub. (3).

(5) BROADCASTING TOWERS. Commercial broadcasting towers constituting the transmission antenna system of a radio or television station are deemed, for sales and use tax purposes, either real estate improvements if installed on land owned by the station or tangible personal property if installed on land owned by others. Contractors engaged in construction of broadcasting towers that are real estate improvements are the consumers of building materials used by them in constructing, altering, or repairing those towers and shall pay tax on the cost of the materials. Contractors engaged in construction of broadcasting towers that are tangible personal property may purchase materials used by them in constructing, altering, or repairing those towers without tax for resale. The charge by the contractor to the purchaser is subject to tax.

Note: Section Tax 11.63 interprets ss. 77.51 (14), 77.52 (2) (a) 11. and 77.54 (23m), Stats.

Note: The interpretations in s. Tax 11.63 are effective under the general sales and use tax law on and after September 1, 1969, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, December, 1977, No. 264, eff. 1−1−78; am. (2) (a) and (c) (intro.), (3), (4) and (5), Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. am. (1) (intro.), (b), (2) (a), (b), (c) 2., (3), (4) and (5), eff. 10−1−09; CR 09−090: am. (1) (intro.), (b), (2) (a), (b), (c) 2., (3), (4) and (5) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.64 Background music. (1) GENERAL. Persons in the business of providing background music commonly utilize one or both of the methods set forth below. The sales and use tax consequences depend upon the method used.

(2) MUSIC PLAYED AT CENTRAL STUDIO. The receipts from the furnishing of background music to business, industry, and others from a central studio over telephone circuits or by FM radio are subject to the sales or use tax as a digital audio work. The persons who provide such service are the consumers of the tapes, tape players, transmitters, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used to provide the service, and their purchases of these items, as well as telecommunication services from the telephone company, are taxable. In addition, the receipts from equipment leased or rented to the customer as part of providing this service are taxable. An exemption for resale may be claimed on the purchase of such leased or rented equipment, if the equipment is used exclusively for lease or rental and if the customer has the option of receiving the digital audio work from the retailer, without also being required to purchase, lease, or rent the equipment from that same retailer.

(3) MUSIC PLAYED BY CUSTOMER. The lease, rental, hire or license to use all tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., comprising a background music system are taxable when the system is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, if the equipment is used exclusively for lease, license, or rental.

Note: Section Tax 11.64 interprets ss. 77.51 (3pa), (14) (intro) and (j), and (17x) and 77.52 (1) (d), Stats.

Note: The interpretations in s. Tax 11.64 are effective under the general sales and use tax law on and after September 1, 1969, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; EmR0924: emerg. am. (2) and (3), eff. 10−1−09; CR 09−090: am. (2) and (3) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.65 Admissions. (1) TAXABLE SALES. (a) The sale of admissions to amusement, athletic, entertainment, or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses, carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment, or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs, and flying clubs. Taxable sales include the sale, furnishing or use of recreational facilities on a periodic basis and other recreational rights, including but not limited to membership rights, vacation services, and club memberships. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment, or recreational facilities to members are charges for the privilege of obtaining access to the clubs and are taxable receipts of the clubs.

(c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing,

card playing, hayrides, hunting, fishing, and horseback or pony riding are taxable.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught. The charge for the privilege of hunting in shooting preserves, pheasant farms, and fenced area bird and animal farms is also taxable, even if the charge is based in whole or in part on the number of game birds or animals taken.

(e) A person who provides boat, tackle, bait, and guide service provides a combination of recreational items which are subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the receipts from conducting bingo games.

(g) The receipts from the sale or furnishing of access to campgrounds, other than Wisconsin state park campgrounds, are taxable, whether the fees are collected on a daily, weekly, annual, or other basis.

(h) The sale of admissions to pleasure tours and cruises, including a cruise originating in Wisconsin by boat on a body of water on the border of Wisconsin, is taxable regardless of whether a portion of the cruise takes place on out−of−state waters.

(2) NONTAXABLE SALES. The following are nontaxable admissions:

(a) The dues of civic, fraternal, religious, patriotic, and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment, or recreational facilities to their members.

(b) Admissions to museums of history, art, or science, and to auto or trade shows, if professional entertainment is not provided at the show. Also, all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society, such as the circus world museum.

(c) Admissions to antique shows unless the admission charge can be used as a credit against the price of merchandise purchased.

(d) Entry fees in contests if the primary motive of the majority of the persons entering the contest is "business" and not "recreation". Generally, entry fees are not taxable for:

1. Professional golfers entering a major tournament.

2. Professional riders entering a rodeo.

3. Professional stock car drivers entering an auto race.

4. Large snowmobile races where the entrants are primarily manufacturers' representatives.

(e) The sales price from the sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., tickets or admissions by any baseball team affiliated with the Wisconsin department of American legion baseball.

(f) Campground fees in Wisconsin state parks.

(g) Admissions to events conducted by nonprofit organizations when the event does not involve entertainment as provided in s. 77.54 (7m), Stats., the organization is not engaged in a trade or business as defined in s. 77.54 (7m), Stats., and the organization is not otherwise required to hold a seller's permit. Sales of admissions to events conducted by a nonprofit organization that otherwise meets the requirements of s. 77.54 (7m), Stats., are not subject to tax, even if the nonprofit organization holds a seller's permit solely for the purpose of conducting bingo games.

(h) Admissions to places or events located outside Wisconsin.

(i) Sales of and admissions to time−share property as follows:

1. The furnishing of rooms or lodging to a person for a continuous period of less than one month through the sale of any kind of time−share property.

2. The sale, furnishing, or use of recreational facilities on a periodic basis and of other recreational rights, including membership rights, vacation services, and club memberships, with respect to time−share property, if the facilities are not available to persons who have not purchased the time−share property, other than guests.

(j) Sales of admissions by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger.

(k) Sales of admissions by a gun club, including the sale of a gun club membership, if the gun club is a nonprofit organization and if the gun club provides safety classes to at least 25 individuals in the calendar year.

(L) Sightseeing flights.

(3) PRIZE MONEY. Bowling center proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable receipts the amount advertised and set aside for prize money.

(4) DONATIONS. (a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment shall be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation shall be obvious that admittance is not restricted to those making a donation. A set amount for the donation, such as through newspaper publicity or signs at the entrance, a turnstile, or restrictive device that shall be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

(b) When a charge to a patron bears little or no relationship to the actual value received, the tax may be based on the reasonable value of the tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services received. The retailer is responsible for determining the reasonable value and showing that the charge to the patron bears little or no relationship to the actual value received.

Examples: 1) Company A puts on a fundraising dinner. Individuals wishing to attend the dinner must pay $300 per person to attend. The actual value of the dinner received is $50. Company A may compute the tax that must be remitted on the $50 since that is the actual value of the dinner received. The actual value in this example is based on the amount that an individual would be required to pay for this dinner if it was not a fundraising dinner.

2) Company B puts on a fundraising dinner and dance. Individuals wishing to attend the dinner and dance must pay $300 per person to attend. The actual value of the dinner received is $50 and the actual value of admission to the dance is $25. Company B may compute the tax that must be remitted on the $75 since that is the actual value of the dinner and admission to the dance that is received. The actual values in this example are based on the amount that an individual would be required to pay for the dinner and to attend the dance if this was not a fundraising dinner and dance.

(5) LOCATION OF EVENT. The receipts from sales of admissions to places of amusement or athletic events that are located or take place in Wisconsin are taxable, even though some of the sales may be made out−of−state. The receipts from sales of admissions to places of amusement or athletic events that are located or take place out−of−state are not subject to Wisconsin sales tax, even though some of the sales may be made in Wisconsin.

Example: Sales by the University of Wisconsin of football tickets for games played in Wisconsin are taxable. However, if the University of Wisconsin, as agent, sells tickets for the University of Michigan for a game played in Michigan, the receipts are not subject to the Wisconsin sales tax.

Note: Section Tax 11.65 interprets ss. 77.52 (1) and (2) (a) 2. and 77.54 (7m), (10), and (35), Stats.

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973, pursuant to Chapter 156, Laws of 1973; (b) The exemption for admissions to museums operated under a lease with the State Historical Society became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The exemption for admissions to American Legion baseball became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) Recreational facilities and rights sold in connection with the sale of time−share property became taxable May 17, 1988, pursuant to 1987 Wis. Act 399; (e) The exemption for state park campground fees became effective September 1, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for admissions to certain gun clubs became effective July 1, 2007, pursuant to 2005 Wis. Act 327; (g) The exemption for sales of admissions by nonprofit organizations to certain youth sports activities became effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c),

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1978, No. 265, eff. 2−1−78; am. (1) (d), cr. (1) (g) and (h), Register, September, 1984, No. 345, eff. 10−1−84; am. (2) (b), cr. (2) (e), Register, July, 1987, No. 379, eff. 8−1−87; am. (1) (b), (e), (f) and (g) and (4) (a) and (b), cr. (2) (f) and (g), Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. am. (1) (a), (b), (d) to (g), (2) (a), (b), (e), (g), (3), (4) and (5), cr. (2) (h) to (k), eff. 10−1−09; CR 09−090: am. (1) (a), (b), (d) to (g), (2) (a), (b), (e), (g), (3), (4) and (5), cr. (2) (h) to (k) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (5) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: cr. (2) (L), am. (4) (b), cr. (4) (b) (Examples) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.66 Telecommunications and telecommunications message services. (1) DEFINITIONS. In this section:

(a) "Air−to−ground radio telephone service" means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Ancillary services" are those services that are associated with or incidental to providing telecommunications services, including detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(c) "Call−by−call basis" means any method of charging for telecommunications services by which the price of such services is measured by individual calls.

(d) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(e) "Conference bridging service" means an ancillary service that links 2 or more participants of an audio or video conference call and may include providing a telephone number, but does not include the telecommunications services used to reach the conference bridge.

(f) "Customer," for purposes of this section, means a person who enters into a contract with the seller of telecommunications services or, in any transaction for which the end user is not the person who entered into a contract with a seller of telecommunications services, the end user of the telecommunication services. "Customer" does not include a person who resells telecommunications services or, for mobile telecommunications services, a serving carrier under an agreement to serve a customer outside the home service provider's licensed service area.

(g) "Customer channel termination point" means the location where a customer inputs or receives communications.

(h) "Detailed telecommunications billing service" means an ancillary service that separately indicates information pertaining to individual calls on a customer's billing statement.

(i) "Directory assistance" means an ancillary service that provides telephone numbers or addresses.

(j) "Eight hundred service" means a telecommunications service that allows a caller to dial a toll−free number without incurring a charge for the call and is marketed under "800", "855", "866", "877", or "888" toll−free calling, or any other number designated as toll−free by the federal communications commission.

(k) "End user" means the person who uses a telecommunications service. In the case of an entity, "end user" means the individual who uses the telecommunications service on the entity's behalf.

(L) "Fixed wireless service" means a telecommunications service that provides radio communications between fixed points.

(m) "Home service provider" means a home service provider under section 124 (5) of P.L. 106−252, the Mobile Telecommunications Sourcing Act. Section 124 (5) of P.L. 106−252 provides that "home service provider" means the facilities−based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(n) "International telecommunications services" means telecommunications services that originate or terminate in the United States, including the District of Columbia and any U.S. territory or possession and originate or terminate outside of the United States, including the District of Columbia and any U.S. territory or possession.

(o) "Internet access services" means sending messages and information transmitted through the use of local, toll, and wide−area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications services; specialized mobile radio; stationary two−way radio; paging service; or any other form of mobile and portable one−way or two−way communications; or 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. "Internet access services" does not include telecommunications services to the extent that such services are taxable under s. 77.52 (2) (a) 5. am., Stats.

(p) "Interstate telecommunications services" means telecommunications services that originate in one state or U.S. territory or possession and terminate in a different U.S. state or territory or possession.

(q) "Intrastate telecommunications services" means telecommunications services that originate in one state or U.S. territory or possession and terminate in the same state or U.S. territory or possession.

(r) "Mobile telecommunications service" means a mobile telecommunications service under 4 USC 116 to 126, as amended by P.L. 106−252, the Mobile Telecommunications Sourcing Act. "Mobile telecommunications service" is defined in 4 USC 116 to 126, as amended by P.L. 106−252, to mean commercial mobile radio service, as defined in 47 CFR 20.3 as in effect on June 1, 1999. "Commercial mobile radio service" is defined in 47 CFR 20.3 to mean a mobile service that is either of the following:

1. A mobile service that is all of the following:

a. Provided for profit, that is, with the intent of receiving compensation or monetary gain.

b. An interconnected service.

c. Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public.

2. The functional equivalent of a mobile service described in subd. 1.

(s) "Nine hundred service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call the subscriber's prerecorded announcement or live service. "Nine hundred service" does not include any charge for collection services provided by the seller of the telecommunications services to the subscriber or for any product or service the subscriber sells to the subscriber's customers. A "nine hundred service" is designated with the "900" number or any other number designated by the federal communications commission.

(t) "Paging service" means a telecommunications service that transmits coded radio signals to activate specific pagers and may include messages or sounds.

(u) "Place of primary use" means place of primary use as determined under 4 USC 116 to 126, as amended by P.L. 106−252. "Place of primary use" as determined under 4 USC 116 to 126, as amended by P.L. 106−252 means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be all of the following:

1. The residential street address or the primary business street address of the customer.

2. Within the licensed service area of the home service provider.

(v) "Postpaid calling service" means a telecommunications service that is obtained by paying for it on a call−by−call basis using a bankcard, travel card, credit card, debit card, or similar method, or by charging it to a telephone number that is not associated with the location where the telecommunications service orig-

inates or terminates. "Postpaid calling service" includes a telecommunications service, not including a prepaid wireless calling service, that would otherwise be a prepaid calling service except that the service provided to the customer is not exclusively a telecommunications service.

(w) "Prepaid calling service" means the right to exclusively access telecommunications services, if that right is paid for in advance of providing such services, requires using an access number or authorization code to originate calls, and is sold in predetermined units or dollars that decrease with use in a known amount.

(x) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined dollar units whereby the number of units declines with use in a known amount.

(y) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of communications channels, regardless of the manner in which the communications channel or group of communications channels is connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of such channel or channels.

(z) "Radio service" means a communication service provided by the use of radio, including radiotelephone, radiotelegraph, paging, and facsimile service.

(zb) "Radiotelegraph service" means transmitting messages from one place to another by means of radio.

(zf) "Radiotelephone service" means transmitting sound from one place to another by means of radio.

(zk) "Service address" as defined in s. 77.51 (17m), Stats., means any of the following:

1. The location of the telecommunications equipment to which a customer's telecommunications service is charged and from which the telecommunications service originates or terminates, regardless of where the telecommunications service is billed or paid.

2. If the location under subd. 1. is not known by the seller who sells the telecommunications service, the location where the signal of the telecommunications service originates, as identified by the seller's telecommunications system or, if the signal is not transmitted by the seller's telecommunications system, by information that the seller received from the seller's service provider.

3. If the locations described under subds. 1. and 2. are not known by the seller who sells the telecommunications service, the customer's place of primary use.

(zp) "Telecommunications services" as defined in s. 77.51 (21n), Stats., means electronically transmitting, conveying, or routing voice, data, audio, video, or other information or signals to a point or between or among points. "Telecommunications services" includes the transmission, conveyance, or routing of such information or signals in which computer processing applications are used to act on the content's form, code, or protocol for transmission, conveyance, or routing purposes, regardless of whether the service is referred to as a voice over Internet protocol service or classified by the federal communications commission as an enhanced or value−added nonvoice data service. "Telecommunications services" does not include any of the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the purchaser's primary purpose for the underlying transaction is the processed data.

2. Installing or maintaining wiring or equipment on a customer's premises.

3. Tangible personal property.

4. Advertising, including directory advertising.

5. Billing and collection services provided to 3rd parties.

6. Internet access services.

7. Radio and television audio and video programming services, regardless of the medium in which the services are provided, including cable service, as defined in 47 USC 522 (6), audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3, and the transmitting, conveying, or routing of such services by the programming service provider.

8. Ancillary services.

9. Digital products delivered electronically, including software, music, video, reading materials, or ringtones.

(zs) "Value−added nonvoice data service" means a service that otherwise meets the definition of telecommunications services, in which computer processing applications are used to act on the form, content, code, or protocol of the information or data provided by the service and are used primarily for a purpose other than for transmitting, conveying, or routing data.

(zw) "Vertical service" means an ancillary service that is provided with one or more telecommunications services and allows customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(zy) "Voice mail service" means an ancillary service that allows a customer to store, send, or receive recorded messages, not including any vertical service that the customer must have to use the voice mail service.

(2) TAXABLE SERVICES. Receipts that are subject to Wisconsin sales and use tax include receipts from the following services, if the services are sourced to Wisconsin as provided in sub. (3):

(a) Telecommunications services, including the following:

1. Intrastate telecommunications services.
2. Interstate telecommunications services.
3. International telecommunications services.
4. Private communication services.
5. 800 services, except interstate 800 services.
6. 900 services.
7. Fixed wireless services.
8. Mobile wireless services.
10. Stationary two−way radio services.
11. Paging services.
12. Facsimile, or FAX, transmission services.
13. Prepaid wireless calling services.
14. Value−added non−voice data services.
15. Residential communications services.
16. Coin−operated telephone services.

(b) Ancillary services, including the following:

1. Conference bridging services.
2. Directory assistance services.
3. Call forwarding services.
4. Voice mail services.
5. Caller ID services.
6. Call waiting services.

