

- (e) Cast materials.
- (f) Intra-uterine devices.
- (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 filled by a registered pharmacist in accordance with law.
 - (b) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being.
 - (c) Furnished by a licensed physician, surgeon, podiatrist or dentist to a patient 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 s. 140.24, 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; r. (3) (g), Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.10 Occasional sales. (ss. 77.51 (10), 77.52 (2) (a) 2. and 77.54 (7), Stats.) (1) GENERAL. Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed *the standards in the statutes and this rule, a taxable sale occurs.*

(2) STATUTES. (a) "Occasional sales" is defined in s. 77.51 (10), Stats.

(b) Section 77.54 (7), Stats., exempts most occasional sales from the sales and use taxes.

(3) SALES BY NONPROFIT ORGANIZATIONS. No special statute exempts all sales by nonprofit organizations. However, the following sales by neighborhood, religious, charitable, civic or educational organizations and other nonprofit organizations which conduct one or more fund raising events during the year shall be occasional sales under the conditions shown:

(a) Admissions or tickets. Sales of admissions or tickets

Tax II

club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The event does not involve professional entertainment;
2. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
3. The organization did not conduct more than 3 events involving sales of admissions or tickets in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of the events in that year.

(b) *Meals, food and beverages.* Sales of meals, food, food products, and beverages, including beer, for direct consumption at an event including a church supper or refreshment stand at a fair by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
2. The organization conducted no more than 3 events involving sales of meals, food, food products and beverages in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of the events in that year.

(c) *Other sales of tangible personal property and services.* Except for sales under pars. (a) and (b), sales of tangible personal property and taxable services, including light bulbs, Christmas trees, candy or parking, by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
2. The gross receipts from sales of property and services otherwise subject to the tax under s. 77.52 (1) and (2), Stats., do not exceed \$1,000 within a calendar year.

(d) *Exceeding the \$1,000 standard.* Nonprofit organizations with sales exceeding \$1,000 annually are taxable on all receipts unless the department of revenue determines that their sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or a partial vocation or occupation. Any organization may request a determination from the department as to whether it qualifies for the exemption. The request should be made in writing, listing items or services sold, unit costs and selling prices, anticipated total gross receipts from all sales activities for the calendar year, the number of days duration of sales throughout the year, and any other information that the department in its determination. Requests for such deter-

minations should be sent to the Wisconsin Department of Revenue, Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902, Madison, Wisconsin 53708.

(e) Each category of sale listed in pars. (a), (b) and (c) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and pay a tax on sales in all categories. If the \$1,000 standard described in par. (c) is exceeded, all receipts from sales of property or services described in that paragraph and all subsequent receipts from admissions and meals shall be taxable.

Note: Example. If an organization engages in separate activities described in pars. (a), (b) and (c) during a year and has a fourth "admissions" event, but only one "meal" event and \$500 receipts from sales of other tangible personal property at that time, it shall obtain a seller's permit and pay the tax on receipts from the fourth "admissions" event and all subsequent receipts from "meal" events and from subsequent sales of other tangible personal property or services.

(4) SALES WHICH ARE NOT OCCASIONAL SALES. The following transactions shall not be exempt occasional sales:

(a) Sales by a person who holds or is required to hold a seller's permit. For example, sales of used equipment by a retail store or vending machine operator are taxable.

(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. Refer to s. Tax 11.13 for additional information concerning this subject.

(c) Sales of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, 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 not exceeding 45 feet in length is registered or titled for use within this state.

(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 if the gross receipts from soft-drink sales do not exceed \$500 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.

(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.

(f) Selling, performing or furnishing lawn maintenance and landscaping services by a person not otherwise required to hold a seller's permit, if the gross receipts from furnishing lawn maintenance and landscaping services is less than \$500 during the calendar year.

(g) Charges for parking by a person not otherwise required to hold a seller's permit, if the gross receipts from parking charges are less than \$500 during the calendar year.

