

Chapter Tax 11

SALES AND USE TAX

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Tax 11.001 Definitions and use of terms. In this chapter, unless otherwise specified:

(3) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

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

(8) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and

(d) Keeping proper records. (See Tax 11.92)

(12) "Tax" means the 4% Wisconsin sales or use tax.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "_____ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of _____ (specific tangible personal property or a specific service) is taxable", means that:

(a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

(b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.01 Sales and use tax return forms. (section 77.58, Wis. Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

(a) Form S-010. For occasional sales of motor vehicles.

(b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.

(c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.

(d) Form S-012A (also called "ST-12A"). The annual information return for each registered retailer and consumer holding a Wisconsin seller's permit.

(e) Form S-013. For concessionaires. (Annual return).

(f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).

(g) Form S-015. For occasional bingo sales.

(h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.

(i) Form S-001U. For occasional and non-Wisconsin sales of boats.

(j) Form S-050U (also called "UT-5"). For consumers other than persons holding a Wisconsin seller's permit, retailers having a use registration certificate and nonresident contractors.

(k) Form SU-051. For nonresident contractors having a use tax liability who do not have a Wisconsin seller's permit.

(l) Form A-R-1 (Department of Transportation form). For the occasional sale of aircraft.

(2) Returns required to be filed with the department shall be filed by mailing them to P.O. Box 8902, Madison, Wisconsin 53708 or by delivering them to 4638 University Avenue, Madison, Wisconsin.

Note: Forms may be obtained by mail request to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78.
Register, March, 1978, No. 267

Tax 11.03 Elementary and secondary schools and related organizations. (section 77.54 (4), (9) and (9a), Wis. Stats.) (1) DEFINITIONS.

(a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. 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 section 119.30, Wis. 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 paragraph (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(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) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

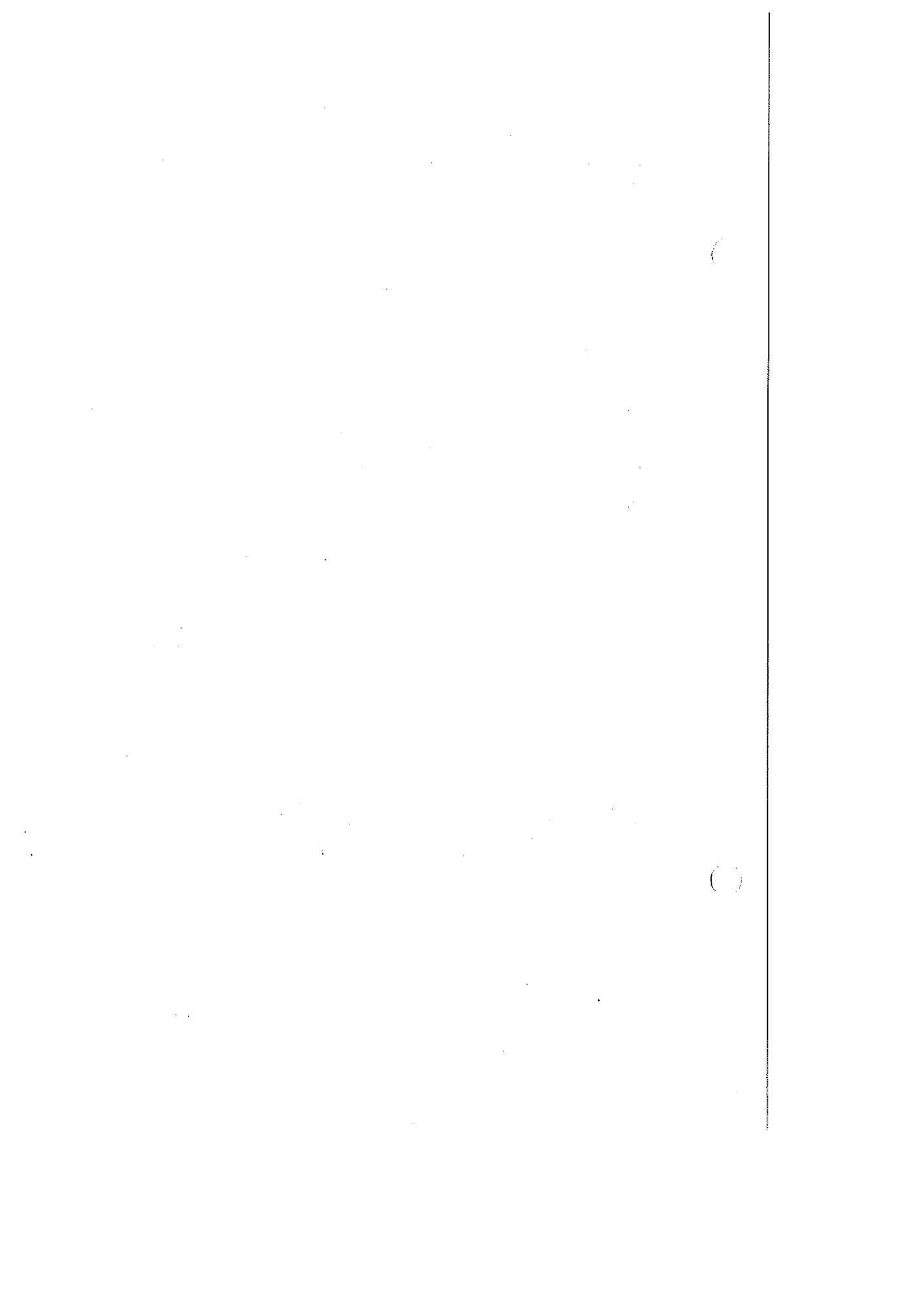
1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.
2. School lunches and library and book fines.
3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.
4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, film 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.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as