(c) Internet access services.

(cm) Prepaid calling services.

(d) Telecommunications message services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including services that are taxable under par. (a), (b), or (c), or services that are incidental, as defined in s. 77.51 (5), Stats., to another service that is not taxable under subch. III of ch. 77, Stats., and sold to the purchaser of the incidental service. Telecommunications message services include the following:

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

1. Nonmechanical telephone answering services.

Examples: 1) A real estate business, whose employees spend considerable periods of time away from its office, contracts with Company A to answer incoming telephone calls during periods when employees are not available to answer the telephone. Employees of Company A receive the calls to the real estate office by telephone, take messages from incoming callers, and transmit the messages to the real estate company or particular employees in that company. The service provided by Company A is not incidental to another service sold by the company that is not a taxable service. Company A's charge for this service is subject to Wisconsin sales or use tax.

2) Company B employs an office management service that provides receptionist, typing, filing, scheduling, bookkeeping, and similar services. Employees of the office management service also answer and route incoming telephone calls. When calls cannot be routed, the office management service takes and transmits messages to the appropriate person. This answering service is only a small part of the total services provided.

The telephone answering service provided as a part of the office management service is not subject to Wisconsin sales or use tax because it is incidental to the office management service provided and that office management service is not taxable.

2. Security monitoring services that consist of recording a telecommunications message and notifying the customer or local authorities of the message.

3. Electronic mail services.

4. Mechanical or electronic voice messaging and telephone answering services, except ancillary services.

Example: Company A provides its customers access to an office message system computer through which a customer can deposit or retrieve telephone messages using a touch−tone telephone. The service may be used as a message center, a call forwarding service, or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages, and cancel messages no longer needed. The service is available 24 hours a day, and the customer accesses the computer through either a toll−free telephone number or a local telephone number. The service provided by Company A is not incidental to another service sold by the company that is not a taxable service and is not associated with or incidental to providing telecommunications services. Company A's charges for this service are subject to Wisconsin sales or use tax.

(3) SOURCING. This subsection describes the sourcing of telecommunications services, ancillary services, Internet access services, and telecommunications message services.

(a) *Telecommunications services.* 1. Except as provided in subds. 3. to 7., the sale of a telecommunications service that is sold on a call−by−call basis is sourced to the taxing jurisdiction:

a. where the call originates and terminates, if the call originates and terminates in the same taxing jurisdiction; or

b. where the call either originates or terminates and where the service address is located, if the call does not originate and terminate in the same taxing jurisdiction.

2. Except as provided in subds. 3. to 7., the sale of a telecommunications service that is sold on a basis other than a call−by−call basis is sourced to the customer's place of primary use, as defined in sub. (1) (u).

3. The sale of a mobile telecommunications service, except an air−to−ground radiotelephone service and a prepaid calling service, is sourced to the customer's place of primary use, as defined in sub. (1) (u).

4. The sale of a postpaid calling service is sourced to the location where the signal of the telecommunications service originates, as first identified by the seller's telecommunications system or, if the signal is not transmitted by the seller's telecommunications system, by information that the seller received from the seller's service provider.

5. The sale of a prepaid calling service or a prepaid wireless calling service is sourced to the location determined under s. Tax 11.945 (2).

6. The sale of a prepaid wireless calling service is sourced to the location determined under s. Tax 11.945 (2), except that if the location cannot be determined under s. Tax 11.945 (2) (a) to (d), the prepaid wireless calling service occurs at the location determined under s. Tax 11.945 (2) (e) 3., or the location associated with the mobile telephone number, as determined by the seller.

7. a. The sale of a private communication service for a separate charge related to a customer channel termination point is sourced to the location of the customer channel termination point.

b. The sale of a private communication service in which all customer channel termination points are located entirely in one taxing jurisdiction for sales and use tax purposes is sourced to the taxing jurisdiction in which the customer channel termination points are located.

Example: Company A contracts with Telecommunications Provider B for private communication service to send data from Company A's bank, located in Milwaukee, Wisconsin, to Company A's automated teller machines or "ATMs," located in Milwaukee, Wisconsin, and to send data from its ATMs in Milwaukee to its bank in Milwaukee. The charge by Telecommunications Provider B to Company A is based on a certain amount of dedicated channel capacity available to Company A on the communications channel, regardless of the volume of data transmitted or number of transmissions made by Company A. Since all of the customer channel termination points are located in Milwaukee, Wisconsin, the entire service is sourced to Milwaukee.

c. If the segments are charged separately, the sale of a private communication service that represents segments of a communications channel between 2 customer channel termination points that are located in different taxing jurisdictions for sales and use tax purposes is sourced in an equal percentage to both jurisdictions.

Example: Company B contracts with Telecommunications Provider C for private communication service to send data from Company B's bank, located in Milwaukee, Wisconsin, to Company B's automated teller machine (ATM) located in Waukesha, Wisconsin. Telecommunications Provider C charges Company B based on the location of the segments of the channel termination points. Since Company B has 2 customer channel termination points that are located in different taxing jurisdictions, one located in Milwaukee and the other located in Waukesha, the charge by Telecommunications Provider C to Company B is sourced equally between the Milwaukee taxing jurisdiction and the Waukesha taxing jurisdiction.

d. If the segments are not charged separately, the sale of a private communication service for segments of a communications channel that is located in more than one taxing jurisdiction for sales and use tax purposes is sourced to each jurisdiction in a percentage determined by dividing the number of customer channel termination points in that jurisdiction by the number of customer channel termination points in all jurisdictions where segments of the communications channel are located.

Example: Company JKL, headquartered in Milwaukee, Wisconsin, has branch offices in Madison, Wisconsin, Green Bay, Wisconsin, Chicago, Illinois and Minneapolis, Minnesota. Company JKL contracts with a telecommunications company for private communication service to send messages between and among its Milwaukee office and the branch offices. Company JKL has exclusive use of the channels while using them. The telecommunications company sells use of the communications channels to other parties while Company JKL is not using them. The charges by the telecommunications company to Company JKL are based on a certain amount of dedicated channel capacity available to Company JKL on the communications channels. The telecommunications company does not bill separately for the segments of the communications channels. Increasing capacity requires a higher charge. The telecommunications company refers to this service as "private line service." Of the charges by the telecommunications company to Company JKL for this service, 60% are subject to Wisconsin sales or use tax because 3 of the 5 customer channel termination points are located in Wisconsin.

e. No credit for tax paid to another state is allowed where the other state apportions the service in a manner similar to that provided in subd. 7. c. and d.

(b) *Ancillary services.* Except for detailed telecommunications billing services, ancillary services are sourced to the customer's place of primary use, as defined in sub. (1) (u).

(c) *Internet access services.* Internet access services are sourced to the customer's place of primary use, as defined in sub. (1) (u).

(d) *Exceptions.* For purposes of pars. (a), (b), and (c), if the location of the customer's service address, channel termination point, or place of primary use is not known, the location where the seller receives or hands off the signal shall be considered, for purposes of this rule, the customer's service address, channel termination point, or place of primary use.

(e) *Telecommunications message services.* Telecommunications message services are sourced to the location determined under s. Tax 11.945 (2), which will generally result in the sale being sourced to the location where the customer, or someone at the direction of the customer, receives the message.

(4) NONTAXABLE SERVICES. The sales price from the sale of or charge for the following services are not taxable:

(a) Interstate or international telecommunications service if the service is sourced to a location outside Wisconsin.

(b) Revenues collected under s. 256.35 (3), Stats., the surcharge established by the public service commission under s. 256.35 (3m) (f), Stats., for customers of wireless providers as defined in s. 256.35 (3m) (a) 6., Stats., and the police and fire protection fees under s. 196.025 (6), Stats.

(c) Transfers of telecommunications services to resellers who purchase, repackage and resell the services to customers. The reseller is liable for sales tax on its final retail sales of those services.

(d) Interstate 800 services.

(e) Transfers of services, commonly called "access services," to an interexchange carrier which permit the origination or termination of telephone messages between a customer in Wisconsin and one or more points in another telephone exchange, and which are resold by the interexchange carrier. The interexchange carrier is liable for sales tax on its final retail sales of those services.

(f) Detailed telecommunications billing services, as defined in sub. (1) (h).

(5) CREDIT FOR TAX PAID TO ANOTHER STATE. Any person who is subject to the tax under s. 77.52 (2) (a) 5., Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52 (2) (a) 5., Stats., was passed on an amount equal to the amounts not remitted.

(6) PURCHASES BY PERSONS PROVIDING SERVICE. Persons engaged in the business of providing telecommunications services are consumers, not retailers, of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used by them or transferred incidentally by them in providing those services. The tax applies to the sale of the property, items, or goods to them.

Note: Section Tax 11.66 interprets ss. 77.51 (1ba), (1r), (3c), (3pe), (3pn), (3rn), (5d), (5f), (5n), (5r), (7k), (8m), (9s), (10d), (10f), (10s), (13rn), (17m), (21n), (24), (25), and (26), 77.52 (2) (a) 5. and 5m., 77.522 (4), and 77.525, 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 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (c) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (d) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31; (f) The repeal of the exemption for equipment in central offices of telephone companies became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (g) 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; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin, terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll−free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237; (L) The exemption for interstate private line services no longer applies, effective December 1, 2002; (m) The definitions of air−to−ground radio telephone service, ancillary services, call−by−call basis, communications channel, conference bridging service, customer, customer channel termination point, detailed telecommunications billing services, directory assistance, eight hundred service, end user, fixed wireless service, home service provider, international telecommunications services, internet access services, interstate telecommunications services, intrastate telecommunications services, mobile telecommunications service, nine hundred service, paging service, place of primary use, postpaid calling service, prepaid calling service, prepaid wireless calling service, private communications service, radio service, radiotelegraph service, radiotelephone service, service address, telecommunications service, value−added nonvoice data service, vertical service, and voice mail service became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (n) The specific imposition of tax on ancillary services and interstate, intrastate, and international telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (o) The sourcing provisions related to telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (p) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; renum. (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; CR 99−101: r. and recr. (1) (a) and (3), renum. (1) (b), (2), (4) (intro.) to (c), (f), and (5) to be (1) (d), (2) (a), (5) (intro.) to (c), (e) and (8) and am. (2) (a) (intro.), 1., 2. (intro.), (5) (intro.), (a), (c) and (e), cr. (1) (b), (c) and (e), (2) (intro.) and (b), (4), (5) (d), (6) and (7), r. (4) (d) and (e), Register November 2002 No. 563, eff. 12−1−02; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; correction in (2) (d) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register May 2010 No. 653; CR 10−094: am. (2) (intro.) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: r. (2) (a) 9., cr. (2) (cm), am. (3) (a) 2., 3., (b), (c) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.67 Service enterprises. (1) GENERAL. When a transaction involves the transfer of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., along with the performance of a service, and the transaction is neither a bundled transaction, as defined in s. Tax 11.985, nor a transaction to which s. 77.52 (2m) (b), Stats., applies, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or the performance of a service with the transfer of the property, item, or good being incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, item, or good, a taxable sale of that property, item, or good 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., 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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which they use in rendering their services, tax applies to the sale of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to them.

Example: Persons engaged in the business of furnishing services include physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is a retailer with respect to the sale, and the tax applies to the total sales price from the sale without any deduction for the work, labor, skill, time spent, or other expense of producing the property, item, or good.

(c) 1. If there is a single charge for providing both taxable and nontaxable services that are not a bundled transaction as defined in s. 77.51 (1f), Stats., 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.

2. If there is a single charge for providing both taxable and nontaxable services in a transaction that is a bundled transaction

as defined in s. 77.51 (1f), Stats., the entire charge is subject to the tax, except as provided in s. 77.52 (20) (b), Stats.

(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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in rendering the services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services are retailers and shall obtain a seller's permit and report the tax on these sales.

Examples: 1) Sales of drugs by a hospital or clinic pharmacy are taxable if they are not dispensed under a prescription.

2) Sales of parking for motor vehicles 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 or a digital good under s. 77.52 (1) (d), Stats., 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 or a digital good under s. 77.52 (1) (d), Stats., and is taxable. The sale of a manuscript is taxable if the manuscript itself is of particular value as an item of tangible personal property or as a digital good under s. 77.52 (1) (d), Stats., and the purchaser is buying the property or good, and not the service which went into it.

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

(d) *Interior designer's fee.* 1. An interior designer's fee is taxable when the designer's services are part of a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. If a designer bills a client only for the full list price of the property, item, or good sold and then receives the equivalent of a fee through the designer's supplier in the form of a trade discount, the designer shall pay a tax on the full amount billed the client without any deduction for services performed.

Example: A designer's fee is taxable when it is added to the bill for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., on a cost−plus arrangement.

2. A designer's fee is not taxable if the fee is solely for services rendered and there is no sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., involved with the transaction.

3. If there is a separate charge for the designer's fee in addition to a separate and optional charge for any tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the designer sells to the client, the designer's fee is not part of the sales price of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., if the client had all of the following choices:

a. Purchasing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., from the designer for an additional, optional, fee.

b. Purchasing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., from another party.

c. Not purchasing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

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, if the primary objective of the customer in the transaction is to obtain tangible personal property or an item under s. 77.52 (1) (b), Stats., such as a prototype, the researcher may purchase the material used to construct the prototype without tax as property for resale. The subsequent sale of the prototype by the researcher to the customer is subject to tax unless an exemption applies. If the primary objective of the customer is to obtain the information resulting from production of the prototype, the prototype is considered transferred to the customer incidental to the research and development services. The researcher is subject to tax on the material purchased and used to construct the prototype. Determinations shall be made on a case−by−case basis.

Note: For a ruling on whether a specific transaction is a sale of a prototype or a research and development service with the prototype transferred incidental to the research and development service, write to Wisconsin Department of Revenue, Administration Technical Services, P.O. Box 8933, Madison, WI 53708−8933. The transaction should be described in detail.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates, compact discs, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which becomes the property, item, or good of others, the tax applies to the total sales price resulting from the sale of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. The sales price may not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though those 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. It would also be taxable if it is transferred electronically to the purchaser since it is an additional digital good. 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(i) *Enuresis alarms.* Charges for rental of bed−wetting alarm systems are taxable charges for the use of tangible personal property, not charges for a service, 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 that service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(k) *Taxidermists.* The sales price from services taxidermists perform on tangible personal property is subject to the tax.

(L) *Car washes.* The sales price received by persons providing car wash services, 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 pur-

chase, except for the wax, air freshener, and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept an exemption certificate claiming resale for the wax, air freshener, protectants, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold to car wash operators, which will be physically transferred to the car wash operator's customers. Car wash operators are liable for sales or use tax on their purchases of supplies that they use in providing their services unless those items are physically transferred to their customers.

(m) *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 subject to use tax on the directories delivered by the U.S. Postal Service as well as on the directories which it distributes to subscribers.

Note: Section Tax 11.67 interprets ss. 77.51 (1f), (12), (12m), (13), (14) (intro.) and (h), (15a), (15b), (20), and (22) (a) and (b) and 77.52 (1), (2) (a), (2m) (a) and (b), and (20), 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 (a) The fees paid to architects performing landscaping planning became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (b) The definition of bundled transactions became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; am. (2) (a), (3) (e) 2., (f), (h) and (j), r. (3) (e) 3., renum. (3) (L) to (n) to be (3) (k) to (m) and am. (3) (L), Register, April, 2000, No. 532, eff. 5−1−00; EmR0924: emerg. am. (1), (2) (a), (b), (3) (a), (b), (d), (e), (f), (h), (i), (k) and (L), renum. (2) (c) to be (2) (c) 1. and am., cr. (2) (c) 2., eff. 10−1−09; CR 09−090: am. (1), (2) (a), (b), (3) (a), (b), (d), (e), (f), (h), (i), (k) and (L), renum. (2) (c) to be (2) (c) 1. and am., cr. (2) (c) 2. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1), (2) (b), (3) (d) (title), 1., 2., cr. (3) (d) 3. Register November No. 659, eff. 12−1−10; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2010 No. 659.

Tax 11.68 Construction contractors. (1) DEFINITION. In this section, "real property construction activities" means activities that occur at a site where tangible personal property or items or goods under s. 77.52 (1) (b) or (d), Stats., that are applied or adapted to the use or purpose to which real property is devoted are affixed to that real property, if the intent of the person who affixes that property, item, or good is to make a permanent accession to the real property. "Real property construction activities" do not include affixing property subject to tax under s. 77.52 (1) (c), Stats., to real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed.

Note: The definition of real property construction activities was revised effective for sales of property pursuant to contracts entered into on or after December 1, 1997, to:

(a) Reverse the effect of the Wisconsin Supreme Court decision in the case of *Wisconsin Department of Revenue vs. Sterling Custom Homes* (283 N.W. 2d 573 (1979)) prospectively from the effective date of this revision, and

(b) Provide by statute those criteria that were used by the Supreme Court in the case of *Dept. of Revenue vs. A.O. Smith Harvestore Products, Inc.* (72 Wis. 2d 60, (1976)), for purposes of determining whether tangible personal property becomes real property. The meaning of each of the criteria is explained in the Supreme Court's decision.

(2) 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 its receipts from retail sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property, items, and goods 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, items, and goods it installs which retain their character as personal property after sale and installation.

Note: Refer to subs. (5) and (7) for the classification of property.

2. Labor or services furnished in installing tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which retain their character as personal property after installation.

Note: Refer to subs. (5) and (7) 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. (11) for a description of real property which retains its character as tangible personal property for repair purposes.

4. Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold.

(c) Contractors are consumers of tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., they use when engaged in real property construction activities, such as altering, repairing, or improving real property.

(3) 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 and items or goods under s. 77.52 (1) (b) or (d), Stats., 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.

(4) 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 or items under s. 77.52 (1) (b), Stats., 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 or items under s. 77.52 (1) (b), Stats., 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) 1. Tangible personal property and property, items, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which a construction contractor will resell as personal property may be purchased without tax for resale. This 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 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. (5) and (7) for the classification of property.

2. Taxable services which a construction contractor will resell may be purchased without tax for resale.

(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 and items and property under s. 77.52 (1) (b) and (c), Stats., which become a component part of an industrial waste treatment facility that would be exempt under s. 70.11 (21), 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 and items.

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. Section 70.11 (36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to, or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

(g) Under s. 77.54 (5) (am), Stats., contractors and subcontractors may purchase without sales and use tax modular homes, as defined in s. 101.71 (6), Stats., and manufactured homes as defined in s. 101.91 (2), Stats., that are used in real property construction activities outside Wisconsin.

(5) 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.

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.

(6) PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY. A construction contractor is the consumer of tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., 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.

(bm) Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment attached to the structure in apartment buildings, convalescent homes, or other residential buildings.

(c) Cemetery monuments.

(d) Personal property that is used to construct 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) Personal property that is used to construct improvements to land. "Improvements to land," as used in this section, include 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) Residential water heaters, water softeners, intercoms, incinerators, and garage door opening equipment, except portable equipment.

(h) Silos and grain elevators.

(i) Swimming pools, wholly or partially underground.

(j) Storage tanks constructed on the site.

(k) Street and parking lot lighting.

(L) Truck platform scale foundations.

(m) Walk−in cold storage units becoming a component part of a building.

(7) PROPERTY PROVIDED UNDER A CONSTRUCTION CONTRACT WHICH REMAINS PERSONAL PROPERTY. (a) Contractors shall obtain a seller's permit and report for taxation the sales price received from the sale and installation of tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., 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, except if attached to the structure in the bathrooms of such facilities.

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 except when used to monitor for unauthorized entry to a building or room in a building, 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 centers, 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 (12m) (b) 7. and (15b) (b) 7. and 77.54 (31), Stats., mobile homes, as defined in s. 101.91 (10), Stats., and manufactured homes, as defined in s. 101.91 (11) and (12), Stats., located in a mobile home park on land owned by a person other than the mobile home or manufactured home owner. Exemptions are provided by s. 77.51 (12m) (b) 7. and (15b) (b) 7., Stats., for 35% of the total amount for which a new manufactured home, as defined in s. 101.91 (11), Stats., is sold. No credit may be allowed for trade−ins and the exemption does not apply to a lease or rental. The exemption provided in s. 77.54 (31), Stats., applies to the sale of, but not the lease or rental of, used mobile homes as defined in s. 101.91 (10), Stats., and used manufactured homes as defined in s. 101.91 (12), Stats.

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.

15. Stop and go lights, railroad signs and signals, and street identification signs.

(b) If a few items of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services are minor in relation to the total amount of a contract and are sold as part of a contract which includes construction of a building or other real property improvement and no separate charge is made in any document provided to the customer for the taxable property, items, goods, and services, the cost of all such property, items, goods, and services to the construction contractor shall be used as the measure subject to sales tax. The tangible personal property, property, items, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services are "minor in relation to the total amount of a contract" if, based on a reasonable allocation, the sales price of the taxable property, items, goods, and services included in the contract is 10 percent or less of the total contract amount. If a separate charge is made in any document provided to the customer, including a contract, contract addendum, appendix, or payment request, for any of the taxable property, items, goods, or services, the separate charge is subject to tax.

Examples: 1) A refrigerator and drapes are included in the contract to construct a new house. No separate charge is made for the refrigerator and drapes, but, based on a reasonable allocation, the sales price of the refrigerator and drapes is less than 10 percent of the total contract amount. Therefore, the cost of the refrigerator and drapes to the construction contractor is the construction contractor's measure subject to sales tax.

2) Landscaping services are included in a contract to build a building. No separate charge is made for the landscaping services, but, based on a reasonable allocation, the sales price of the landscape services is more than 10 percent of the total contract amount. Since the sales price of the landscaping services, based on a reasonable allocation, is more than 10 percent of the contract amount, the construction contractor is required to make an allocation between the taxable landscaping services and the other nontaxable charges included in the contract and charge Wisconsin sales tax on the sales price of those landscaping services.

(8) PROPERTY, ITEMS, AND GOODS PURCHASED BY A PERSON WHO PERFORMS BOTH REAL PROPERTY CONSTRUCTION ACTIVITIES AND SELLS TANGIBLE PERSONAL PROPERTY OR ITEMS, PROPERTY, OR GOODS UNDER S. 77.52 (1) (B), (C), OR (D), STATS., AT RETAIL, WHEN DESTINATION OF PROPERTY, ITEM, OR GOOD 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 tangible personal property or items or goods under s. 77.52 (1) (b) or (d), Stats., 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 tangible personal property or items or goods under s. 77.52 (1) (b) or (d), Stats. 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 an exemption certificate claiming resale to suppliers and purchase the property, item, or good without tax. If the contractor later resells the property, item, or good, the contractor shall report the sales and collect and remit the tax on the sales price to customers. If the property, item, or good 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, items, and goods purchased. If the property, item, or good is later consumed in fulfilling a real property construction contract, the tax obligation is taken care of. If the property, item, or good 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 on the purchase of such property, item, or good.

(9) PROPERTY, ITEMS, AND GOODS 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 nonprofit 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. The sales price received from sales of these building materials to a contractor is 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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., pur-

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

chased to construct a bridge, road, or governmental building, since the property, item, or good becomes a part of realty after installation.

2) A contractor shall pay tax on its purchases of equipment for use at a municipal well or pumping station that becomes a part of realty after installation.

(b) A contractor may purchase without tax for resale tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which retain their character as personal property after installation as described in sub. (7), and taxable services, even though the resale of the property, item, good, or taxable service by the contractor is exempt when 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. Taxable services include landscaping services. This exemption does not apply to property, items, goods, or taxable services which become a part of real property as described in sub. (6) and par. (a).

(10) USE OF PROPERTY, ITEMS, AND GOODS PURCHASED OUTSIDE WISCONSIN. (a) If a construction contractor, when the contractor acts as a consumer, purchases property, items, or goods 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, items, or goods 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 where the property, item, or good 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 collect the tax, the contractor shall report and pay the tax to Wisconsin.

Note: The use tax as provided for in sub. (10) 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 property 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).

(11) 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 the sales price received from these activities is 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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., are taxable. Solely for the purpose of imposing the tax on these services, 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall register as a retailer and pay the tax on the sales price received from the performance of these services except that the tax does not apply to the original installation or complete replacement of an item listed in par. (c), if that installation or replacement is a real property construction activity under s. 77.51 (2), Stats.

(c) Section 77.52 (2) (ag), Stats., provides in part that the following items shall be considered to have retained their character as tangible personal property, regardless of the extent to which the item is fastened to, connected with or built into real property:

1. Furnaces.
2. Boilers.
3. Stoves.
4. Ovens, including associated hoods and exhaust systems.
5. Heaters.
6. Air conditioners.
7. Humidifiers.
8. Dehumidifiers.
9. Refrigerators.
10. Coolers.
11. Freezers.
12. Water pumps.
13. Water heaters.
14. Water conditioners and softeners.
15. Clothes washers.
16. Clothes dryers.
17. Dishwashers.
18. Garbage disposal units.
19. Radios and radio antennas.
20. Incinerators.
21. Television receivers and antennas.
22. Record players.
23. Tape players.
24. Jukeboxes.
25. Vacuum cleaners.
26. Furniture and furnishings.
27. Carpeting and rugs.
28. Bathroom fixtures.
29. Sinks.
30. Awnings.
31. Blinds.
32. Gas and electric logs.
33. Heat lamps.
34. Electronic dust collectors.
35. Grills and rotisseries.
36. Bar equipment.
37. Intercoms.
38. Recreational, sporting, gymnasium, and athletic goods and equipment including the following:
    a. Bowling alleys.
    b. Golf practice equipment.
    c. Pool tables.
    d. Punching bags.
    e. Ski tows.
    f. Swimming pools.
39. Equipment in offices, business facilities, schools, and hospitals but not in residential facilities including personal residences, apartments, long−term care facilities, as defined under s. 16.009 (1) (em), Stats., state institutions, as defined under s. 101.123 (1) (i), Stats., Type 1 juvenile correctional facilities, as defined in s. 938.02 (19), Stats., or similar facilities including the following:
    a. Lamps.
    b. Chandeliers.
    c. Fans.
    d. Venetian blinds.
    e. Canvas awnings.
    f. Office and business machines.
    g. Ice and milk dispensers.
    h. Beverage−making equipment.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

i. Vending machines.

j. Soda fountains.

k. Steam warmers and tables.

L. Compressors.

m. Condensing units and evaporative condensers.

n. Pneumatic conveying systems.

40. Laundry, dry cleaning, and pressing machines.

41. Power tools.

42. Burglar alarm and fire alarm fixtures.

43. Electric clocks.

44. Electric signs.

(d) Charges for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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 or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., incorporated into it may be purchased by the contractor without tax for resale.

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.

(12) REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES. Section 77.52 (2) (a) 10., Stats., provides that the sales price received for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property or items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., is taxable, except that the tax does not apply to the original installation or complete replacement of an item listed in s. 77.52 (2) (ag), Stats., if that installation or replacement is a real property construction activity under s. 77.51 (2), Stats. When a contractor performs an original installation or complete replacement of an item listed in s. 77.52 (2) (ag), Stats., and that activity is a real property construction activity, the contractor's charges for the installation of the item is not subject to tax imposed under s. 77.52 (2) (a) 10., Stats., and the contractor must pay tax on its purchase of the materials used in making the real property improvement, as described in sub. (4) (a), unless an exemption applies.

Example: A contractor furnishes and installs a new furnace as part of a contract to build a new home for an individual. The installation of the furnace is a real property construction activity. The contractor is the consumer of the furnace, and is liable for tax on its purchase of the furnace. The tax imposed under s. 77.52 (2) (a) 10., Stats., does not apply to the contractor's charges for installing the furnace.

(13) COUNTY AND STADIUM TAXES ON BUILDING MATERIALS. (a) Section 77.71 (3), Stats., imposes excise taxes upon a contractor engaged in construction activities, which includes constructing, altering, repairing, or improving real property within any county or special district's jurisdictional area that has adopted the county or stadium sales and use tax. The taxes are measured by the purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in constructing, altering, repairing, or improving real property which becomes a component part of real property in that county or special district's jurisdictional area, unless the contractor has paid the county or stadium tax of a county or special district in Wisconsin or a similar local sales tax in another state on the purchase of that property, item, or good.

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

(c) In providing the services to property subject to taxation under s. 77.52 (2) (a) 10., Stats., a contractor may purchase without county or stadium tax for resale tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., physically or electronically transferred to the customer in conjunction with providing such services.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the county and stadium taxes 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 are 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 special district resolution, 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 county and stadium taxes under s. 77.71 (3), Stats., on building materials used in real property construction activities are not imposed if the contractor purchased the building materials before the effective date of the county or stadium tax of that county or special district's jurisdictional area or has paid the sales tax of another county or special district in Wisconsin in purchasing the building materials.

Note: Section Tax 11.68 interprets ss. 77.51 (2), (12m) (b) 7., (14) (intro.), (15a) (a) 1. and 4., (15b) (b) 7., 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) The exemption of 35% 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; (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; (n) In Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue, Wisconsin Court of Appeals, District IV, No. 86−1813, October 29, 1987 (CCH 202−919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation; (o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (q) The clarification of the tax treatment of the original installation or complete replacement of certain deemed items became effective on October 1, 2001, pursuant to 2001 Wis. Act 16; (r) The changes in the use of the terms mobile homes and manufactured homes became effective January 1, 2008, pursuant to 2007 Wis. Act 11; (s) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (t) The exemption for modular homes and manufactured homes used in real property construction activities outside Wisconsin became effective September 1, 2011 pursuant to 2011 Wis. Act 32.

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), (e), (f), (h) and (j), (6) (a) 2., 4., 5., 6., 9. and 10. and (b), (7), (8), (9) (a), (10) (a), (b) and (d) 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; am. (4) (a) 2., (5) (L) and (10) (c), cr. (6) (a) 15., Register, October, 1997, No. 502, eff. 11−1−97; renum. (1), (2) (a) and (b) and (3) (a), (b), (c) to (f) and (4) to (12) to be (2), (3) (a) and (b), and (4) (a), (b) 1., (c) to (f) and (5) to (13) and am. (2) (b) 1., (4) (f), (7) (a) 6., 9., (b), (9) (b), (11) (c), (13) (a) and (c) to (e), cr. (1) and (4) (b) 2., r. (2) (c), Register, June, 1999, No. 522, eff. 7−1−99; EmR0924: emerg. am. (1), (2) (a), (b) 1. to 4., (c), (3), (4) (a), (b) 1., (c) to (f), (5) (b), (6) (intro.), (b), (d), (f), (7) (a) (intro.), 1. to 9., 15., (b), (8), (9), (10), (11) (a), (b), (d), (13) (title), (a) and (c) to (e), cr. (6) (bm), r. (6) (g), renum. (6) (h) to (n) to be (6) (g) to (m) and am. (6) (g), r. and recr. (11) (c) and (12), eff. 10−1−09; CR 09−090: am. (1), (2) (a), (b) 1. to 4., (c), (3), (4) (a), (b) 1., (c) to (f), (5) (b), (6) (intro.), (b), (d), (f), (7) (a) (intro.), 1. to 9., 15., (b), (8), (9), (10), (11) (a), (b), (d), (13) (title), (a) and (c) to (e), cr. (6) (bm), r. (6) (g), renum. (6) (h) to (n) to be (6) (g) to (m) and am. (6) (g), r. and recr. (11) (c) and (12) Register May 2010 No. 653, eff.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

6−1−10; CR 10−094: am (6) (f), (7) (b) Register November 2010 No. 659. eff. 12−1−10; **CR 12−014: cr. (4) (g), am. (13) (title), (a), (c) to (e) Register August 2012 No. 680, eff. 9−1−12.**

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, except for a federally chartered credit union, shall obtain a seller's permit and file the required sales and use tax returns if it has taxable sales. Taxable sales by a financial institution include the following:

(a) 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) Prepared foods, candy, dietary supplements, and soft drinks 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, 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 except camera security equipment used to monitor for unauthorized entry to a building or a room in a building.

(b) Any tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., 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 includes calendars, playing cards, plat books, maps, and any other property, items, or goods 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that the financial institution will resell, rather than give away, may be purchased without tax by giving its supplier a properly completed exemption certificate claiming resale.

(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.), (15a), and (20) and 77.52 (1) and (2) (a) 9., Stats.

Note: The interpretations in s. Tax 11.69 are effective under the general sales and use tax law on and after September 1, 1969, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1), (2), (3) (intro.), (a), (f), (g), (4) (a) to (c) and (5) (a), eff. 10−1−09; CR 09−090: am. (1), (2), (3) (intro.), (a), (f), (g), (4) (a) to (c) and (5) (a) Register May 2010 No. 653, eff. 6−1−10.

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

(a) "Catalog" means a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

(b) "Finished artwork" means the final artwork used for actual reproduction by photomechanical or other processes or for display purposes, but does not include web site or home page designs. Finished artwork also includes drawings, paintings, designs, photographs, lettering, paste−ups, mechanicals, assemblies, charts, graphs, and illustrative materials, regardless of whether such items are reproduced.

(c) "Preliminary artwork" means artwork prepared solely for presenting an idea to a client or prospective client. Preliminary artwork 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 artwork. Finished artwork is tangible personal property, unless it is transferred electronically. Finished artwork that is transferred electronically is an additional digital good, as provided in s. 77.51 (1a), Stats.

(b) Charges for preliminary artwork all or any part of which results in the production of finished artwork or other tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., by the advertising agency. This preliminary artwork is tangible personal property or an item or good under s. 77.52 (1) (b) or (d), Stats.

Examples: 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 artwork, for an advertising flyer. Company A selects one of the ideas, and it is developed into finished artwork, which is used to produce flyers.

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

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 artwork. Since finished artwork was produced from the preliminary artwork, the charge is subject to tax, unless an exemption applies to the sale of the finished artwork.

(c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, advertising and promotional direct mail, brochures, commercials, tapes, or other items of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

Examples: 1) Company C contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary artwork. Company C decides on one theme and the finished artwork 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 artwork, finished artwork, and the flyers, is subject to tax.

2) Assume the same facts as Example 1, except that Company C mails 90% of the flyers to customers outside Wisconsin and 10% to customers in Wisconsin.

Ten percent of the total charge to Company C by the advertising agency for the flyers, including the preliminary artwork, finished artwork, and flyers, is subject to tax.

3) 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 by the advertising agency.

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.

4) Assume the same facts as Example 3, except that 5 dubs are mailed by the advertising agency to radio stations outside Wisconsin.

Fifty percent of the entire charge by the advertising agency for the production of the master tape and dubs is subject to tax. The remaining 50% is not subject to tax because that portion of the sale took place outside Wisconsin.

(d) Photographic services or photostats.

