

Chapter Tax 11

SALES AND USE TAX

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Tax 11.01 Concessionaires (sections 77.52 (7), (19) and 77.61 (2), Wis. Stats.). (1) Each person desiring to engage in or conduct business as a concessionaire at a fair, carnival, circus or other temporary location shall file with the department of revenue an application for a temporary seller's permit for each concession on a form prescribed by the department. At the time of filing such application he shall pay to the department a security deposit to protect the revenue of the state, which deposit for each concession shall be \$10, regardless of the number of days a particular concession is operated at the event. At such time he shall also furnish the department with the name and address of his agent in this state upon whom any process, notice or demand required or permitted by law to be served upon him may be served.

(2) A temporary seller's permit shall be valid only for the duration of the event for which it is issued.

(3) Each person granted one or more temporary seller's permits in a calendar year shall, on or before January 31 of the succeeding year, file a concessionaire's annual sales tax return. On such return the security deposited during the calendar year may be claimed as a credit against the tax due.

(4) Examples of "concessionaires" are persons conducting the following businesses at such events: nickel pitch, pop in, ring toss, short range, basketball, guess your weight, jewelry stand, fish pond, photo stand and tip the bottle. Further examples include persons selling ice cream, cotton candy, candy apples, sno cones, popcorn, or frozen delight from stands at such events.

(5) For purposes of this rule, "concessionaire" does not include:

(a) A person who holds a permanent seller's permit for operating amusement rides, traveling vaudeville performances, menageries or object of curiosity shows;

(b) A person selling meals (including lunches or sandwiches).

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.

Tax 11.02 Temporary amusement, entertainment or recreational events or places (sections 77.51(7)(c), 77.52(7), (19) and 77.61(2), Wis. Stats.). (1) "Admission" for the purpose of this rule means the right or privilege to have access to or use of a place, facility

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or location in Wisconsin where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions are subject to sales tax.

(2) "Places of amusement, entertainment or recreation" for the purpose of this rule include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(3) Pursuant to section 77.51(3), Wis. Stats., and as used in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of section 77.51(7)(c), Wis. Stats., if said 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 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.

(5) As retailers such 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 section 77.52(7), Wis. Stats., and may be required to post security as provided in section 77.61(2), Wis. Stats. Such 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.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such 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. Further, it does not apply to churches or other nonprofit groups which operate within the occasional sale limitations of section 77.51(10)(c), Wis. Stats.

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76.

Tax 11.38 Fabricating and processing. (sections 77.61(4)(f) and (h) and 77.52(2)(a) 10 and 11, Wis. Stats.) (1) **TAXABLE FABRICATION.** Except for sales for resale described in section 77.52(13) to (15), Wis. Stats., types of fabrication charges which are taxable, regardless of whether the customer or fabricator furnishes the materials, include charges for the following:

- (a) Printing and imprinting.
- (b) Tailoring a suit.

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(c) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job. The end result of the fabrication is a modification of a previously manufactured article.

(d) Making curtains, drapes, slip covers or other household furnishings.

(e) Making a fur coat from pelts, gloves or a jacket from a hide.

(f) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers (often referred to as "millending").

(g) Bookbinding.

(h) Heat treating or plating.

(i) Firing of ceramics or china.

(j) Assembling kits to produce a completed article.

(k) Production of a sound recording or a motion picture.

(l) Threading pipe, or welding pipe.

(m) Tanning hides.

(n) Bending glass tubing into neon signs.

(o) Laminating identification cards.

(2) TAXABLE PROCESSING. Except for sales for resale described in sections 77.52(13) to (15), Wis. Stats., types of processing charges which are taxable, regardless of whether the customer or processor furnishes the materials, include charges for the following:

(a) A caterer's preparation of food for consumption on or off the premises.

(b) Dyeing or fireproofing fabric.

(c) Cutting or crushing stones, gravel or other construction materials.

(d) Retreading tires.

(e) Drying, planing or ripping lumber.

(f) Cleaning used oil.

(g) Application of coating to pipe.

Note: Sales or use tax may not apply in many cases because the customer is a manufacturer or other business entitled to issue a valid resale certificate to the producer, fabricator or processor. Such customer purchases the service "for resale" without tax. This rule does not impose a tax in such cases.

