

DEPARTMENT OF REVENUE

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(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

(c) Sales of motor vehicles, aircraft, boats, mobile homes, snowmobiles, trailers and semitrailers, except as specifically provided in s. 77.54 (7), Stats. Unless exempt, a use tax shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, snowmobile, trailer or semitrailer is registered or the mobile home is registered or titled for use within this state. Except as provided in s. 77.54 (7), Stats., the occasional sales of snowmobiles, mobile homes, trailers and semitrailers required to be registered or titled under the laws of Wisconsin are taxable effective August 1, 1977.

(d) Sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of such property.

(e) Sales by persons conducting bingo games.

(f) Sales by persons engaged primarily in the business of making non-taxable sales of personal property, such as manufacturers, wholesalers and grocers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

(6) SALES WHICH ARE OCCASIONAL SALES. The following sales shall be exempt occasional sales:

(a) Sales of fishing bait by minors who are not licensed or required to be licensed as bait dealers, if the sales are made by minors not required to hold a seller's permit for some other activity, such as operating a lunch stand. (Under s. 29.137 (3), Stats., all bait dealers must obtain a license from the Wisconsin department of natural resources except that "resident children under 16 years of age, without license or permit, may barter or sell bait to consumers, but no such resident child shall make bait sales totaling more than \$500 annually.") However, sales of bait by licensed bait dealers are taxable without regard to the total amount of gross receipts from such bait sales.

(b) Sales of soft drinks by employe groups whose markup (gross profit) from such sales does not exceed \$250 per year. These groups are deemed consumers and need not obtain a seller's permit. Their suppliers, however, shall treat all sales to such groups as taxable retail sales.

(c) A garage, lawn and rummage sale held at a private residence by a person who does not have a seller's permit, if the gross receipts from such sales are less than \$500 during the calendar year.

(d) Auction sales of personal farm property and household goods. (See rule Tax 11.50).

(e) Sales by a sole proprietor who is, or is required to be, a holder of a seller's permit of tangible personal property which is not or has not been used in the course of the person's business activities and is not the type of property sold in the course of conducting such business activities. All

tangible personal property sold by a corporation or partnership holding or required to hold a seller's permit shall be considered used or sold in the course of the organization's business activities and is taxable. Examples include the following:

1. Taxpayer is a sole proprietor and a service station operator who obtained a seller's permit for the purpose of selling cigarettes and repairing motor vehicles; taxpayer sold a refrigerator and stove used in the taxpayer's residence; the gross receipts from the sale of the refrigerator and stove are not subject to the sales tax.

2. Taxpayer in the prior example sold a desk and refrigerator which were used in the service station's business activities; the gross receipts from the sale of these 2 items are subject to the sales tax.

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. Subsection (6) (e) became effective on March 1, 1979 and applies to periods open to adjustment under the statute of limitations of s. 77.59, Stats., on its effective date and thereafter.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (6) (e), Register, February, 1979, No. 278, eff. 3-1-79.

Tax 11.11 Waste treatment facilities (industrial or governmental). (s. 77.54 (26), Stats.) (1) THE STATUTE, EFFECTIVE JULY 31, 1975. (a) The sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility is contained in s. 77.54 (26), Stats.

(b) The general property tax exemption for a waste treatment facility is contained in s. 70.11 (21) (a), Stats. and the exemption for public utilities and railroads is contained in 76.02 (10), Stats.

(2) CONTRACTORS AND SUBCONTRACTORS. (a) The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates such property into an approved waste treatment facility. The contractor-installer should certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sale. Certification of exempt use should be made on a Certificate of Exemption, Form S-207.

(b) Contractors should be certain the facility they are constructing has been properly approved by the department of revenue. If there has been no "approval", the contractor may be liable for the tax on his or her purchases.

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

(3) THE APPROVAL. (a) Effective July 31, 1975, the department must approve each facility for it to qualify for the property tax exemption. A facility must be exempt from property tax to qualify for a sales and use tax exemption.

(b) Under the sales and use tax law, "approval" of a waste treatment facility means an approval by the department before purchases are made or construction begins, or contemporaneously with the purchase

or construction. The property tax exemption approvals for industrial and commercial waste treatment facilities are effective January 1 of each year. Any approvals issued prior to January 1 which apply to contemplated construction must of necessity be "tentative approvals" based on the information presented to the department by the applicant.

(c) Requests for approvals of an industrial waste treatment facility should be sent to the Department of Revenue, Bureau of Property Tax, 201 East Washington Avenue, Madison, WI 53702. Requests for approval by public utilities, railroads, airlines and pipelines should be sent to the Bureau of Utility and Special Taxes at the same address. The request should contain a thorough description of the waste treatment facility and include the Department of Natural Resources order number, if available.

(d) Requests for municipal approvals should be sent to the Department of Revenue, Technical Services Staff, Income, Sales, Inheritance and Excise Tax Division, 201 East Washington Avenue, Room 428, Madison, WI 53702. The municipality or solid waste recycling authority requesting an approval for a new waste treatment facility should provide a general description of the major waste processing units which are being added and describe their function and location. The applicant should also provide information regarding approvals of plans that previously were received from other governmental agencies.

(4) **INDUSTRIAL WASTE TREATMENT EXEMPTION.** (a) If an industrial or utility waste treatment facility qualifies for the property tax exemption under s. 70.11 (21) (a), or 76.02 (10), Stats., it qualifies for the sales and use tax exemption under s. 77.54 (26), Stats.

(b) When any plant or equipment has been approved as exempt from the property tax on January 1, the repair, service, alteration, cleaning, painting and maintenance of such exempt property and the repair parts and replacements therefor are also exempt through the following December 31. The exemption does not extend to supplies or services used to carry out the treatment process.

(5) **MUNICIPAL WASTE TREATMENT EXEMPTION.** (a) Storm sewers, water supply systems and private domestic waste water facilities do not qualify for the sales and use tax exemption.

(b) Prior to July 31, 1975, an entire municipal sanitary sewer, including its collection system, qualified for the sales and use tax exemption. On and after July 31, 1975, only the central waste treatment plant which actually treats the sewage qualifies for the exemption.

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

(d) When any municipal central waste treatment facility has been approved as exempt under s. 77.54 (26), Stats., the repair, service, alteration, cleaning, painting and maintenance of such property and the re-

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pair parts and replacements therefor are exempt from the sales and use tax.

Note: The interpretations in this rule are effective July 31, 1975 when ss. 70.11 (21) (a) and 77.54 (26), Stats., were revised, unless otherwise noted in this rule. Prior to that date, the exemption language was different and "approvals" were not obtained from the department of revenue.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

Tax 11.12 Farming, agriculture, horticulture and floriculture. (ss. 77.52 (2) (a) 10 and 77.54 (3), (3m), (27) and (30), Stats.) (1) STATUTES. Sections 77.54 (3) and (3m), 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. In this section and s. 77.54 (3), (3m), and (30), Stats.:

(a) 1. "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 chs. 29 and 94, 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 as described in subd. 2; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

2. Effective on December 1, 1981 and thereafter, "feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for such livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

(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.