(e) Producing, fabricating, processing, printing, or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing, or imprinting of the property, items, or goods. However, the tax does not apply to the printing or imprinting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

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

(a) Preliminary artwork that does not result in the production of finished artwork or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

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

(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, other than catalogs and the envelopes in which the catalogs are mailed, which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual 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 artwork. Company F decides on one theme and the finished artwork 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 artwork, finished artwork, 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.

(gm) Catalogs, as defined in s. 77.51 (1fr), Stats., and the envelopes in which the catalogs are mailed, if the catalogs are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

Example: Company A contracts with an advertising agency to have 5,000 catalogs that advertise Company A's products produced. The advertising agency has the catalogs printed. Some of the catalogs are delivered to Company A in Wisconsin and other catalogs are shipped directly to Company A's prospective customers in and outside Wisconsin.

The entire charge to Company A by the advertising agency for the catalogs, which includes any charges for preliminary artwork, finished artwork, and the catalogs, is exempt from tax because catalogs and the envelopes in which they are mailed are exempt from tax, regardless of whether the catalogs are delivered in or out of Wisconsin.

(h) Printing or imprinting tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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 artwork. Company G decides on one theme, and the finished artwork is prepared. Company G provides the finished artwork, 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., 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 artwork and has the printing done. Company H receives an itemized bill from the advertising agency which shows a charge for the finished artwork 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 exemption certificate claiming resale.

(j) Tangible personal property and items under s. 77.52 (1) (b), Stats., used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and becoming an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or which is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., in any form destined for sale.

Examples: 1) Company I contracts with a Wisconsin advertising agency to produce an advertising flyer. The advertising agency prepares preliminary artwork. Company I decides on one theme and the finished artwork is prepared. Company I takes the finished artwork 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 artwork and finished artwork is exempt from Wisconsin sales tax because the finished artwork is consumed in the production of flyers which are sold by the printer to Company I.

2) Assume the same facts as Example 1, except that Company I provides the paper to the printer, in addition to the finished artwork.

The charge to Company I by the Wisconsin advertising agency for the preliminary artwork and finished artwork is subject to Wisconsin sales tax. The printer is selling a printing service, and not tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., to Company I. The destined for sale requirement is not met and exemption from tax does not apply. Even though Company I is furnishing a printing service, however, it is still considered to be engaged in manufacturing, and its machinery and equipment, if used exclusively and directly in manufacturing, qualify for exemption under s. 77.54 (6) (a), Stats.

(k) Tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and 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 artwork for the shoppers guide advertisement is produced. The preliminary artwork and finished artwork 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 artwork and $3,000 for finished artwork.

The total $4,000 charge is exempt from Wisconsin sales or use tax because the preliminary artwork results in finished artwork and the finished artwork 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 or items or property under s. 77.52 (1) (b) or (c), Stats., if the containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials 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 artwork to be used on Company K's shipping boxes. The boxes are used by Company K to ship its products

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

to its customers. The advertising agency delivers the finished artwork to a printer who uses the finished artwork to print and produce the boxes which the advertising agency resells to Company K.

The entire charge for the finished artwork 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 exemption certificate.

(m) Raw materials processed, fabricated, or manufactured into, attached to, or incorporated into printed materials that are transported and used solely outside Wisconsin.

Example: Company A, located in Wisconsin, publishes flyers it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the flyers for Company A. The flyers are transported and used solely outside Wisconsin.

The paper purchased by Company A for the flyers is exempt from Wisconsin sales or use tax.

(4) MEASURE OF TAX. (a) Tax applies to an advertising agency's total sales price from the sale of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and 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 artwork or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(5) WHEN AND WHERE SALE OCCURS. (a) The tax applies to an agency's sales price from a sale of or the storage, use, or consumption of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sourced to Wisconsin under s. 77.522, Stats., 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 artwork transferred to a business in Wisconsin is taxable.

(b) The sale of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services occurs when the advertising agency transfers possession of the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., to the client or the client realizes the economic benefits of the property's, item's, or good's use, even though the property, item, or good 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., 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 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., it is not taxable. A fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales, unless the fee is a bundled transaction, as defined in s. 77.51 (1f), Stats.

(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 exemption certificate claiming resale.

2. Physically becomes an ingredient or component part of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., 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 exemption certificate claiming resale.

(b) An advertising agency is the consumer of all tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by the agency, other than tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased for immediate sale to customers or that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or the item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale. As the consumer, the advertising agency is subject to Wisconsin sales or use tax on the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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: Exemption certificates and their instructions may be obtained free of charge from the department's web site at www.revenue.wi.gov, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708−8902, or by calling (608) 266−2776.

Note: Section Tax 11.70 interprets ss. 77.51 (1f), (1fr), (3rm), (14) (intro.) and (h), 77.52 (1) and (2), 77.522, 77.54 (2), (2m), (6) (b), (25), (25m), and (43), and 77.585 (8), 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; (c) The exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983; (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for catalogs and their mailing envelopes became effective April 1, 2009, pursuant to 2007 Wis. Act 20; (f) The provision that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; (g) The definitions of bundled transaction and finished artwork became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, December, 1977, No. 264, eff. 1−1−78; r. and recr. Register, April, 1993, No. 448, eff. 5−1−93; cr. (3) (m), Register, June, 1999, No. 522, eff. 7−1−99; EmR0924: emerg. renum. (1) (a) and (b) to be (1) (b) and (c) and am., cr. (1) (a) and (3) (gm), am. (2) (a) to (c), (e), (3) (a), (d), (g) to (m), (4), (5) (a) (intro.), (b), (6), (7) (a) 2. and (b), eff. 10−1−09; CR 09−090: renum. (1) (a) and (b) to be (1) (b) and (c) and am., cr. (1) (a) and (3) (gm), am. (2) (a) to (c), (e), (3) (a), (d), (g) to (m), (4), (5) (a) (intro.), (b), (6), (7) (a) 2. and (b) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (c), (e) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (7) (a) 2. Register August 2012 No. 680, eff. 9−1−12.**

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

(d) "Computer" means an electronic device that accepts information in digital or similar form and that manipulates such information to achieve a result based on a sequence of instructions.

(e) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(em) "Computer software maintenance contract" means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, computer software support services, or both.

(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) "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.

(h) "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.

(i) "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in a punch card or transcribed on a tape during the keypunching operation has been punched properly.

(j) "Load−and−leave" means delivery to a purchaser by using a tangible storage media that is not physically transferred to the purchaser.

(k) "Prewritten computer software" is defined in s. 77.51 (10r), Stats., to mean computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of 2 or more "prewritten computer software" programs or prewritten portions of computer software does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than the specific purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is the author or creator only of the person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of computer software that is modified or enhanced to any degree, with regard to a modification or enhancement that is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software," except that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not "prewritten computer software."

(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 prewritten or custom program.

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

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

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

(2) TAXABLE RECEIPTS. Receipts from the following transactions involving automatic data processing equipment, computer software, output, and services are taxable:

(a) The retail sale, license, 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 licenses, leases, and rentals:

1. License, lease, or rental includes a contract by which a licensee or lessee, for a consideration, obtains the full or partial use of equipment if the licensee's or lessee's employees operate the equipment. License, lease, or rental does not include obtaining remote access to equipment by telephone or other means when that person's employees do not operate the equipment or control its operations. License, lease, or rental also does not include any transaction in which the licensor or lessor of the equipment provides the operator of the equipment and the operator does more than maintain, inspect, or set up the equipment.

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 prewritten computer software, regardless of how it is delivered to the purchaser. The tax applies to the total charge for prewritten computer software, including:

1. The consideration received for the temporary transfer of possession of prewritten computer software for the purpose of direct use or to be recorded by the customer.

2. The consideration received for prewritten computer software 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, and installing the prewritten computer software.

(bm) The sale of computer software maintenance contracts for prewritten computer software, unless the sale, license, lease, or rental in Wisconsin of the software to which the maintenance contract relates is or was exempt from tax to the purchaser of the contract.

(c) The sale of training materials, such as books and manuals, including digital books and manuals furnished to trainees for a specific charge. However, separately stated training services are not taxable, unless they are a service necessary to complete the sale of a taxable product.

Examples: 1) Company A sells prewritten computer software to Customer B for $1,000. Company A also offers optional training on how to use the prewritten computer software for an additional $100. Customer B chooses to purchase the training service. The $1,000 sale of the prewritten computer software is subject to Wisconsin sales tax but the $100 charge for the training is not subject to tax since the training was not required by the seller or the purchaser as a service necessary to complete the sale.

2) Company C sells prewritten computer software to Customer D for $1,000. In addition, Company C also requires that any customer that purchases the prewritten computer software, must also purchase the training services on how to use the software for $100. Since Company C requires that Customer D purchase the training services as a part of the sale of the prewritten computer software to Customer D, the training services are a service necessary to complete the sale and Company C must charge Wisconsin sales tax on the entire $1,100 it charges Customer D.

(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 sales price 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 computer software 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 software 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 computer software that is not prewritten computer software.

(c) Providing program technical support, error correction services, and maintenance and enhancement to computer software that is not prewritten computer software.

(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 employees, 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 prewritten computer software or other tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., 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) Keypunching and keystroke verifying services, including:

1. Keypunching only, keypunching and keystroke verification, or keypunching 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 (1n), (1p), (1pd), (7), (7g), (10r), (14) (h) and (j), and (20) and 77.52 (1) and (2) (a) 10. and 13m., 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, except that (a) 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; (b) The definition of prewritten computer software became effective March 6, 2009, pursuant to 2009 Wis. Act 2; (c) The definitions of computer, computer software, computer software maintenance contract and load and leave became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1) (b), (2) (intro.), (a) (intro.), 1., (b) to (d), (3) (intro.), (b) to (e) (intro.), (f) 1. and 2., r. (1) (c), (g) and (n), renum. (1) (d), (h) to (j) and (o) to (q) to be (1) (c), (g) to (i) and (n) to (p) and am. (1) (g), (h) and (p), cr. (1) (d), (em), (j) and (2) (bm), r. and recr. (1) (e) and (k), eff. 10−1−09; CR 09−090: am. (1) (b), (2) (intro.), (a) (intro.), 1., (b) to (d), (3) (intro.), (b) to (e) (intro.), (f) 1. and 2., r. (1) (c), (g) and (n), renum. (1) (d), (h) to (j) and (o) to (q) to be (1) (c), (g) to (i) and (n) to (p) and am. (1) (g), (h) and (p), cr. (1) (d), (em), (j) and (2) (bm), r. and recr. (1) (e) and (k) Register May 2010 No. 653, eff. 6−1−10, **CR 12−014: am. (2) (c) (Example 2) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers. (1) LAUNDRIES AND DRY CLEANERS. (a) The sales price received from selling, performing, or furnishing laundry, dry cleaning, pressing, and dyeing services is taxable, except as provided in par. (b).

(b) The sales price from selling, performing, or furnishing laundry, dry cleaning, pressing, and dyeing services is 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 sales price received by lessors from leasing, licensing, or renting clothing, including uniforms, towels, linens, or similar items, including cloth diapers, to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled is 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 and the charge for cleaning cloth diapers by a diaper service is not subject to 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 sales price on the sale of these items to laundries, dry cleaners, and linen and clothing suppliers.

(b) The tax applies to the sales price from sales, licenses, 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, licensing, 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 (15a) and 77.52 (2) (a) 6. and (2m) (a), 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; (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant

to 1989 Wis. Act 335; (c) The repeal of the exemption for cloth diapers became effective October 1, 2002, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, December, 1979, No. 288, eff. 1−1−80; am. (3) (a) and r. (3) (c), Register, September, 1984, No. 345, 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; EmR0924: emerg. am. (1) (a), (b) (intro.), (2) and (3), eff. 10−1−09; CR 09−090: am. (1) (a), (b) (intro.), (2) and (3) Register May 2010 No. 653, eff. 6−1−10.

Subchapter IX — Types of Tangible Personal Property and Items, Property, and Goods Under s. 77.52 (1) (b), (c), and (d), Stats.

Tax 11.78 Stamps, coins, and bullion. (1) TAXABLE SALES. Retail sales of the following tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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 of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to the purchaser in connection with the sale and delivery of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., if the sale of the property, item, or good 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 if the sale is sourced to a location in Wisconsin under s. 77.522, Stats., whether the sales contract is entered into in or outside of Wisconsin. Sales of silver and gold bullion sourced to a location outside Wisconsin are subject to the use tax when the bullion is brought into Wisconsin.

(h) Commemorative medals.

(2) NONTAXABLE SALES. Retail sales of the following tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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 if the sale is sourced to a location outside Wisconsin under s. 77.522, Stats.

(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 ss. 77.51 (15b) and (20) and 77.522, 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, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1) (intro.), (d), (g), (2) (intro.) and (c), eff. 10−1−09; CR 09−090: am. (1) (intro.), (d), (g), (2) (intro.) and (c) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (title), (1) (g) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.79 Leases of highway vehicles and equipment. (1) GENERAL RULE. The sales price received from the license, lease, or rental of motor vehicles and mobile equipment used on a highway is subject to the sales and use tax.

Note: See s. Tax 11.32 for additional information explaining what is included in the "sales price."

(2) DEDUCTIONS FROM SALES PRICE. In determining a lessor's taxable receipts under sub. (1), the cost of the following items may be deducted if they meet the conditions in sub. (3):

(a) Motor vehicle 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. (a) The items listed in sub. (2) may be deducted if:

1. The charge is reasonable.

2. The charge is separately stated in the lease agreement, billing, or invoice.

3. The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in sub. (2).

(b) 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 sales price 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) The sales price received from the license, lease, or rental of motor vehicles and mobile equipment used on a highway is taxable in Wisconsin if the license, lease, or rental payments are sourced to Wisconsin under s. 77.522, Stats., as described in pars. (b) and (c).

(b) A license, lease, or rental of a motor vehicle, trailer, semitrailer, or aircraft that only requires one payment, is sourced as follows:

1. If the motor vehicle, trailer, semitrailer, or aircraft is received by the lessee or licensee at the lessor's or licensor's business location, the payment is sourced to the lessor's or licensor's business location.

2. If the motor vehicle, trailer, semitrailer, or aircraft is not received by the lessee or licensee at the lessor's or licensor's business location, the payment is sourced to the location where the lessee or licensee or the lessee's or licensee's designated donee receives the product. This would include the location indicated by instructions known to the lessor or licensor for delivery to the lessee or licensee or the lessee's or licensee's designated donee. The delivery may be made by the lessor or licensor or by a shipping company hired by the lessee or licensee.

3. If the location cannot be determined under subds. 1. and 2., the payment is sourced to the lessee's or licensee's address as indicated by the lessor's or licensor's business records, if the records are maintained in the ordinary course of the lessor's or licensor's business and if using that address to establish the location of the lease, license, or rental is not in bad faith.

4. If the location cannot be determined under subd. 1., 2., or 3., the payment is sourced to the lessee's or licensee's address as obtained during the consummation of the license, lease, or rental, including the address indicated on the lessee's or licensee's payment instrument, if no other address is available and if using that address to determine the location of the lease, license, or rental is not in bad faith.

5. If the location cannot be determined under subd. 1., 2., 3., or 4., the payment is sourced to the location from which the motor vehicle, trailer, semitrailer, or aircraft was shipped.

(c) Except as provided in par. (b), licenses, leases, and rentals of motor vehicles, trailers, semitrailers, and aircraft that are not

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

transportation equipment, as defined in s. 77.522 (1) (a) 2., Stats., are sourced to the primary location of such property as indicated by an address for the property that is provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith.

(6) EXEMPT LEASES. The sales price from the license, lease, or rental 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), 77.522, 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; (b) The exemption for mobile mixing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The sourcing provisions under s. 77.522, Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1), (2) (title), (intro.), (a), (4) (intro.), (6) (intro.) and (c), renum. (3) to be (3) (a) and (b) and am. (3) (a) 2., r. and recr. (5), eff. 10−1−09; CR 09−090: am. (1), (2) (title), (intro.), (a), (4) (intro.), (6) (intro.) and (c), renum. (3) to be (3) (a) and (b) and am. (3) (a) 2., r. and recr. (5) Register May 2010 No. 653, eff. 6−1−10.

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. 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 of ice blocks through vending machines.

(b) Sales of ice blocks and ice cubes 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 of ice cubes to be used in drinks, including sales to restaurants, taverns, and individuals.

Note: Ice sold by a food retailer in cubes or crushed form can be ingested for taste. Therefore, a seller may exempt the sale of such ice. If the purchaser uses the ice to keep food or beverages cold rather than ingesting or chewing it, the purchaser is subject to tax on the purchase of the ice.

(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.

(bm) Sales of ice for use inside shipping cases for meat or meat products, regardless of whether such items are used to transfer merchandise to customers. The sales are exempt as "shipping materials" under s. 77.54 (6) (bm), Stats.

(c) Ice sold to manufacturers which is used exclusively and directly by the manufacturer in manufacturing an article of tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., 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 purchaser may either purchase the ice without tax by providing a properly completed exemption certificate and then pay the applicable use tax on the ice used in a taxable manner or pay tax on the entire purchase price of the ice and then claim a credit on its sales and use tax return for that portion of the ice that is used in a manner that is not subject to tax.

(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), 77.53 (1), and 77.54 (2) and (6) (bm), 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, except: (a) The clarification that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1), (2) (a), (b), (3) (a) to (c), cr. (3) (bm), r. and recr. (4) (a), eff. 10−1−09; CR 09−090: am. (1), (2) (a), (b), (3) (a) to (c), cr. (3) (bm), r. and recr. (4) (a) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (b), (3) (a) Register November 2010 No. 659. eff. 12−1−10.