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- (a) Bone pins.
- (b) Dyes.
- (c) Insulin (furnished by a registered pharmacist).
- (d) Liquids.
- (e) Oxygen for medicinal purposes.
- (f) Oral contraceptives.
- (g) Pacemakers.
- (h) Pills.
- (i) Powders.
- (j) Salves and ointments.
- (k) Suppositories.
- (l) Sutures.
- (m) Vaccines.
- (n) Vitamins.
- (o) Other medicinal preparations consumed orally, injected or applied.
- (p) Other articles permanently implanted in the human body which remain or dissolve in the body.

(3) **ITEMS WHICH ARE NOT MEDICINES.** Items which are not described in subsection (1) and which are not medicines include:

- (a) Alcoholic beverages, soda water beverages or distilled water.
- (b) Auditory, prosthetic, ophthalmic or ocular devices or appliances.
- (c) Medical supplies (such as bandages, compresses, dressings, pads, splints and supports).
- (d) Medical instruments or equipment.
- (e) Cast materials.
- (f) Intra-uterine devices.
- (g) Oxygen tanks.

(4) **EXEMPT SALES OR USE OF MEDICINES.** Medicines shall be exempt if:

- (a) Prescribed by a licensed physician, surgeon, podiatrist or dentist for treatment of a human being and dispensed on prescription filed 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 for treatment of the patient.

(d) Furnished by a hospital for treatment of any person by the order of a licensed physician, surgeon, dentist or podiatrist. For this exemption, "hospital" has the meaning described in section 140.24, Wis. Stats., and does not include nursing homes.

(e) Sold to this state or any political subdivision or municipal corporation thereof, 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 thereof.

(5) **TAXABLE SALES OF MEDICINES.** Taxable sales of medicines include:

(a) Retail sales for use in laboratories.

(b) Retail sales for use on domestic animals.

(6) **TAXABLE USE OF MEDICINES.** Persons who sell medicines are subject to the use tax on samples furnished without charge to hospitals, physicians, surgeons, podiatrists or dentists.

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

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.12 Farming, agriculture, horticulture and floriculture. (sections 77.52 (2) (a) 10 and 77.54 (3), (3m) and (27), Stats.) (1) **STATUTES.** Sections 77.54 (3) and (3m), Wis. Stats., provide exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture and floriculture as a business enterprise. Persons who contract with farmers to do agreed upon jobs are not engaged in farming as a business enterprise.

(2) **DEFINITIONS.** (a) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chapters 29 and 94, Wis. Stats., "farming" includes raising 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 for sale; and raising 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 (e.g., riding stables or shooting preserves); operating stockyards, slaughterhouses or feed lots where livestock is held for a short period of time; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

(b) "Horticulture" means the business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial nurseries and orchards. "Nurseries" do not include 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.