(h) Sales of firewood by a person not otherwise required to hold a seller's permit, if the gross receipts from firewood sales are less than \$500 during the calendar year.

(i) Sales of books by a person not otherwise required to hold a seller's permit, if the gross receipts from book sales are less than \$500 during the calendar year.

Note: The interpretations in s. Tax 11.10 are effective under the general sales and use tax law on and after September 1, 1969, except that par. (6) (e) became effective on March 1, 1979. The 7 day standard in subd. (3) (a) 3 and (b) 2 was changed to 9 days by 1983 Wisconsin Act 23, effective June 7, 1983 and the "9 consecutive 24-hour periods" standard was added by

1983 Wisconsin Act 27, effective July 2, 1983. Refer to s. Tax 11.50 for information regarding auction sales.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (6) (e), Register, February, 1979, No. 278, eff. 3-1-79; am. (4) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (b) (intro.) and (e), (4) (c), (6) (a), (b) and (d), r. and recr. (3) (c), cr. (6) (f) to (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (a) 3. and (b) 2., Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.11 Waste treatment facilities (industrial or governmental). (s. 77.54 (26), Stats.) (1) THE STATUTE. (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 industrial waste treatment facility or who incorporates such property into a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sale. Certification of exempt use shall be made on a Certificate of Exemption, Form S-207.

(b) Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department of revenue for a property tax exemption under s. 70.11 (21), Stats. If there has been no "approval", the contractor or subcontractor may be liable for the sales or use tax on his or her purchases. As described in sub. (3) (d), approvals are not required for municipal waste treatment facilities.

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

(3) APPROVAL OF FACILITIES. (a) Tangible personal property which becomes a component part of an industrial waste treatment facility qualifies for the sales and use tax exemption if the facility has been approved for property tax exemption by the department of revenue as provided in s. 70.11 (21), Stats. Sections Tax 6.40 and 12.40 describe how an "approval" may be obtained for public utilities and other commercial and industrial concerns, respectively.

(b) The property tax exemption approvals for public utility, 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) Contractors and others may determine whether a facility has been approved by the department of revenue as follows:

1. Public utility facilities, including railroads, airlines and pipelines: Write or call the Department of Revenue, Bureau of Utility and Special Taxes, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608) 266-3565.

2. Other commercial or industrial facilities: Write or call the Department of Revenue, Bureau of Property Tax, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608) 266-8135.

(d) Property tax exemption approvals by the department of revenue are not required for municipal waste treatment facilities for the sales and use tax exemption under s. 77.54 (26), Stats., to apply. Contractors or others constructing municipal waste treatment facilities may purchase construction materials which become a component part of the exempt facility without tax by issuing a properly completed exemption certificate to their suppliers.

(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 sales and use tax exemption applies to chemicals and supplies used or consumed in operating a waste treatment facility.

(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) 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) The repair, service, alteration, cleaning, painting and maintenance of a municipal central waste treatment facility, the repair parts and replacements therefor, and chemicals and supplies used or consumed in operating a waste treatment facility 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, except that the exemption for chemicals and supplies used or consumed in operating a waste treatment facility is effective September 1, 1979, the date s. 77.54 (26), Stats., was amended by Chapter 39, Laws of 1979.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (2), (4) (b) and (5) (d), r. and recr. (3), Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (b), (3) (a) and (b) and (5) (b), Register, September, 1984, No. 345, eff. 10-1-84.

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. Sec-Register, September, 1984, No. 345

(a) Auction sales of personal farm property or household goods which are not held at regular intervals. Such auctions are generally held on the property owner's premises.

1. Household goods. "Household goods" includes tangible personal property which is associated with maintaining a household and is for family use. For example, household goods includes furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus, auction sales of goods removed from a family home (such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars) are not taxable. Items which are not considered "household goods" include:

a. Highway motor vehicles or trailers, snowmobiles, mini bikes, bicycles, aircraft, boats and other sporting goods.

b. Professional or business inventory equipment.

