

## 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 or location in Wisconsin where amusement, entertainment or rec-

reation 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 11.29 Leases and rentals of tangible personal property.** (sections 77.51 (4) (j), (7) (k) and (11) (c) 5, 77.52 (1) and 77.58 (6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of tangible personal property shall be subject to the sales and use taxes to the same extent that gross receipts from the sale of the same property would be subject to the tax. Because a lease is a continuing sale for the duration of the lease while the leased property is situated in this state (s. 77.51 (4) (j), Wis. Stats.), a lessor shall pay tax on rental receipts for any period of time leased property is in Wisconsin, even though the property may have been acquired and/or used previously by the lessee in another state.

(2) **PURCHASES FOR RENTAL.** (a) A lessor's purchase of tangible personal property to be used solely for lease or rental shall be exempt as a purchase for resale.

(b) A lessor's purchase of lubricants, repair parts and repair services on personal property used solely for leasing shall also be exempt as a purchase for resale. However, if the same items are purchased by a renter or lessee, the purchases shall be taxable.

(c) Charges by a lessor to a lessee under a maintenance contract on leased personal property shall be taxable.

(3) **PROPERTY BOTH RENTED AND USED PERSONALLY.** If tangible personal property is purchased by a person who uses it part of the time and rents it out part of the time, the sale of the property to such person shall be taxable. The lessor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(4) **SERVICE VS. RENTAL OF EQUIPMENT.** (a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.

(b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out such equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment, the entire charge is subject to the tax. However, the operator's services shall not be taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.

(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 and the public service commission and the department of transportation's division of motor vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable.

(5) **CREDIT FOR SALES TAX PAID.** If a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or claim a credit against the tax due on rental receipts from the property involved. (s. 77.51(11)(c)5). If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the seller paid sales tax to the state.

(6) **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. Such "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softners.* The gross receipts from 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.* Rental of a mobile home shall be taxable unless the mobile 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 shall remain tangible personal property if the lessor does not own the realty on which it is located.

(e) *Lease cancellation charge.* A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property 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 was used.

(f) *Delivery and erection.* Lessors of scaffolding or other tangible personal property who set forth separate charges for transportation, assembly and disassembly shall pay tax on their total gross receipts. A lessee rents property 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.* An owner of a hearse shall receive taxable gross receipts when the owner furnishes it (with or without a driver) to a funeral director who is responsible for conducting the funeral service. If it is customary or mandatory that the lessee (funeral director) take the operator with the leased vehicle, the entire charge shall be taxable.

**History:** Cr. Register, July, 1977, No. 259, eff. 8-1-77.

**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.

(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 11.78 Stamps, coins and bullion.** (section 77.51 (5), Wis. Stats.) (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

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

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

(h) Commemorative medals.

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

(a) United States postage stamps, coins and paper currency sold at face value.

(b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.

(c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.

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

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 11.79 Leases of highway vehicles and equipment.** (sections 77.51 (4) (intro.) and (j), (7) (k) and 77.58 (6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

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

(a) Motor fuel.

(b) Vehicle license fees.

(c) Federal highway use taxes.

(d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

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

(a) The charge is reasonable.

(b) The charge is separately stated in the lease agreement, billing or invoice.

(c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in subsection (2).

(d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

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

(a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.

(b) Maintenance or repair charges incurred by the lessor.

(c) Interest and other financing costs incurred by the lessor.

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

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

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**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 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.