Register, March, 1978, No. 267

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

(d) "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.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. The standard "Farmer's Exemption Certificate" (Form S-206) provides for continuous use under certain conditions. The certificate shall be used only for categories of items listed on it. 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). Section 77.54(3), Wis. Stats., exempts: "The gross receipts from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments, fuel and parts therefor, used directly in farming, including dairy farming, agriculture, horticulture or floriculture, but excluding automobiles, trucks, and other motor vehicles for highway use, when engaged in by the purchaser or user as a business enterprise, but the purchaser of property exempt under this subsection shall be liable for use tax under s. 77.57 at the time any more than nominal other use, including job contracting other than the performance of farm services by one farmer for another with machinery customarily used by the performing farmer in his own farming operation, is made of such property." (Emphasis added.)

1. "Directly". Items used "directly" in farming include a plow and a combine. Items of "indirect" or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, fuel oil for the home, lawn and garden tractors.

2. *Accessories, attachments and parts.* Included within the exemption are accessories, attachments, parts and fuel for tractors and machines used directly in agriculture. "Accessories" and "attachments" include devices designed to be mounted on a machine or to be pushed or pulled by a machine. Examples include farm wagons and portable pipes attached to mobile irrigation pumps. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor cabs, oil filters and slow-moving-vehicle signs. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids (e.g., antifreeze or lubricants) nor milk filters which must be replaced every time a machine is used. These are "supplies" rather than "parts" and are not exempt. The exemption for fuel for farm machines does not apply to purchases of electricity.

3. *Machines.* "Machines" include auxiliary power generators, bale loaders, balers, barn cleaners, barn elevators, chain saws for orchard use (not for use in lumbering, pulping or cutting firewood), choppers, conveyors, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, and loaders, electric clippers and hoof trimmers, electric dehorners, electric fence charges (not fencing or insulators), electric foggers, feed elevators and augers, fork lifts, grain dryers and grinders, harrows, harvesting combines, hay wagons, manure spreaders, milk coolers, milking machines (including piping, pipeline washer and compressor), mowers, planters, plows, powered feeders (not including platforms or

troughs constructed from ordinary building materials), powered posthole diggers, pumps and associated portable piping for irrigation, rock pickers, rotary hoes, silo unloaders, space heaters (not for residential use and not realty improvements), sprayers, stalk shredders and windrowers.

4. *Realty improvements.* a. Certain machines in addition to those in subd. 3 qualify for the exemption if purchased by farmers directly from retailers, even though they are used to make realty improvements. 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 (e.g., 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.

b. However, a person (such as a plumbing contractor) who contracts with a farmer to provide and install such a machine permanently into real estate is a consumer of the machine, not a seller. Such a contractor, not being a farmer, may not furnish a Farmer's Exemption Certificate on the person's purchase of the machine. Being the consumer, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department.

5. *Motor vehicles.* Specifically excluded from the statutory exemption are "motor vehicles for highway use". "For highway use" means licensed for that use or designed primarily for that use even though not licensed. Examples include motor trucks, automobiles, station wagons, self-propelled feed mills, buses and motorcycles. Sales of parts, supplies and repairs for these vehicles, nurse tanks and trailers designed primarily for highway use are also taxable.

6. *Other non-exempt sales.* The exemption does not apply to:

a. Tools used in construction or for making repairs to real estate or farm machinery, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, 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, stanchions and underground and fixed in place water supply systems.

c. Applicators for insecticides (non-powered), cattle chutes, farrowing crates, feed carts, fire extinguishers, flood gates, gravity flow feeders (non-powered), saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations (oilers), snowmobiles, stationary salt and mineral feeders.

7. *Use tax.* A person who buys without tax by claiming the farming exemption owes the use tax at the time the person uses the item purchased more than nominally for a nonexempt purpose.

(b) *Section 77.54(3m).* Section 77.54(3m), Wis. Stats., exempts: "The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits,

vegetables, grain and animal wastes used *exclusively* in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise." (Emphasis added.)

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 vegetable seeds; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

2. *Plants.* "Plants" include herbs, shrubs or young trees, slips 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 (granular or block), 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. Medicines (including antibiotics) which are administered to animals or poultry directly or as an additive to drinking water are 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 primarily 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. (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 registered with the department of agriculture under section 94.68, Wis. Stats., as a pesticide or fungicide.

6. *Containers for fruits, vegetables, grain and animal wastes.* a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains or animal wastes. The phrase does not include feed carts designed to hold various green and dry feeds.

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 such a bin permanently into real estate is a consumer of the bin, not its seller. Such a contractor, dealer or installer, not being a farmer, may not furnish a Farmer's Exemption Certificate on the bin's purchase. Being the consumer, not a seller, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department. A farmer who wishes to utilize the farmer's 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. The exemption for animal waste containers became effective July 31, 1975. As a result, farmers may purchase animal waste containers without tax or the component parts thereof, by issuing their supplier a properly completed "single purchase" Farmer's Exemption Certificate.