Tax 11.81 Industrial gases, welding rods, fluxing materials, and fuels. (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 sales price from the sales of and the storage, use or other consumption of tangible personal property or item under s. 77.52 (1) (b), Stats., that is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale, except as provided in s. 77.54 (30) (a) 6., Stats. Section 77.54 (30) (a) 6., Stats., exempts from sales and use tax fuel and electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in this state. Therefore, the sale of industrial gases, welding rods, fluxing materials, or fuels shall be:

(a) Exempt if they are used exclusively and directly by a manufacturer in manufacturing and become ingredients or component parts of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale.

(b) Exempt if they are used exclusively and directly by a manufacturer in manufacturing and are consumed, destroyed, or lose their identity in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale.

(bm) Exempt under s. 77.54 (30) (a) 6., Stats., if they are a fuel consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin. A fuel is a material used to produce heat or power by burning, or is something that feeds a fire.

(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 if they are used exclusively and directly by a manufacturer in manufacturing and become an ingredient or component part of an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., 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) Exempt sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces that are used in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin.

2. Acetylene or other gases used in torches that are used in the manufacture of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(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 or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or in repairing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., 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 exclusively and directly in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., 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 nonmanufacturing 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) and (30) (a) 6., 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, except: (a) The exemption for fuel and electricity consumed in manufacturing became exempt January 1, 2006, pursuant to 2003 Wis. Act 99; (b) The clarification that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, September, 1977, No. 261, eff. 10−1−77; am. (3) and (4), Register, June, 1991, No. 426, eff. 7−1−91; EmR0924: emerg. am. (title), (1) (intro.), (a), (b), (2) (intro.), (a) (intro.), 2., (b), (3) and (4), cr. (1) (bm), eff. 10−1−09; CR 09−090: am. (title), (1) (intro.), (a), (b), (2) (intro.), (a) (intro.), 2., (b), (3) and (4), cr. (1) (bm) Register May 2010 No. 653, eff. 6−1−10.

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 sales price 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 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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., they purchase and use in producing these lists. However, any tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., becoming a component part of mailing lists when the mailing lists are physically transferred to a customer by either sale, rental, lease, or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed exemption certificate.

(2) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property, items, and goods to be mailed by writing, typewriting, printing, imprinting, or affixing addresses or names and addresses to the property, items, or goods. 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, items, or goods to be mailed for the purpose of serving as addresses for the property, item, or good. 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. The sales price from charges for envelopes is 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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., 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), and 77.53 (1), 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); (b) Mailing lists stored in machine−readable form are not tangible personal property, pursuant to the Wisconsin Tax Appeals Commission decision in *A−K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue* (1/15/87); (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. eff. 10−1−09; CR 09−090: am. Register May 2010 No. 653, eff. 6−1−10.

Tax 11.83 Motor vehicles. (1) DEFINITIONS. In this section:

(a) "Actively participates" means the person performs services for the motor vehicle dealership, including selling, accounting, managing, and consulting, for more than 500 hours in a taxable year for which the person receives compensation. "Actively par-

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

ticipates" does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use, or monitoring the finances or operations of the activity in a nonmanagerial capacity.

(am) "Mobility−enhancing equipment" means equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a person who has normal mobility. "Mobility−enhancing equipment" does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer. "Mobility−enhancing equipment" does not include durable medical equipment.

(b) "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 SALES. 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. The sales price subject to sales tax is $3,000, the $20,000 selling price less the $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. The sales price subject to sales tax is $7,000, the $22,000 selling price less the $15,000 trade−in.

(am) The sale of motor vehicles by any retailer registered or required to be registered to collect Wisconsin sales or use tax, regardless of whether the retailer is a motor vehicle dealer.

Example: Landscaper A is registered to collect and remit Wisconsin sales and use tax on its landscaping services. Landscaper A sells a motor vehicle that it had used in its landscaping business. Landscaper A must collect Wisconsin sales tax on its sale of the motor vehicle and remit the tax to the Department of Revenue on its Wisconsin sales and use tax return.

(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, equipment that is not generally provided by a motor vehicle manufacturer, but which is added to a motor vehicle may qualify for exemption under s. 77.54 (22b), Stats., as mobility−enhancing equipment, as defined in sub. (1) (am).

(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 mobility−enhancing equipment, as described in par. (c).

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

(e) Towing or hauling a motor vehicle by a tow truck, as defined in s. 340.01 (67n), Stats.

(3) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON−RETAILERS. (a) The occasional sale of a motor vehicle is taxable, unless one of the following applies:

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 or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered or titled in Wisconsin in the name of the transferor, if required to be registered or titled; and the transferor is not engaged in the business of selling motor vehicles.

2. The motor vehicle is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(b) No motor vehicle shall be registered or titled in Wisconsin unless the registrant presents proof that the sales or use taxes imposed by this subchapter have been paid or the registrant pays the tax due to the department of transportation at the time 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 "purchase price," as defined in s. 77.51 (12m), Stats., 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 sales price 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 is exempt. Truck bodies include semi−trailers. However, the separate sale of a "slide−in" camper to a nonresident is taxable if the sale is sourced to Wisconsin as provided s. 77.522, Stats.

(b) The sales price from charges for the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body is subject to tax.

(c) A motor vehicle, trailer, semi−trailer, all−terrain vehicle, or recreational vehicle as defined in s. 340.01 (48r), Stats., purchased outside Wisconsin 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, the District of Columbia, or the Commonwealth of Puerto Rico, in which the purchase was made, sales or use tax paid to the other state, the District of Columbia, or the Commonwealth

of Puerto Rico 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 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 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 if the motor vehicle has been purchased by the donor tax−free for resale or upon the presentation of a valid exemption certificate, and if the donor has made no other use of the motor vehicle.

(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 ss. 218.0101 to 218.0163, 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 and used by a specific dealer employee subject to withholding from federal income tax on wages are subject to Wisconsin use tax on $140 per motor vehicle registration plate per month. The $140 amount is effective January 1, 2009 and is subject to change annually as explained in the notes following par. (b).

2. Motor vehicles held for sale which are assigned to and used by persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships who are not subject to withholding for federal income tax purposes, but who actively participate in the day−to−day operation of the dealership, are subject to Wisconsin use tax on $140 per motor vehicle registration plate per month. The $140 amount is effective January 1, 2009 and is subject to change annually as explained in the notes following this subdivision.

Note: As provided in s. 77.53 (1m), Stats., the department will annually adjust the amount per plate 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* and *Sales and Use Tax Report* prior to the January 1 that the change becomes effective.

Note: The amount per plate subject to use tax under par. (b) 1. and 2. was $96 for the period September 1, 1995 through December 31, 1996, $99 for the period January 1, 1997, and $102 for the period January 1, 1998 through December 31, 1998.

3. Motor vehicles used by the dealer or any person other than an employee of the dealer and which are held for sale and not assigned to and used by a specific dealer employee 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 26 CFR 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.

4. 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 purchase price of the motor vehicle as defined in s. 77.51 (12m), Stats.

(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 employees subject to withholding for federal income tax purposes or owners who actively participate in the day−to−day operations of the dealership for a purpose in addition to retention, demonstration, or display and are subject to use tax as provided in par. (b) 1. and 2., 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) 3. or 4.

(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, but who are retailers that hold a Wisconsin seller's permit, must charge the sales tax on their sales of motor vehicles. The heavy equipment dealers may purchase motor vehicles they are going to resell without tax for resale by providing a properly completed exemption certificate.

(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 and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which are physically transferred to the customer's vehicle and which leave the repair facility with the customer. The property includes paints, paint hardeners, plastic fillers, welding rods, and auto parts.

(b) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., not physically transferred to a customer's motor vehicle and which do not leave the repair facility with the customer are 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 even though a separate charge may be made to the customer for these supplies.

(12) EXEMPTION FOR MIXING AND PROCESSING UNITS. Sales, licenses, leases, and rentals of mobile units used for mixing and processing, and the motor vehicles or trailers on which the units

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

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. The sales price from the sale, license, 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 is exempt from sales and use tax.

(14) REFUNDS UNDER "LEMON LAW". Sales tax refunds made under s. 218.0171 (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.

(15) VEGETABLE OIL AND ANIMAL FAT. Sales of vegetable oil and animal fat to an individual that will be converted to motor vehicle fuel for use in that individual's personal motor vehicle are exempt from sales and use tax if the individual does not sell any of that fuel during the year. This exemption only applies if the motor vehicle fuel is exempt from the motor vehicle fuel tax under s. 78.01 (1), Stats.

Note: Section Tax 11.83 interprets ss. 77.51 (7m), (13) (am), (14) (j), and (15b) (b) 6., 77.52 (1), (2) (a) 10. and 13m., and (15), 77.53 (1), (1m), (16), (17), and (18), 77.54 (5) (a), (c) and (d), (7) and (22b), 77.56 (2) and (3), 77.61 (1), 77.71 (2) and (4), and 77.73, 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; (h) The measure of use tax on motor vehicles as described in sub. (8) (b) 1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (i) The use of the amount per plate rather than the lease value, as described in sub. (8) (b) 2., as the measure of use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (j) The trade−in provisions related to lemon law refunds became effective June 1, 2002, pursuant to 2001 Wis. Act 45; (k) The imposition of tax on towing and hauling motor vehicles by a tow truck became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (L) The exemption for mobility−enhancing equipment became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (m) The requirement to collect the tax by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (n) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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), renum. (5) to be (6), renum. (6) to (11) to be (7) to (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; renum. (1) and (8) (b) 2. and 3. to be (1) (b) and (8) (b) 3. and 4. and am. (1) (b), am. (8) (b) 1., (c) 2. and (d), cr. (1) (a), (8) (b) 2., Register, August, 1999, No. 524, eff. 9−1−99; corrections in (8) (a) and (14) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. am. (1) (a), (b), (2) (title), (intro.), (b) to (d), (3) (title), (a) to (c), (4) (a) to (c), (5), (6), (7) (title), (a), (c), (8) (a), (b) (intro.) to 3. (intro.), 4., (c) (intro.), 1., (10), (11) (a), (b), (12) and (13), cr. (1) (am) and (2) (am), r. (8) (d) and (11) (c), eff. 10−1−09; CR 09−090: am. (1) (a), (b), (2) (title), (intro.), (b) to (d), (3) (title), (a) to (c), (4) (a) to (c), (5), (6), (7) (title), (a), (c), (8) (a), (b) (intro.) to 3. (intro.), 4., (c) (intro.), 1., (10), (11) (a), (b), (12) and (13), cr. (1) (am) and (2) (am), r. (8) (d) and (11) (c) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (title), cr. (2) (e) Register November 2010 No. 659, eff. 12−1−10; correction in (2) (e) made under s. 13.92 (4) (b) 7., Stats., Register November 2010 No. 659; **CR 12−014: renum. (3) (a) to be (3) (a) 1. and am., cr. (3) (a) (intro.), 2., am. (11) (a), (b), cr. (15) Register August 2012 No. 680, eff. 9−1−12.**

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

(b) The occasional sale of an aircraft in Wisconsin is taxable unless one of the following applies:

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; the aircraft was previously registered or titled in Wisconsin in the transferor's name, if required to be registered or titled; and the transferor is not engaged in the business of selling aircraft.

2. The sale is by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(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 registrant does not present proof that the tax has been paid, the registrant shall pay the tax to the department of transportation at the time the aircraft is registered or titled in Wisconsin. 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, as determined under s. 77.522, Stats.

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 other 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 tangible personal property and no real 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.

bm. A limited liability company and all of the corporate members fulfill the requirements under subd. 3. a., and none of the managers and none of the members who has management or control responsibilities is domiciled in Wisconsin and the limited liability company has no other tangible personal property and no real 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, cooperative, or unincorporated cooperative association, and that estate, that trust and its grantor or that cooperative or association does not have real property or other 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, partnership, or limited liability company, was formed to qualify for the exemption from Wisconsin use tax.

(2) TAXABLE SALES. (a) *Aircraft, supplies and repairs*. The sales price received from the following shall be taxable:

1. The sale, license, lease, or rental of aircraft by any retailer registered or required to be registered to collect Wisconsin sales or use tax, regardless of whether the retailer is an aircraft dealer.

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 sales price from charges for the following are taxable:

1. Aerial photographs and maps.

4. Towing a banner that is not provided by the person towing it.

(3) EXEMPT SALES OF AIRCRAFT. (a) Section 77.54 (5) (a), Stats., provides that the tax does not apply to the sales price 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, alteration, fitting, cleaning, painting, coating, towing, inspection, 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. Amounts received from the following services are not taxable:

(a) Except as provided in sub. (2) (c), 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 skywriting and banner towing if the person towing the banner also provides it, except when the aircraft is leased to a person who provides the person's own 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.

(g) Sightseeing flights.

(h) Carrying a skydiver.

(i) Towing a hang glider and pilot.

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; (d) The exemption for transfers of aircraft to in−laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (e) The requirement to collect the tax on sales of aircraft by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (f) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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) (e) 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; CR 02−128: am. (1) (b) 1. and 2., (c) and (4) (a) and (c), renum. (2) (c) to be (2) (c) (intro.) and am., cr. (2) (c) 1. to 4., Register July 2003 No. 571, eff. 8−1−03; EmR0924: emerg. am. (1) (a), (b) 1., (c), (e) 1., 3. a., b., d., 4., (2) (a), (c) (intro.), (3), (4) (intro.) and (c) to (e), cr. (1) (e) 3. bm., eff. 10−1−09; CR 09−090: am. (1) (a), (b) 1., (c), (e) 1., 3. a., b., d., 4., (2) (a), (c) (intro.), (3), (4) (intro.) and (c) to (e), cr. (1) (e) 3. bm. Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: r. and recr. (1) (b), r. (2) (c) 2., 3., am. (2) (c) 4., cr. (4) (g) to (i) Register August 2012 No. 680, eff. 9−1−12.**

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

(a) The receipts from the sale, license, lease, or rental of boats and boat accessories, and of attachments, parts, supplies, and materials therefor, by any retailer registered or required to be registered to collect Wisconsin sales or use tax, regardless of whether the retailer is a boat dealer.

(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.

Example: Individual A, a resident of Wisconsin, takes his boat to Illinois to have it repaired. No Illinois tax is charged to Individual A on the repair services. Individual A brings the boat back to Wisconsin where it is used. Individual A owes Wisconsin use tax on the purchase of the repair services performed in Illinois.

(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 and 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 are exempt if the boat was previously registered or titled with the Wisconsin department of natural resources, if required to be registered or titled, 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.

(bm) The sale of a boat by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(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, as determined under s. 77.522, Stats., 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.

(g) Section 77.54 (30) (a) 7., Stats., exempts fuel sold for use in motorboats that are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in s. 29.001 (63), Stats., and the rivers and tributaries specified in s. 29.2285 (2) (a) 1. and 2., Stats., if the owner and all operators are licensed under s. 29.514, Stats., to operate the boat for that purpose.

(3) PAYMENT OF TAX. (a) No boat may be registered in Wisconsin unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the registrant does not present proof that the tax has been paid, the registrant shall pay the tax at the time the boat is registered or titled in Wisconsin, even though the boat may also be used out−of−state.

(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 vessels 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, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and 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 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), (13), and (30) (a) 7., 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; (e) The exemption for transfers to in−laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (f) The exemption for fuel used in motorboats by persons regularly employed in carrying persons for hire for sport fishing became effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (g) The requirement to collect the tax on sales of boats by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (title), (1) (intro.), (a), (c), (2) (a) to (d), (f), (3) (a), (d) and (5), cr. (2) (g), eff. 10−1−09; CR 09−090: am. (title), (1) (intro.), (a), (c), (2) (a) to (d), (f), (3) (a), (d) and (5), cr. (2) (g) Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: am. (2) (b), cr. (2) (bm) Register August 2012 No. 680, eff. 9−1−12.**

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) The sales price from the installation, license, lease, rental, repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is subject to sales tax.

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

Examples: 1) The charges by a contractor for 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 charges by a utility for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, 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, alteration, fitting, cleaning, painting, coating, towing, inspection, maintenance, or installation may be purchased without tax for resale.

3) Charges for the installation, sale, license, lease, rental, repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, 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 charges are not subject to sales or use tax. However, materials used in the X−ray testing of the under-

ground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) RELATED EXPENSES. The taxable 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 receipts.

(4) EQUIPMENT CHARGES. (a) The taxable 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 charges for the rental of equipment used in the construction or repair of a utility line to a utility are taxable.

Note: See s. Tax 11.29 (5) for more information.

(5) NONTAXABLE SERVICES. (a) The sales price received 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 is not taxable under s. 77.52 (2) (a) 20., Stats.

(b) The sales price received under a separate contract for tree trimming and line clearing in connection with the construction of a new utility line is not taxable.

(c) The sales price received from a separate charge for removing an existing utility line is not taxable.

(6) LANDSCAPING SERVICES. The sales price received from landscaping and lawn maintenance services is taxable. Except as provided in sub. (5) (a) and (b), landscaping and lawn maintenance services include:

(a) Landscape planning and counseling.

(b) Lawn and garden services, such as planting, mowing, spraying, and fertilizing.

(c) Shrub and tree services.

(d) Spreading topsoil and installing sod or planting seed where trenches have been dug or sump pump, transmission, and distribution lines have been buried in residential, business, commercial, and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots, and other areas, and along highways, streets, and walkways.