Tax applies to charges for producing, fabricating or processing tangible personal property for a consideration for consumers, whether or not the consumers furnish, either directly or indirectly, the materials used in the producing, fabricating or processing operation. Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of tangible personal property except sales for resale.

Sales or use tax applies to the entire amount charged for such services, including the charge for materials on which the service is performed.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

Tax 11.45 Sales by pharmacies and drug stores. (Sections 77.51(21) and (22) and 77.54(14), (22) and (28), Wis. Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be 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) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in paragraph (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist)
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.
3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast materials.
5. Oxygen tanks.

(3) **EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES.** The exemption for medical appliances and prosthetic devices under ss. 77.54(22) and (28), Wis. Stats., shall apply to sales of the following:

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

(b) Trusses, supports, shoes, braces and elastic hose only when specially fitted or altered to fit a particular person. "Altered" includes

the bending of metal stays but does not include adjusting straps or seams.

(c) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pacemakers, and other equipment worn as a correction or substitute for any functioning part of the body. This exemption shall not apply to wigs or hair pieces, to garments designed to restrict or enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not "worn" by a person.

(d) Crutches and wheelchairs for the use of invalids and crippled persons, open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.

(e) Apparatus or equipment for the injection of insulin.

(f) Parts for and services to the exempt items listed in this subsection.

(4) **MEDICARE CLAIMS.** The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

Tax 11.61 Veterinarians and their suppliers. (sections 77.51 (7) (m) and (o) and 77.52 (2) (a) 10, Wis. Stats.) (1) **VETERINARIANS.** (a) Charges made by veterinarians which shall be exempt from the sales tax include charges for the following professional services for animals:

1. Medical services.
2. Hospitalization services.

(b) Charges made by veterinarians which shall be 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 by veterinarians which shall be taxable include the following:

1. Leashes, collars and other pet equipment.
2. Pets.
3. Pet food

(2) **SUPPLIERS.** (a) Sales to veterinarians of medicines and items 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.

(b) If the tax on sales to veterinarians is not collected by a supplier (for example, because the supplier is located out-of-state and is not required to be registered with the department), the veterinarian shall be responsible for and shall report and pay a use tax on such purchases directly to the department.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 11.62 Barbers and beauty shop operators. (section 77.51 (7) (i) and 77.52 (2) (a) 10, Wis. Stats.) (1) **NONTAXABLE SALES AND SERVICES.** (a) Barbers and beauty shop operators are engaged primarily in a service occupation and charges for services on human beings shall be exempt from the sales tax.

(b) Barbers and beauty shop operators shall *not* be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt as such occasional sellers shall pay sales or use tax to their suppliers on all purchases, 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 (such as hair pieces) for resale without paying tax by issuing to their supplier a properly completed resale certificate.

(2) **TAXABLE SALES AND SERVICES.** (a) Barbers and beauty shop operators are the consumers of the materials and supplies which are used in performing their services and shall pay sales tax to their suppliers on such purchases.

(b) Over the counter sales by barbers or beauty shop operators of packaged cosmetics, hair tonics, lotions, wigs, falls, toupees or other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property shall be subject to the sales tax. Unless a barber or beauty shop operator falls within the occasional sales standard set forth in subsection (1) (b), the person shall be responsible for collecting and remitting to the department the tax on all such sales or charges.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 11.91 Successor's liability. (Section 77.52(18), Wis. Stats.) (1) **DESCRIPTION OF SUCCESSOR.** (a) A purchaser or assignee of the business or stock of goods of any retailer liable for sales or use tax shall be personally liable for the payment of such 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 shall be created and shall acquire the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for the sales tax 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 mortgagee who forecloses on a loan to a retailer owing delinquent sales 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

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pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

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

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

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

2. Debts assumed by the purchaser.

(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. The letter requesting the certificate shall include the real name, business name and seller's permit number (if known) of the prior operator. The department shall have sales tax returns for all periods during which the predecessor operated before it can issue the certificate.

(c) By statute, the department has 60 days from the date it receives the request 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 section 77.59, Wis. Stats.

(d) The department's failure to mail the notice of liability within 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.

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

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.