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

e. Milk cans are not covered by the farmer's exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

7. *Livestock and poultry.* "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals (such as those purchased for breeding).

8. *Farm work stock.* "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase does not include dogs, riding horses, racing horses or laboratory animals. The food for animals which are not farm work stock is taxable (e.g., dog and cat food).

9. *Semen.* Effective July 22, 1971 semen used for artificial insemination of livestock is exempt.

(5) **SERVICES FURNISHED TO FARMERS.** (a) The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under sections 77.54 (3) and (3m), Wis. Stats., are also exempt from the sales and use tax under s. 77.52 (2) (a) 10, Wis. Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses shod, but not when having riding horses shod.

(b) Breeding fees, and charges for artificial insemination of animals and veterinarians' services are not taxable.

(c) The exemptions under section 77.54 (3), Wis. Stats., do not apply to farmers' purchases of other services which are taxable under section 77.52 (2) (a), Wis. Stats., (e.g., telephone, electricity, laundry, dry cleaning and photographic services).

(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 by one farmer for another farmer, such as harvesting hay or grain.

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

(b) *Taxable services.* The following services performed by farmers are taxable:

1. *Boarding animals.* The boarding of dogs, cats, riding horses, ponies 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 Resale Certificate.

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

Note: The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.

Tax 11.13 Sale of a business or business assets. (sections 77.51(10) (a) and (b) and 77.54(7), Stats.) (1) **GENERAL.** The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax. (a) 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 at the time of termination of a business.

3. Piecemeal sales, whether part of a continuing business or upon termination.

(b) The tax does not apply to merchandise inventory purchased for resale in the regular course of the purchaser's business.

(2) **EFFECT OF HOLDING A SELLER'S PERMIT.** Pursuant to section 77.51(10) (a), Wis. Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sale exemption. A person may qualify for the occasional sale exemption if that person delivers the seller's permit to the department for cancellation prior to the disposition. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

(3) **DELIVERY OF SELLER'S PERMIT.** A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

(a) Retailers may personally deliver their seller's permits to a representative of the department's Income, Sales, Inheritance and Excise Tax Division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(b) The seller's permit may be mailed to the department (P.O. Box 8902, Madison 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective 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 permit, the retailer may use certified mail, return receipt requested.

(c) If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual seller's permit.

(4) 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. (3), 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 sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

(c) The fact that a business ceases operations and no longer conducts its day to day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. Section 77.52(12), Wis. Stats., requires a permittee to ". . . forthwith surrender his permit . . ." when ceasing to operate as a seller. If the permittee does not surrender the permit at that time, the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

(5) THE "ACTIVITY" REQUIRING A PERMIT. Under section 77.51(10)(b), Wis. Stats., the transfer of substantially all the property held or used by a person in the course of an "activity" for which a seller's permit is required shall be an occasional sale if, after such transfer, the property's real or ultimate ownership is substantially similar to that which existed before the transfer. The "activity" contemplated in this statute relates solely to the distinction between an activity for which a seller's permit would be required and an activity for which a permit would not be required. Since permits issued by the department are general in nature and can be used to sell any kind of tangible personal property or taxable services, "activity" for which a permit would be required under the statute means the sum total of all of a person's operations which require the holding of a seller's permit. For example, assume that a person who holds a seller's permit operates a tavern and restaurant and disposes of the entire restaurant operation. That person cannot meet the exemption requirements of s. 77.51(10)(b) because the person must continue to hold a seller's permit to operate the tavern. The tavern and restaurant (and any other operation engaged in by the person which produces receipts subject to the sales tax) are all part of the activity requiring the holding of a seller's permit.

Note: The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969, except for subsections (2), (3) and (4). The procedure described in subsections (2), (3) and (4) are effective May 4, 1976 and reflect the Wisconsin Supreme Court's decision in *Three Lions Supper Club, Ltd. v. Dept. of Revenue* (May 4, 1976), 72 Wis. 2d. 546.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.

Register, March, 1978, No. 267

Tax 11.26 Other taxes in taxable gross receipts and sales price. (section 77.51 (11) (a) 4, (12) (a) 4 and (26), Wis. Stats.) (1) **GENERAL RULE.** (a) Tangible personal property sold at retail often is subjected to many direct and indirect taxes prior to reaching a retailer. Such 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. Such tax may be imposed by this state, the federal government or a municipality.