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; (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; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; r. and recr. (6), Register, October, 1997, No. 502, eff. 11−1−97; correction in (6) made under s. 13.93 (2m) (b) 1., Stats., Register, May, 1999, No. 521; EmR0924: emerg. am. (1) (a), (b), (2) (a), (3), (4), (5), (6) (intro.), (b) and (d), eff. 10−1−09; CR 09−090: am. (1) (a), (b), (2) (a), (3), (4), (5), (6) (intro.), (b) and (d) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.87 Prepared food, food and food ingredients, and soft drinks. (1) DEFINITIONS. In this section:

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

(b) "Exempt food" means food and food ingredients that are exempt from the sales and use tax as provided in s. 77.54 (20n), 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) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing, and ambulation.

(em) "Prepared food" has the meaning provided in s. Tax 11.51 (4).

(f) "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.

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

(h) "Taxable food" means food and food ingredients, including candy, dietary supplements, prepared food, soft drinks, and alcoholic beverages subject to the sales and use tax.

Note: See s. Tax 11.51 to determine which items are exempt food and which items are taxable food.

(2) TAXABLE SALES. (a) *General.* Generally, the sales price 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, 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 as "prepared 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 roasts chickens on a rotisserie and sells them in a heated condition, the roasted chickens are taxable because they are prepared food.

(c) *Prepared food.* Sales of prepared food, as provided in s. Tax 11.51 (4), are taxable.

Examples: 1) Retailer A sells heated food and heated beverages. Heated foods and heated beverages are prepared food and Retailer A's sales of the heated foods and heated beverages are subject to tax.

2) Restaurant B sells prepared foods and also other foods and food ingredients, including cartons of milk, cookies, and candy. Restaurant B's sales of prepared foods, based on Restaurant B's prior tax year, are *more* than 75% of its total sales of food and food ingredients. Restaurant B makes napkins and straws available to the purchaser. Restaurant B's sales of the food and beverages, including the cartons of milk are subject to tax since (a) Restaurant B's sales of prepared foods are more than 75% of Restaurant B's total sales of food and food ingredients, based on Restaurant B's prior tax year; and (b) napkins and straws are available to the purchaser.

3) Same as Example 2, except that the seller is a convenience store instead of a restaurant. The answer is the same as in Example 2.

4) Convenience Store C sells prepared foods and other foods and food ingredients, including cartons of milk, cookies, soft drinks, and candy. Convenience Store C's sales of prepared foods, based on its prior tax year, are *less* than 75% of its total sales of food and food ingredients. Convenience Store C makes napkins and straws available to the purchaser, but does not physically hand or give the straws or napkins to the purchaser. Convenience Store C's sales of heated food, heated beverages, soft drinks, and candy are subject to tax, but Convenience Store C's sales of milk and cookies are not subject to tax since (a) Convenience Store C's sales of prepared foods are less than 75% of Convenience Store C's total sales of food and food ingredients, based on its prior tax year; and (b) Convenience Store C makes the napkins and straws available to the purchaser, rather than physically giving or handing the napkins or straws to the purchaser.

5) Same as Example 4, except that Convenience Store C's customary practice is to physically give or hand the napkins and straws to the purchaser. Convenience Store C's sales of heated food, heated beverages, soft drinks, candy, cookies, and cartons of milk are subject to tax since Convenience Store C's customary practice is to physically give or hand the napkins and straws to the purchaser. The tax applies to these sales even though Convenience Store C's sales of prepared foods are less than 75% of its total sales of food and food ingredients.

6) Grocery Store A has a self−service salad bar. Grocery Store A's sales of prepared foods, based on its prior tax year, are less than 75% of its total sales of food and food ingredients. The plates necessary to receive the food items at the salad bar, along with the forks, knives, and napkins are made available to the purchaser. Grocery Store A's sales of the self−service salad bar items are subject to tax since the plates necessary to receive the food items at the salad bar are made available to the purchaser.

(d) *Caterers.* Food and food ingredients, sold by caterers are generally taxable as prepared foods. 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 "prepared foods" either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute taxable receipts.

2. Charges made by a caterer for preparing and serving prepared foods 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 prepared foods, hold a seller's permit and give a properly completed exemption certificate 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, unless customers are charged a separate and optional amount for their use. In addition, 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 are charged a separate and optional amount for their use. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placemats, and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator's receipts from candy, dietary supplements, prepared foods, and soft drinks are taxable.

(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 prepared food, candy, dietary supplements, soft drinks, or other taxable property, items, or goods, shall be taxable. If prepared food, candy, dietary supplements, soft drinks, or other taxable property, items, or goods 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 employee in cash or which is added by a customer to a bill which amount is then turned over in full to the employee 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 prepared food or other taxable food or food ingredient under a requirement of the seller or an arrangement made with the seller is a part of the sales price of the prepared food or other taxable food or food ingredient 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 employees.

(h) *Huber law meals.* Prepared foods, candy, dietary supplements, and soft drinks sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Food and food ingredients to employees.* Sales of prepared foods, candy, dietary supplements, and soft drinks to employees by an employer for a consideration shall be taxable. For purposes of this paragraph:

1. A consideration shall be deemed made for prepared foods, candy, dietary supplements, and soft drinks if any one of the following conditions is met:

a. The employee pays cash for the prepared foods, candy, dietary supplements, and soft drinks consumed.

b. An actual, specific charge for the prepared foods, candy, dietary supplements, and soft drinks is deducted from an employee's wages.

c. An employee receives the prepared foods, candy, dietary supplements, and soft drinks in lieu of cash to bring the employee's compensation up to the legal minimum wage.

d. An employee has the option to receive cash for the prepared foods, candy, dietary supplements, and soft drinks 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 prepared foods, candy, dietary supplements, and soft drinks only as a means of reporting the fair market value of an employee's prepared foods, candy, dietary supplements, and soft drinks for FICA, social security, or union contract purposes.

b. An employee who does not consume available prepared foods, candy, dietary supplements, and soft drinks has no recourse against the employer for additional cash wages.

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

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 employee 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 food and food ingredients shall be exempt:

(a) *Health care facilities.* Food and food ingredients, except soft drinks, fermented malt beverages, and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community−based residential facilities as defined in s. 50.01 (1g),

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Stats., or any facility certified or licensed 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 prepared food and drinks sold at the coffee shop are taxable.

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

(c) *Institutions of higher education.* Food and food ingredients furnished in accordance with any contract or agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to any of the following:

1. An undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at the public or private institution of higher education and if the food and food ingredients are consumed by the student.

2. A national football league team.

(d) *Groceries.* Sales of food and food ingredients, except candy, dietary supplements, prepared foods, and soft drinks are exempt from tax under s. 77.54 (20n), Stats. This includes sales of prepackaged ice cream, ice milk, or sherbet in any size container and also of ice cream, ice milk, sherbet, or yogurt as cones, sundaes, sodas and shakes.

Note: See s. Tax 11.51 for more information.

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

(f) *Food and food ingredients to employees.* Purchases by restaurants of candy, soft drinks, dietary supplements, prepared foods, and disposable products that are transferred with such items, are exempt from sales and use tax if the restaurant transfers such items to its employees during the employee's work hours for no consideration.

(g) *Vegetable oil and animal fat.* Sales of vegetable oil and animal fat to an individual that will be converted to motor vehicle fuel for use in that individual's personal motor vehicle if the individual does not sell any of that fuel during the year. This exemption only applies if the motor vehicle fuel is exempt from the motor vehicle fuel tax under s. 78.01 (1), Stats.

(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 taxable food and food ingredients and beverages received, the tax shall be based on the reasonable value of the taxable food and food ingredients and other tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services received by the customer. The retailer is responsible for determining the reasonable value and showing that the charge to the patron bears little or no relationship to the actual value received.

Examples: 1) Company A puts on a fundraising dinner. Individuals wishing to attend the dinner must pay $300 per person to attend. The actual value of the dinner received is $50. Company A may compute the tax that must be remitted on the $50 since that is the actual value of the dinner received. The actual value in this example is based on the amount that an individual would be required to pay for this dinner if it was not a fundraising dinner.

2) Company B puts on a fundraising dinner and dance. Individuals wishing to attend the dinner and dance must pay $300 per person to attend. The actual value of the dinner received is $50 and the actual value of admission to the dance is $25. Company B may compute the tax that must be remitted on the $75 since that is the actual value of the dinner and admission to the dance that is received. The actual values in this example are based on the amount that an individual would be required to pay for the dinner and to attend the dance if this was not a fundraising dinner and dance.

Note: Section Tax 11.87 interprets ss. 77.51 (10m), (12m), (14) (b) and (f), and (15b), and 77.54 (20n) and (20r), 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 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; (c) Sales of meals by community−based residential facilities on their premises became exempt June 1, 1994, pursuant to 1993 Wis. Act. 332; (d) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237; (f) The exemption for food and food ingredients was revised to exempt all food and food ingredients except candy, dietary supplements, prepared food and soft drinks effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (g) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; am. (1) (b), (2) (c) and (3) (a), renum. (1) (e) and (f) to be (1) (f) and (e), r. and recr. (3) (c), Register, October, 1999, No. 526, eff. 11−1−99; EmR0924: emerg. am. (title), (1) (b), (e), (h), (2) (a), (b), (d), (f), (g) 2., (h) to (k) 1., (3) (intro.), (a), (b), (c) 1., 2., (d), (e) and (4) (b), cr. (1) (em) and (3) (f), r. and recr. (2) (c), (e) and (3) (c) (intro.), eff. 10−1−09; CR 09−090: am. (title), (1) (b), (e), (h), (2) (a), (b), (d), (f), (g) 2., (h) to (k) 1., (3) (intro.), (a), (b), (c) 1., 2., (d), (e) and (4) (b), cr. (1) (em) and (3) (f), r. and recr. (2) (c), (e) and (3) (c) (intro.) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (2) (a), (j), (3) (a) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: cr. (3) (g), am. (4) (b), cr. (4) (b) (Examples) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.88 Manufactured homes, mobile homes, modular homes, and recreational vehicles. (1) DEFINITIONS. For purposes of this section:

(a) 1. "Manufactured home," as defined in s. 101.91 (2), Stats., means either of the following:

a. A structure that is designed to be used as a dwelling with or without a permanent foundation and that is certified by the federal department of housing and urban development as complying with the standards established under 42 USC 5401 to 5425.

b. A mobile home, unless a mobile home is specifically excluded under the applicable statute.

2. As provided in 42 USC 5402 (6), "manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air−conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under this chapter; and except that such term shall not include any self−propelled recreational vehicle.

(b) "Mobile home," as defined in s. 101.91 (10), Stats., means a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet. "Mobile home" includes the mobile home structure, its plumbing, heating, air conditioning and electrical systems, and all appliances and all other equipment carrying a manufacturer's warranty.

(bm) 1. "Modular home," as defined in s. 101.71 (6), Stats., means any structure or component thereof which is intended for use as a dwelling and satisfies either of the following conditions:

a. The structure or component is of closed construction and fabricated or assembled on−site or off−site in manufacturing facilities for installation, connection, or assembly and installation, at the building site. In this subd. 1. a., "closed construction" has the meaning given in s. 101.71 (1), Stats.

b. The structure or component is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer. In this subd. 1. b. and subd. 2., "open construction" has the meaning given in s. 101.71 (7), Stats.

2. "Modular home" does not mean any manufactured home under s. 101.91, Stats., or any building of open construction which is not subject to subd. 1. b.

(c) "New manufactured home," as defined in s. 101.91 (11), Stats., means a manufactured home that has never been occupied, used or sold for personal or business use.

(d) "New recreational vehicle," as defined in s. 218.10 (7), Stats., means a recreational vehicle which has never been occupied, used or sold for personal or business use.

(e) "Recreational vehicle," as defined in s. 340.01 (48r), Stats., means a vehicle that is designed to be towed upon a highway by a motor vehicle, that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length.

(f) "Recreational vehicle dealer" has the meaning given in s. 218.10 (1g), Stats.

(g) "Retailer" is a person who has or is required to have a certificate under s. 77.52 (7), Stats., or s. 77.53 (9), Stats., and who holds or is required to hold a permit issued under s. 77.52 (9), Stats., or s. 77.53 (9m), Stats.

(h) "Used manufactured home," as defined in s. 101.91 (12), Stats., means a manufactured home that has previously been occupied, used or sold for personal or business use.

(i) "Used recreational vehicle" has the meaning given in s. 218.10 (9), Stats.

(2) MANUFACTURED AND MOBILE HOMES AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT. A manufactured or mobile home is personal property if it is located in a manufactured home community, a mobile home park, or other place where the land on which the manufactured or mobile home is located is not owned by the manufactured or mobile home owner. A manufactured or mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the manufactured or mobile home. It is permanently affixed to the land for sales tax purposes if the manufactured or 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.

(3) SALES OF MANUFACTURED AND MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS. (a) The sale of a manufactured or 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 manufactured or 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 manufactured or 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. Except as provided in par. (c), sales of manufactured or mobile homes to the contractor−consumer are subject to the tax, but the sales price from the subsequent sale by the contractor−consumer to the purchaser of the home are not taxable.

(c) Sales of manufactured homes to the contractor−consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

(4) SALES AND RENTALS OF MANUFACTURED AND MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) Under s. 77.54 (31), Stats., the total sales price from the sale of a used mobile home or a used manufactured home is exempt from the sales and use tax.

(b) Under s. 77.51 (15b) (b) 7. and (12m) (b) 7., Stats., 35% of the total sales price from the sale of a new manufactured home is exempt from the tax. No credit is allowed for trade−in allowances on the purchase of these new manufactured homes.

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

(d) Under s. 77.54 (7), Stats., recreational vehicles, as defined in s. 340.01 (48r), Stats., registered or titled or required to be registered or titled in this state that are transferred to the child, spouse, parent, father−in−law, mother−in−law, son−in−law, or daughter−in−law of the transferor are exempt occasional sales if the recreational vehicle, as defined in s. 340.01 (48r), Stats., 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 recreational vehicles, as defined in s. 340.01 (48r), Stats.

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

(4m) MODULAR HOMES. (a) The sale of a modular home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax.

(b) If the seller of a modular home as part of the sales transaction agrees to permanently affix the home on a foundation, the seller is a contractor−consumer engaged in improving realty. Except as provided in par. (e), the sale of the modular home to the contractor−consumer is subject to the tax, but the sales price from the subsequent sale by the contractor−consumer to the purchaser of the home is not taxable.

(c) The sales or purchase price from the sale of a modular home that is tangible personal property when sold (i.e., the sale to the contractor−consumer), may be reduced by one of the following:

1. 35% of the sales or purchase price.

2. An amount equal to the sales or purchase price of the home minus the cost of materials that become an ingredient or component part of the home.

(d) Once the retailer chooses one of the options provided in par. (c) 1. or 2., the retailer may not use the other option without the written approval of the department.

(e) Sales of modular homes to the contractor−consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

(5) PAYMENT OF TAX. (a) No recreational vehicle may be registered in Wisconsin unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the recreational vehicle was exempt from the tax. If the recreational vehicle registrant does not present proof that the tax has been paid, the registrant shall pay the tax at the time the recreational vehicle is registered with the department of transportation even though the recreational vehicle may also be used out−of−state.

(b) If a recreational vehicle 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 recreational vehicle was purchased.

(6) CONSIGNMENT SALES. When a recreational vehicle dealer has possession of a recreational vehicle 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 recreational vehicle and the tax on the transaction shall be paid under sub. (4) (a), provided the recreational vehicle dealer does not take title to the recreational vehicle. If the dealer does take title, the dealer is the seller.

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

Note: Section Tax 11.88 interprets ss. 77.51 (2), (12m) (b) 7., (13) (am), and (15b) (b) 7., 77.52 (2) (a) 1., 77.53 (17) and (18), 77.54 (7), (31), and (36), 77.61 (1) (a) and (c), 101.91 (2), (10), (11), and (12), 218.10 (1g), (7), and (9), and 340.01 (29) and (48r), 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; (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The changes in terminology related to "mobile homes," "manufactured homes," and "recreational vehicles," became effective January 1, 2008, pursuant to 2007 Wis. Act 11; and (j) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, December, 1980, No. 300, eff. 1−1−81; r. and recr. (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; corrections in (3) (c) and (6) (a) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: am. (title), cr. (1) (bm), am. (3) (b), cr. (3) (c), (4m) Register August 2012 No. 680, eff. 9−1−12.**

Subchapter X — Administrative Provisions

Tax 11.90 Penalty for failure to produce records under s. 77.61 (19), Stats. (1) GENERAL. A person who fails to produce records or documents, as provided under ss. 73.03 (9) and 77.59 (2), Stats., that were requested by the department may be subject to any of the following penalties under s. 77.61 (19), Stats.:

(a) The disallowance of deductions, credits, exemptions or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation that is equal to the greater of $500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" means that an item is disallowed, included or adjusted through action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" include both paper and electronic formats. Examples include bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes. "Records" do not include items protected by attorney−client privilege, if the taxpayer provides a brief description or summary of the contents of each record, the date each record was prepared, the person or persons who prepared each record, the person to whom each record was directed, or for whom each record was prepared, the purpose in preparing each record, and how each element of the privilege is met as to each record.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e−mail, fax or any other written form.