2. Personal farm property. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property used by a farmer to till the soil and raise crops. "Personal farm Property" does not include riding horses or other recreational animals or equipment for them, highway vehicles, boats, snowmobiles, mini bikes and bicycles.

(b) Sales for resale or sales which are otherwise exempt. If such a sale is made at an auction, the person conducting the auction should obtain a properly completed resale or exemption certificate from the purchaser.

(c) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

(d) One-day auction sales by religious, charitable, educational or civic organizations and other nonprofit organizations which conduct a fund raising event, if:

1. The auctioneer is not the retailer, (because the auctioneer's services are donated); and

2. The organization is not engaged in a trade or business and not otherwise required to have a seller's permit; and

3. Gross receipts from the auction sale of tangible personal property and taxable services do not exceed \$1,000.

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, January, 1978, No. 265, eff. 2-1-78; am. (3) (e), Register, December, 1983, No. 336, eff. 1-1-84.

Tax 11.51 Grocers' guidelist. (ss. 77.52 (1), 77.54 (15) and (20), Stats.) (1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption necessary for the home preparation of meals. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages (including bases or concentrates to produce soft drinks and fruit drinks), beer, intoxicating liquors, candy, paper products and detergents. The

following lists shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

(2) GUIDELISTS. (a) *Taxable sales by grocers.* Gross receipts from the sale of the following are taxable:

Adhesive tape.	Cigarette lighter	Flatware.
Albums.	fluid, wicks, flints.	Floor care products.
Amonia.	Cigars.	Flowers and seeds.
Anti-acid products.	Cleaning equipment	Food coloring.
Anti-freeze.	and supplies.	Foot care products.
Appliances.	Cleansers.	Foil (aluminum and
Ash trays.	Clocks.	similar products).
Aspirin.	Clothes lines.	Frames.
Auto supplies.	Clothespins.	Fuel and lubricants.
	Clothing.	Fudgesicles.
Baby needs (except	Cocktail mixes.	Furniture polish.
food).	Cod liver oil.	
Bags (all kinds).	Cold remedies.	Games.
Bakeware.	Coloring extracts.	Garden needs.
Baskets.	Combs and brushes.	Garbage bags and
Barbeque supplies.	Confections.	cans.
Batteries.	Cough drops.	Gifts (non-food).
Beauty aids.	Cracker jacks.	Ginseng.
Beer.	Crayons.	Glassware.
Beer making supplies.		Gloves.
Binders (notebook).	Dental aids.	Glue.
Bird food and sup-	Deodorants.	Greeting cards.
plies.	Detergents.	Grooming aids.
Bleach.	Dinnerware.	Gum.
Blueing.	Disinfectants.	
Bobby pins and roll-	Distilled spirits.	Hair care products.
ers.	Dixie cups.	Hardware.
Books.	Dog food and sup-	Heated foods and
Bowl cleaner.	plies.	beverages (1).
Breath mints.	Dolls.	Health and beauty
Brooms.	Drain cleaners.	aids.
Brushes.	Drug sundries.	Hosiery.
Bubble bath.	Dry cleaners.	Household equipment
	Dye.	and supplies.
Cameras and sup-		
plies.	Electrical supplies.	Ice (cube and
Cake decorations	Eskimo pies.	block).
(non-edible).		Ice cream bars.
Calcium tablets.	Facial tissues.	Ice cream in cones.
Candied fruits.	Farm and garden im-	Internal remedies.
Candy.	plements.	Intoxicating liquor.
Candy apples.	Feminine hygiene	Insect and pest con-
Canning and freezer	needs.	trol products.
supplies.	Fermented malt bev-	Iron tablets.
Can openers.	erages.	
Carbonated	Fertilizers.	Jewelry.
beverages.	Fiddle faddle.	
Cat food.	Film.	Kool aid and similar
Charcoal and starter.	First aid products.	items.
Chewing gum.	Fizzies.	Kotex and similar
Cigarettes	Flash bulbs.	items.