(b) In determining the measure of sales and use taxes, certain separately stated or separately passed on taxes are included in gross receipts and the sales price, while others are not. However, the same taxes that are included or excluded from gross receipts are also included or excluded from sales price. Thus, the treatment of such taxes for sales and use tax purposes is identical, even though the measure of tax for each is gross receipts and sales price, respectively.

(2) **TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE.** The following taxes shall be included in a retailer's gross receipts and sales price:

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

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

(c) Any federal stamp tax and manufacturer's or importer's excise tax. Presently there are federal excise taxes on tires, inner tubes, tread rubber, certain trucks, truck parts, firearms, ammunition, lubricating oils, fishing equipment, cigarettes, beer, and intoxicating liquor (including wine).

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(f) Landing fees.

Note: The interpretations in this rule are effective under the general sales and use law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.87 Meals, food, food products and beverages. (sections 77.51(4)(b) and (f), (11)(c)2, (12)(c)1 and 77.54(20), Stats.) (1) **DEFINITIONS.** In this rule: (a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

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

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

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. For example, when a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food (or heated beverages) are taxable. 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.

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

(d) *Caterers.* Meals, food, food products and beverages sold by caterers shall be taxable. 1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute the sale of taxable food. Any rental charges made by a caterer for items such as tableware, tablecloths or other tangible personal property, whether or not separately stated on the bill, shall be includable in the consideration paid and shall be taxable.

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

3. The tax shall apply to items purchased by caterers (such as dishes, silverware, plastic eating utensils, straws, 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 food or beverages to their customers, or used in conjunction with providing catering service. However, the following items may be

purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for such use: tents, public address systems, portable dance floors, portable bars, chairs and tables.

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

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for such service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe, shall be exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer.

2. On and after May 5, 1976, a flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller is a part of the selling price of such meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

3. However, prior to May 5, 1976, a flat percentage service charge added to customer's bill by a private club was not taxable if: a. The charge was imposed under the club's bylaws;

b. The total amount collected was paid directly to food service employes; and

c. The amount was not part of employes' wages that brought them up to the legal minimum wage.

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

(i) *Meals to employes.* Sales of meals to employes by an employer for a specific charge shall be taxable. 1. A specific charge shall be deemed made for meals if any one of the following conditions shall be met: a. The employe shall pay cash for meals consumed.

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

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

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

2. In the absence of any of the following foregoing conditions, a specific charge shall not be deemed made when: a. A value shall be assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA (social security) or union contract purposes.

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

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

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

2. However, when an exempt religious, charitable or educational organization shall pay for food and beverages out of its own funds, and shall provide such items to members or others without charge, the sale of such items by a retailer to the organization shall not be subject to the tax. If such exempt organizations hold a Certificate of Exempt Status issued by the department, they shall give the retailer their certificate number to claim the exemption.

(3) **EXEMPT SALES.** The following meals shall be exempt: (a) *Health care facilities.* Meals, food, food products, or beverages sold by hospitals, sanitoriums, nursing homes or day care centers registered under chapter 48, Wis. Stats. ("Hospital" is defined in section 50.33 (1), Wis. Stats. "Nursing Home" is defined in section 146.30, Wis. Stats. "Sanitorium" means an institution for the recuperation and treatment of victims of physical or mental disorders.) However, if an affiliated organization sells such items, the exemption shall not apply. For example, if the ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at such coffee shop are taxable.

(b) *"Meals on wheels".* Effective on and after October 4, 1973, meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education, effective for the fall semester of 1973.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of prepackaged ice cream, ice milk, sherbet or yogurt (pint, quart, gallon or larger sizes), whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of ice cream, ice milk, sherbet or yogurt, or

cones, sundaes, sodas, shakes and frozen chocolate bars made from these products shall be taxable.

(4) **SPECIAL SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food. For example, a restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

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

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.

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.

(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

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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.

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

Note: The interpretations in this rule are effective under the general sales and use tax law on or after September 1, 1969.

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

Tax 11.92 Records and record keeping. (sections 77.52(13), 77.60(8), 77.61(4) (a) and (9), Wis. Stats.) (1) **GENERAL.** All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in this state tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices (which shall contain a posting reference), cash register tapes, credit memoranda (which shall carry a reference to the document evidencing the original transaction) or other documents of original entry which are

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the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. Such records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property (including any services that are a part of the sale or lease) made within Wisconsin irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by

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