(e) "Provided" means the records are provided by electronic means or in paper format to the address specified by the department in its written request for records. If the address specified by the department is the person's location, the records are considered provided on the date the person notifies the department they are available for review at that location.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the notifications in pars. (a) and (b) regarding the records requested. The number of days established by the department for the person to respond to the record requests should be reasonable based on the facts of each situation.

(a) A first written request for records where the department allowed the person a minimum of 30 days from the date of request for the records to be provided.

(b) After the time period to respond to the first written request has expired as provided in par. (a), a second written request for records where the department allowed the person a minimum of 30 days from the date of request for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 77.61 (19), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of $500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

2) The department issues a first written request for records to Corporation B on December 21, 2009, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61 (19), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by March 10, 2010, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records that were not provided relate and impose a penalty equal to the greater of $500 or 25% of the additional tax on the adjustments made resulting from the requested records that were not provided.

(4) WAIVER OF PENALTIES. (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider any of the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.

2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.

3. Natural disaster such as tornado, flood or fire.

4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

5. Any other facts and circumstances that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), shall result in a reduction of the penalties provided in sub. (1) (a) and (b) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support deductions for exempt sales, the department issues a proposed audit report to Corporation C disallowing all the deductions for exempt sales previously claimed, which represents the penalty provided in s. 77.61 (19) (a), Stats. Additional tax of $100,000 and the penalty as provided in s. 77.61 (19) (b), Stats., of $25,000 results in the proposed audit report from disallowing the deductions for exempt sales. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains, without any further detail, that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. In addition, the records provided do not support a reduction of the exempt sales deductions disallowed in the proposed audit report. Therefore, the deductions for exempt sales adjustment is not modified so the proposed additional tax of $100,000 and the original proposed penalty as provided in s. 77.61 (19) (b), Stats., of $25,000 remain.

2) Since Mr. Smith does not provide the records requested regarding his business, which primarily receives payments in cash, to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into taxable sales for unreported receipts, which represents the penalty provided in s. 77.61 (19) (a), Stats. Additional tax of $60,000, a negligence penalty of $15,000 and the penalty as provided in s. 77.61 (19) (b), Stats., of $15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from $60,000 to $12,000, the negligence penalty is reduced from $15,000 to $3,000 and the original penalty as provided in s. 77.61 (19) (b), Stats., is reduced from $15,000 to $3,000.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from $60,000 to $12,000, the negligence penalty is reduced from $15,000 to $3,000 and the original penalty as provided in s. 77.61 (19) (b), Stats., of $15,000 is waived.

History: EmR0929: emerg. cr. eff. 10−19−09; CR 09−087: cr. Register June 2010 No. 654, eff. 7−1−10; correction in (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register June 2010 No. 654.

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 items, property, and goods, under s. 77.52 (1) (b), (c), and (d), Stats., 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) (bm), 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, except that the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; correction in (3) (c) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. am. (1) (a), (2) (b) 1. and (3) (b), eff. 10−1−09; CR 09−090: am. (1) (a), (2) (b) 1. and (3) (b) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.92 Records and record keeping. (1) GENERAL. All persons selling, licensing, leasing, or renting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services and every person storing, using, or otherwise consuming in Wisconsin tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., 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 sales price from sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services, or licenses, rentals, or leases of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including any services that are a part of the sale, license, lease, or rental sourced to Wisconsin under s. 77.522, Stats., even if the seller, licensor, or lessor regards the receipts as taxable or nontaxable. Taxable 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 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. Except as provided in this paragraph and ss. 77.52 (13) and 77.53 (10), Stats., exempt sales shall be supported by an exemption certificate retained by the seller and paper certificates shall also be signed by the purchaser. 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, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services purchased for sale, license, lease, rental, storage, use, or other consumption in Wisconsin.

(d) Every person subject to the county or stadium sales and use tax shall keep a record of sales that the person makes that are sourced under s. 77.522, Stats., to each:

1. County that has in effect an ordinance imposing a county tax under s. 77.70, Stats.

2. Stadium district that has in effect a resolution imposing the tax under s. 77.705 or 77.706, Stats.

(e) Every person shall keep a record of the purchase price of property, items, and goods on which the person is subject to county and stadium use or excise tax in each enacting county or stadium district's jurisdiction.

(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, including the disallowance of deductions, credits, and exemptions and the inclusion of additional taxable sales or additional taxable purchases to which the requested records relate.

(7) PENALTIES. (a) 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.

(b) If a person fails to produce records or documents that were requested by the department, as provided under ss. 73.03 (9) and 77.59 (2), Stats., the penalties under s. 77.61 (19), Stats., may be imposed. See s. Tax 11.90 for additional information relating to these penalties.

Note: Section Tax 11.92 interprets ss. 77.52 (13), 77.58 (6m), 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: (a) The 25% penalty in sub. (7) became effective July 20, 1985, pursuant to 1985 Wis. Act 29; and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1) (intro.) to (c), (2) (b), (3) (c) and (6), renum. (1) (d) to be (1) (d) (intro.) and am., cr. (1) (d) 1. to 3. and (e) eff. 10−1−09;CR 09−090: am. (1) (intro.) to (c), (2) (b), (3) (c) and (6), renum. (1) (d) to be (1) (d) (intro.) and am., cr. (1) (d) 1. to 3. and (e) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: renum. (7) to be (7) (a), cr. (7) (b) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: am. (1) (b), (d) (intro.), r. (1) (d) 3., am. (1) (e) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.925 Sales and use tax security deposits. **(1)** GENERAL. (a) Under s. 77.61 (2) (a), 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.

(b) As provided in s. 77.61 (2) (b), Stats., a certified service provider who has contracted with a seller and filed an application to collect and remit sales and use taxes on behalf of the seller shall submit a surety bond within 60 days after the department notifies the certified service provider that the certified service provider is registered to collect Wisconsin sales and use taxes, to guarantee the payment of such sales and use taxes. However, the secretary of revenue or the secretary's designee may waive this requirement or release the liability with respect to any certified service provider.

(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) (a), Stats., provides any security deposited under s. 77.61 (2), Stats., shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of subch. III of ch. 77, Stats.

(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 of 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 of 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; (b) The $15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wis. Act 29; and (c) The provision to require certified service providers to submit surety bonds and the provision to allow the secretary of revenue to waive the requirement became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. renum. (1) to be (1) (a) and am., cr. (1) (b), am. (2) (a) 1., (3) (a) 1., (5) (a), (d) 3. and 5., eff. 10−1−09; CR 09−090: renum. (1) to be (1) (a) and am., cr. (1) (b), am. (2) (a) 1., (3) (a) 1., (5) (a), (d) 3. and 5. Register May 2010 No. 653, eff. 6−1−10.

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 that it must only file one sales and use tax return for the following year. If the retailer wants to continue to file returns on a quarterly basis, it must contact the department.

(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; EmR0924: emerg. am. (1), eff. 10−1−09; CR 09−090: am. (1) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.94 Delivery charges. (1) DEFINITION. "Delivery charges" is defined in s. 77.51 (2m), Stats., to mean charges by a seller to prepare and deliver tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services to a location designated by the purchaser of the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services, including charges for transportation, shipping, postage, handling, crating, and packing.

(2) TAXABILITY OF DELIVERY CHARGES. (a) When a seller charges a purchaser for the delivery of taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the seller's total charge, including any delivery 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: Retailer A sells clothing to Customer B for $100. Retailer A also charges Customer B $10 for delivery of the clothing. Retailer A delivers the clothing to Customer B at a Wisconsin address for which the total applicable sales and use tax rate is 5%. The correct computation of the tax due is as follows:

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

(b) When a seller charges a purchaser for the delivery of nontaxable or exempt tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the seller's total charge, including any delivery charge, is not subject to the sales or use tax.

(c) 1. If a shipment includes both taxable and nontaxable property and items the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property and items. The portion allocated to nontaxable property and items is not taxable. If no allocation is made, the total delivery charge shall be taxable.

2. The allocation in subd. 1. is computed based on either:

a. The total sales price of all of the property and items subject to tax as compared to the total sales price of all of the property and items included in the shipment.

b. The total weight of all of the property and items subject to tax as compared to the total weight of all of the property and items included in the shipment.

(d) A Wisconsin purchaser who purchases taxable property and items 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 "purchase price" of the property and items to the purchaser. The "purchase price" shall include delivery charges paid by the Wisconsin purchaser to the seller for shipment of the property and items to the purchaser. The "purchase price" does not include delivery charges paid by the Wisconsin purchaser to a carrier independent of the seller when the purchaser arranges for the transportation.

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

(3) DIRECT MAIL. (a) Delivery charges for advertising and promotional direct mail and other direct mail are not subject to sales or use tax if the delivery charges are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

(b) "Direct mail" is defined in s. 77.51 (3pd), Stats., to mean printed material that is delivered or distributed by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" includes any tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., provided directly or indirectly by the purchaser of the printed material to the seller of the printed material for inclusion in any package containing the printed material, including billing invoices, return envelopes, and additional marketing materials. "Direct mail" does not include multiple items of printed material delivered to a single address.

Note: Section Tax 11.94 interprets ss. 77.51 (2m), (3pd), (12m) (a) 4. and (b) 4., (14) (intro.), and (15b) (a) 4. and (b) 4., 77.52 (1), and 77.585 (8), 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, except that the definitions of "delivery charges" and "direct mail," and the change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: Cr. Register, January, 1978, No. 265, eff. 2−1−78; am. (1) (e), r. (2) (b), renum. (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; am. (1) (d), (2) (a) and (c), r. (2) (d), Register, October, 1999, No. 526, eff. 11−1−99; EmR0924: emerg. r. and recr. eff. 10−1−09; CR 09−090: r. and recr. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (3) (a) Register November 2010 No. 659, eff. 12−1−10.

Tax 11.945 Sourcing transactions. (1) DEFINITIONS. (a) "Advertising and promotional direct mail," as provided in s. 77.51 (1ag), Stats., means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

(b) 1. "Other direct mail," as provided in s. 77.51 (9r), Stats., means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. "Other direct mail" includes:

a. Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, account statements, and payroll advices.

b. Any legally required mailings, including privacy notices, tax reports, and stockholder reports.

c. Other nonpromotional direct mail, including newsletters and informational pieces, that is delivered to existing or former shareholders, customers, employees, or agents.

2. "Other direct mail" does not include printed materials that result from developing billing information or providing any data processing service that is more than incidental, as defined in s. 77.51 (5), Stats., to producing other direct mail.

(c) "Product," as provided in s. 77.51 (11d), Stats., includes tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services.

(d) "Receive," as defined in s. 77.522 (1) (a) 1., Stats., means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.; making first use of services; or taking possession or making first use of digital goods under s. 77.52 (1) (d), Stats., whichever comes first. "Receive" does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., on a purchaser's behalf.

(e) "Transportation equipment," as defined in s. 77.522 (1) (a) 2., Stats., means any of the following:

1. Locomotives and railcars that are used to carry persons or property in interstate commerce.

2. Trucks and truck tractors that have a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are registered under the international registration plan under s. 341.405, Stats., and operated under the authority of a carrier that is authorized by the federal government to carry persons or property in interstate commerce.

3. Aircraft that are operated by air carriers that are authorized by the federal government or a foreign authority to carry persons or property in interstate or foreign commerce.

4. Containers that are designed for use on the vehicles described in subds. 1. to 3. and component parts attached to or secured on such vehicles.

(2) SOURCING — GENERAL. Except as provided in subs. (3), (4), and (5), and except as provided in s. Tax 11.66 (3) relating to the sourcing of telecommunications services, ancillary services, Internet access services, and telecommunications message services, a sale is sourced to a location based on the following:

(a) If a purchaser receives the product at a seller's business location, the sale is sourced to that business location.

(b) If a purchaser does not receive the product at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, receives the product. This would include the location indicated by instructions known to the seller for delivery to the purchaser or the purchaser's designated donee. The delivery may be made by the seller or by a shipping company hired by the seller or purchaser.

(c) If the location of a sale cannot be determined under pars. (a) and (b), the sale is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of the sale is not in bad faith.

(d) If the location of a sale cannot be determined under pars. (a), (b), and (c), the sale is sourced to the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address to determine the location of the sale is not in bad faith.

(e) If the location of a sale cannot be determined under pars. (a), (b), (c), and (d), including the circumstance in which the seller has insufficient information to determine the locations under pars. (a), (b), (c), and (d), the location of the sale is sourced as follows:

1. If the item sold is tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., the sale is sourced to the location from which the tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., is shipped.

2. If the item sold is a digital good or computer software delivered electronically, the sale is sourced to the location from which the digital good or computer software was first available for transmission by the seller, not including any location that merely provided the digital transfer of the product sold.

3. If a service is sold, the sale is sourced to the location from which the service was provided.

(3) DIRECT MAIL. (a) *Advertising and promotional direct mail.* 1. A sale of advertising and promotional direct mail, including a sale of a service that is an integral part of the production and distribution of advertising and promotional direct mail, is sourced to the location from which the advertising and promotional direct mail was shipped if the purchaser does not provide to the seller any of the following:

a. The purchaser's direct pay permit.

b. An exemption certificate claiming direct mail.

c. Other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients.

2. If the purchaser provides one of the items indicated in subd. 1. a. or b., to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients and pay or remit to the department the tax imposed under s. 77.53, Stats., on all its purchases of advertising and promotional direct mail for which the tax is due, and in the absence of bad faith the seller is relieved from liability for collecting the tax.

3. If the purchaser provides delivery information as provided in subd. 1. c., the seller shall collect the tax according to that information, and in the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.

4. An exemption certificate provided by the purchaser under subd. 1. b. remains in effect for all sales by the seller who received the exemption certificate to the purchaser who provided the exemption certificate, in the absence of bad faith.

5. a. Except as provided in subd. 5. b., if a transaction is a bundled transaction that includes "advertising and promotional direct mail," subds. 1. to 4. only apply if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.

b. If advertising and promotional direct mail and other direct mail are included in a single mailing, the sale of that mailing is sourced the same as "other direct mail" as explained in par. (b).

(b) *Other direct mail.* 1. The sale of "other direct mail," including a sale characterized under Wisconsin law as the sale of a service when the service is an integral part of the production and distribution of printed material that meets the definition of "other direct mail," is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of the sale is not in bad faith, unless the purchaser provides the seller with either of the following:

a. The purchaser's direct pay permit.

b. An exemption certificate claiming direct mail.

2. If the purchaser provides one of the items indicated in subd. 1. a. or b., to the seller, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall pay or remit to the department the tax imposed under s. 77.53, Stats., on its purchases of other direct mail for which the tax is due, and in the absence of bad faith, the seller is relieved from liability for collecting the tax.

3. If "advertising and promotional direct mail" and "other direct mail" are included in a single mailing, the sale of that mailing is sourced as a sale of "other direct mail."

(c) *Development of billing information and providing data processing services.* 1. A transaction that includes the development of billing information or the provision of a data processing service that is more than incidental, as defined in s. 77.51 (5), Stats., to producing direct mail is not sourced as a sale of direct mail, but instead is sourced using the general sourcing rules provided in sub. (2).

2. A transaction that includes data processing services that are incidental, as defined in s. 77.51 (5), Stats., to producing direct mail are sourced using the direct mail sourcing rules provided in this subsection.

(4) SOURCING LEASES, LICENSES, AND RENTALS. (a) *First or only payment.* Except as provided in pars. (c) and (e), for lease, license, and rental agreements that only require one payment and for the first payment on lease, license, and rental agreements that require more than one payment, the lease, license, or rental is sourced to the location where the purchaser receives the product, as follows:

1. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is received by the lessee or licensee at the lessor's or licensor's business location, the first or only payment is sourced to the lessor's or licensor's business location.

2. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is not received by the lessee or licensee at the lessor's or licensor's business location, the first or only payment is sourced to the location where the lessee or licensee or the lessee's or licensee's designated donee receives the product. This would include the location indicated by instructions known to the lessor or licensor for delivery to the lessee or licensee or the lessee's or licensee's designated donee. The delivery may be made by the lessor or licensor or by a shipping company hired by the lessee or licensee.

3. If the location cannot be determined under subds. 1. and 2., the first or only payment is sourced to the lessee's or licensee's address as indicated by the lessor's or licensor's business records, if the records are maintained in the ordinary course of the lessor's or licensor's business and if using that address to establish the location of the lease, license, or rental is not in bad faith.

4. If the location cannot be determined under subds. 1., 2., and 3., the first or only payment is sourced to the lessee's or licensee's address as obtained during the consummation of the lease, license, or rental, including the address indicated on the lessee's or licensee's payment instrument, if no other address is available and if using that address to determine the location of the lease, license, or rental is not in bad faith.

5. If the location cannot be determined under subds. 1., 2., 3., and 4., the first or only payment is sourced as follows:

a. For tangible personal property and items and property under s. 77.52 (1) (b) or (c), Stats., except for computer software delivered electronically, the first or only payment is sourced to the location from which the property or item was shipped.

b. For prewritten computer software delivered electronically and digital goods under s. 77.52 (1) (d), Stats., the first or only payment is sourced to the location from which the computer software or digital good was first available for transmission by the seller, but not including any location that merely provided the digital transfer of the product sold.

Example: Company A sells digital goods that it develops at its location in Wisconsin. Company A also has a server located outside Wisconsin from which Company A merely provides the digital transfer of the digital goods. The digital goods are first available for transmission from its Wisconsin location. Company A does not know the location to source the sale of digital goods under subds. 1. to 4. and therefore will source the sale under subd. 5. to the Wisconsin location. The sale cannot be sourced to the location of the server outside Wisconsin, because at that location, Company A merely provides the digital transfer of the digital good.

(b) *Subsequent periodic payments.* Except as provided in pars. (d) and (e), subsequent periodic payments on the lease, license, or rental of tangible personal property and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are sourced to the property's, item's, or good's primary location. The primary location is the address of the property, item, or good provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith.

(c) *Motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment.* Leases, licenses, and rentals of motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment are sourced to the primary location of such property as indicated by an address for the property that is provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith, and except that a lease, license, or rental that only requires one payment shall be sourced as provided in par. (a).

(d) *Intermittent use.* The sourcing of the lease, license, and rental payments as described in pars. (a) and (b), shall not be altered by any intermittent use of the property, item, or good at a different location.

Example: Company A leases laptop computers that are normally kept in State A and the lease payments are sourced to State A. However, when an employee is travelling and consulting with clients in other states, the employee brings the laptop computer to these other states. The intermittent use of the laptop computer in the other states does not affect the sourcing of these lease payments.

(e) *Transportation equipment.* Leases, licenses, and rentals of transportation equipment are sourced to the location determined in par. (a).

(5) FLORISTS. (a) 1. "Retail florist" is defined in s. 77.522 (5), Stats., to mean a person engaged in the business of selling cut flowers, floral arrangements, and potted plants and who prepares such flowers, floral arrangements, and potted plants. "Retail florist" does not include a person who sells cut flowers, floral arrangements, and potted plants primarily by mail or via the Internet.

2. A retailer who does not prepare and sell cut flowers, floral arrangements, and potted plants, such as a person who only takes orders for cut flowers, floral arrangements, and potted plants and then transmits those orders to a retail florist, is not a "retail florist."

(b) Except as provided in par. (c), sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services by florists are sourced the same as provided in sub. (2).

(c) Sales by a retail florist in which the retail florist receives an order from a customer and then transmits that order to a second retail florist who will prepare and deliver the order at the customer's direction are sourced to the location where the first retail florist received the order from the customer. The first retail florist that received the order from the customer must collect and remit the applicable Wisconsin sales or use taxes based on the location where that retail florist received the order from the customer. The sale from the second retail florist to the first retail florist is not subject to Wisconsin sales or use tax if the first retail florist provides the second retail florist an exemption certificate claiming resale.

Example: Retail Florist A located in Wisconsin receives an order from a customer, who wants the flowers delivered to a location in Kentucky. Retail Florist A contacts Retail Florist B, located in Kentucky, and has Retail Florist B prepare the order and deliver it to the location in Kentucky. This sale is sourced to Retail Florist A's location in Wisconsin.

(d) Sales by persons who are not retail florists but who take orders for cut flowers, floral arrangements, and potted plants from customers and transmit those orders to a person who is a retail florist are sourced as provided in sub. (2).

Note: Section Tax 11.945 interprets ss. 77.51 (11d) and 77.522, Stats.

Note: (a) The interpretations under s. Tax 11.945 are effective beginning October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28 and (b) The definitions of "advertising

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

and promotional direct mail" and "other direct mail" and the provisions relating to the sourcing of transactions that include these types of items are effective May 27, 2010, pursuant to 2009 Wis. Act 330.

History: EmR0924: emerg. cr. eff. 10−1−09; CR 09−090: cr. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: renum. (1) (a) to (c) to be (1) (c) to (e), cr. (1) (a) and (b), am. (2) (b), r. and recr. (3) Register November 2010 No. 659, eff. 12−1−10.

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, retailers may deduct 0.5% of the sales and use tax payable on retail sales, except as provided in pars. (am), (b), and (c).

(am) Effective for taxes payable on October 1, 2009 and thereafter, the retailer's discount that may be deducted on a sales and use tax return is limited to $1,000 per reporting period.

(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.

(c) Certified service providers that receive compensation under s. 73.03 (61) (h), Stats., for the taxes reported on a return are not entitled to the retailer's discount on that return.

(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.

(d) The certified service provider that is filing the sales and use tax return is receiving compensation under s. 73.03 (61) (h), Stats., with respect to the taxes reported on that return.

Note: Section Tax 11.95 interprets ss. 77.61 (4) (c), 77.76 (3), (3m), (3p), and (3r), 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; (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; (e) The limitation of the retailer's discount to $1,000 per reporting period became effective for taxes payable on and after October 1, 2009, pursuant to 2009 Wis. Act 28; and (f) The provision prohibiting the retailer's discount on those returns filed by a certified service provider who receives other compensation became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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; EmR0924: emerg. am. (1) (a), cr. (1) (am), (c) and (3) (d), eff. 10−1−09; CR 09−090: am. (1) (a), cr. (1) (am), (c) and (3) (d) Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: am. (1) (a) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.96 Delivery of ordinance or resolution; county, stadium, and premier resort area tax. (1) PURPOSE. This section clarifies requirements for the timely delivery of county and stadium sales and use tax and premier resort area tax ordinances or resolutions to the secretary of revenue.

(2) TIME REQUIREMENT FOR DELIVERY. (a) *Adoption of county tax ordinance.* Any Wisconsin county may impose county sales and use taxes by adopting an ordinance. Under s. 77.70, Stats., a certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the ordinance may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(b) *Repeal of county tax ordinance.* Under s. 77.70, Stats., a county described in par. (a) may repeal a county sales and use tax by delivering a certified copy of the repeal ordinance to the secretary of revenue at least 120 days before the effective date of the repeal. The effective date of the repeal may only be December 31.

Note: An ordinance to adopt or repeal a county sales and use tax or a premier resort area tax should be mailed to Wisconsin Department of Revenue, Office of the Secretary, Mail Stop 624A, PO Box 8933, Madison WI 53708−8933 or delivered to 2135 Rimrock Road, Madison, Wisconsin.

(c) *Adoption of premier resort area tax ordinance.* Any Wisconsin municipality or county wholly within a premier resort area under s. 66.1113, Stats., may impose a premier resort area tax, by adopting an ordinance. Under s. 77.9941 (1), Stats., a certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the ordinance may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(d) *Repeal of premier resort area tax ordinance.* Under s. 77.9941 (3), Stats., a county or municipality described in par. (c) may repeal a premier resort area tax by delivering a certified copy of the repeal ordinance to the secretary of revenue at least 60 days before the effective date of the repeal. The effective date of the repeal may only be December 31.

(e) *Adoption of stadium tax resolution.* A baseball park district created under subch. III of ch. 229, Stats., or a football stadium district created under subch. IV of ch. 229, Stats., may impose a stadium district sales and use tax, by adopting a resolution. Under ss. 229.68 (15) and 229.824 (15), Stats., a certified copy of that resolution shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the ordinance may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(f) *Repeal of stadium tax resolution.* A baseball park district and a football stadium district described in par. (e) may repeal a baseball or football stadium district tax by delivering a certified copy of the repeal resolution to the secretary of revenue at least 120 days before the effective date of the repeal. The effective date of the repeal may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(3) DELIVERY OF ORDINANCE OR RESOLUTION. An ordinance or resolution referred to in s. 77.70, 77.9941 (1) or (3), 229.68 (15), or 229.824 (15), Stats., is timely delivered to the secretary of revenue if, by the prescribed number of days before the effective date, any of the following occur:

(a) The ordinance or resolution is hand delivered to and received by the secretary of revenue.

(b) The ordinance or resolution is mailed in a properly addressed envelope with the postage duly prepaid, if the envelope is postmarked before midnight and the ordinance or resolution is received by the secretary of revenue within 5 days after the prescribed date.

(c) The ordinance or resolution is delivered by a carrier other than the U.S. postal service and the ordinance is received by the secretary of revenue.

Note: Section Tax 11.96 interprets ss. 77.70, 77.705, 77.706, 77.707, 77.708, 77.9941 (1) and (3), 229.68 (15), and 229.824 (15), Stats.

History: Cr. Register, April, 2000, No. 532, eff. 5−1−00; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559; EmR0924: emerg. am. (title) and (1) to (3), cr. (2) (c) to (h), eff. 10−1−09; CR 09−090: am. (title) and (1) to (3), cr. (2) (c) to (h) Register May 2010 No. 653, eff. 6−1−10; **CR 12−014: am. (title), (1), r. (2) (g), (h), am. (3) (intro.) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.97 "Engaged in business" in Wisconsin. (1) GENERAL. (a) Out−of−state retailers shall 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 con-

nection 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 shall 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).

8. Quill Corp. vs. North Dakota, 504 U.S. 298 (1992).

(2) STATUTES. (a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sourced to this state as provided under s. 77.522, Stats., 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 or items or property under s. 77.52 (1) (b) or (c), Stats., sourced to this state under s. 77.522, Stats.

(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, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services.

(e) Any person servicing, repairing, or installing equipment or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., in Wisconsin.

(f) Any person delivering property, items, or goods into this state in company operated vehicles.

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

(h) Any retailer selling tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services for storage, use, or other consumption in Wisconsin, unless otherwise limited by federal law.

(i) Any person who has an affiliate in Wisconsin, if the person is related to the affiliate and if the affiliate uses facilities or employees in Wisconsin to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in Wisconsin or for providing services to the related person's purchasers in Wisconsin, including accepting returns of purchases or resolving customer complaints. For purposes of this paragraph, two persons are "related" if any of the following apply:

1. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50% of the corporation's outstanding stock value.

2. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the other person or both persons.

3. An individual stockholder and the members of the stockholder's family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of both persons' outstanding stock value.

(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. 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 Business Tax Registration," form BTR−101.

Note: Form BTR−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 53708−8902, telephone (608) 266−2776.

File inserted into Admin. Code 9−1−2012. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

Note: 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) COUNTY AND SPECIAL DISTRICT TAXES. Retailers that are registered or required to be registered to collect and remit Wisconsin state sales or use taxes are also required to collect, report, and remit the applicable county and stadium district sales or use taxes, regardless of whether the retailer is engaged in business in the county or special district, as provided in s. 77.73 (3), Stats.

Note: Section Tax 11.97 interprets ss. 77.51 (13) (c) and (k), (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: (a) 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; (b) The provisions in pars. (3) (h) and (i) became effective October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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), renum. (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; am. (1), renum. (6) (a) to be (6) and am. r. (6) (b), Register, October, 1997, No. 502, eff. 11−1−97; EmR0924: emerg. am. (1) (a), (2) (a), (3) (b) to (f), (5) (a) 4. and (6), cr. (1) (b) 8., (3) (h) and (i), eff. 10−1−09; CR 09−090: am. (1) (a), (2) (a), (3) (b) to (f), (5) (a) 4. and (6), cr. (1) (b) 8., (3) (h) and (i) Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (8) Register November 2010 No. 659, eff. 12−1−10; **CR 12−014: r. and recr. (8) Register August 2012 No. 680, eff. 9−1−12.**

Tax 11.98 Reduction of delinquent interest rate under s. 77.62, 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 section is not appealable.

Note: Section Tax 11.98 interprets ss. 71.82 (2) (b), 77.60 (2) and 77.62, 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; EmR0924: emerg. am. (1) (intro.), (d), (2) (c) and (3), eff. 10−1−09; CR 09−090: am. (1) (intro.), (d), (2) (c) and (3) Register May 2010 No. 653, eff. 6−1−10.

Tax 11.985 Bundled transactions. (1) DEFINITIONS. In this section:

(a) 1. "Bundled transaction" means the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price.

2. "Bundled transaction" does not include any of the following:

a. The sale of any products for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction.

Example: Retailer A enters into a contract with Customer B to provide various information technology services. Customer B selects the information technology services it wants from Retailer A. Through negotiation, Retailer A and Customer B agree on a price based on the services selected and Retailer A bills Customer B one nonitemized price for all of the services. Since the price was based on the products selected by Customer B, the transaction is not a bundled transaction.

b. The retail sale of tangible personal property and a service, if the tangible personal property is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service. The Wisconsin sales and use tax treatment of this transaction would follow the tax treatment of the service provided.

c. The retail sale of a service and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., if such items, property, or goods are essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service. The Wisconsin sales and use tax treatment of this transaction would follow the tax treatment of the service provided.

d. The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and if the true object of the transaction is the second service. The Wisconsin sales and use tax treatment of this transaction would follow the tax treatment of the second service.

e. A transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10 percent of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both, or, in the case of a service contract, the full term of the service contract.

f. The retail sale of taxable tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that is exempt from the taxes imposed under this subchapter, if the transaction includes food and food ingredients, drugs, durable medical equipment, mobility−enhancing equipment, prosthetic devices, or medical supplies and if the seller's purchase price or the sales price of the taxable tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is no greater than 50 percent of the seller's total purchase price or sales price of all the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., included in what would otherwise be a bundled transaction, as determined by the seller using either the seller's purchase price or the sales price, but not a combination of both.

(b) "Distinct and identifiable product" does not include any of the following:

1. a. Packaging, including containers, boxes, sacks, bags, bottles, and envelopes; and other materials, including wrapping, labels, tags, and instruction guides; that accompany, and are incidental or immaterial to, the retail sale of any product.

b. Packaging that is incidental or immaterial to the retail sale of a product includes grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

2. a. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction.

b. Products that are provided free of charge include a free car wash provided by a gas station with the purchase of 15 or more gallons of gas, a free place setting of dinnerware provided by a grocery store with the purchase $50 or more in groceries, and a free cap provided by an auto parts store with the purchase of a case of motor oil.

3. a. Any items specified in the definition of "purchase price" in s. 77.51 (12m) (a), Stats., or "sales price" in s. 77.51 (15b) (a), Stats.

b. Items that are specified in the definition of "purchase price" and "sales price" include the cost of the property sold, the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, charges by the seller for any services necessary to complete the sale, delivery charges, and installation charges.

(c) 1. "One nonitemized price" does not include:

a. A price that is separately identified by product on a binding sales document, or other sales−related document, that is made available to the customer in paper or electronic form, including an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card, or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

Example: Retailer C enters into a contract with Customer D to provide various information technology services. Customer D selects the information technology services it wants from Retailer C. Through negotiation, Retailer C and Customer D agree on a price based on the services selected and Retailer C bills Customer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from Retailer C to Customer D only contains one price for all of the services, since the price was based on the products selected by Customer D, the price is not "one nonitemized price."

c. A single price that is equal to the total of the individually priced or itemized products contained in the supporting sales related documentation such as a catalog, price list, or service agreement.

2. If a transaction includes a bundle of products that are sold for one nonitemized price and also one or more additional products that were individually priced or itemized from the bundled products in a catalog or price list, but the invoice provided to the purchaser only included one price, the additional products that were individually priced in the catalog or price list are not part of the bundled transaction.

3. If the products in a transaction are not sold for one nonitemized price as provided in subds. 1. and 2., and the total sales price of the transaction is further discounted, without itemizing the discount for each product, this will not cause the transaction to now be characterized as a bundled transaction. Unless sales related documentation or information is provided to show the allocation of the discount, the discount is to be allocated pro rata among the otherwise separately itemized products.

(d) "Product" includes tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services. For purposes of this rule, "product" does not include real property or services to real property.

(2) TAXABLE RECEIPTS. (a) Except as provided in par. (b), the entire sales price of a bundled transaction is subject to Wisconsin sales or use tax.

(b) 1. At the retailer's option, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products that are not subject to the tax imposed under this subchapter, that portion of the sales price is not taxable.

2. The option provided to the retailer under subd. 1. does not apply to a bundled transaction that contains food and food ingredients as defined in s. 77.51 (3t), Stats., drugs as defined in s. 77.51 (3pj), Stats., durable medical equipment as defined in s. 77.51 (3pm), Stats., mobility−enhancing equipment as defined in s. 77.51 (7m), Stats., prosthetic devices as defined in s. 77.51 (11m), Stats., or medical supplies.

(3) NONTAXABLE RECEIPTS. The receipts from the following types of transactions are not subject to Wisconsin sales or use tax. Although these transactions would generally be thought of as being bundled transactions, since they meet certain specific conditions, they are excluded from the definition of a bundled transaction.

(a) The sales price received from sales of taxable products sold in what would be a bundled transaction, except that the sales price of the taxable products in the transaction are 10 percent or less of the seller's total sales price of all of the products in the transaction or the seller's total purchase price of the taxable products in the transaction are 10 percent or less of the seller's total purchase price of all of the products in the transaction. However, the first person combining the products shall pay the Wisconsin sales or use tax on their purchase price of the taxable items.

(b) If the transaction includes food and food ingredients as defined in s. 77.51 (3t), Stats., drugs as defined in s. 77.51 (3pj), Stats., durable medical equipment as defined in s. 77.51 (3pm), Stats., mobility−enhancing equipment as defined in s. 77.51 (7m), Stats., prosthetic devices as defined in s. 77.51 (11m), Stats., or medical supplies, the sales price received from sales of taxable products sold in what would be a bundled transaction, except that the sales price of the taxable products in the transaction are 50 percent or less of the seller's total sales price of all of the products in the transaction or the seller's total purchase price of the taxable products in the transaction are 50 percent or less of the seller's total purchase price of all of the products in the transaction.

Note: Section Tax 11.985 interprets ss. 77.51 (1f), (3pf), and (9p) and 77.52 (1), (2), (20), (21), (22), and (23), Stats.

Note: The interpretations in s. Tax 11.985 became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

History: EmR0924: emerg. cr. eff. 10−1−09; CR 09−090: cr. Register May 2010 No. 653, eff. 6−1−10; CR 10−094: am. (1) (c) 3. Register November 2010 No. 659, eff. 12−1−10.