

## DEPARTMENT OF REVENUE

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## Tax 11

(6) **TAXABLE USE OF MEDICINES.** Persons who sell medicines are subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) 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; am. (4) (d) and (6), Register, July, 1987, No. 379, eff. 8-1-87.

**Tax 11.10 Occasional sales.** (ss. 77.51 (9), 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 (9), 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 to an event conducted by a neighborhood association, church, civic group, garden 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 \$7,000 within a calendar year.

(d) *Exceeding the \$7,000 standard.* Nonprofit organizations with sales exceeding \$7,000 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 will assist the department in its determination. Requests for such determinations should be sent to the Wisconsin Department of Revenue; Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902; Madison, Wisconsin 53708.

(e) *Treatment of categories.* 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 \$7,000 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.

**Note:** Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(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 *por-*  
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tion 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 or sales tax pursuant to s. Tax 11.14 (2) (c) 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) Unless exempt under sub. (5) (c) 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) Unless exempt under sub. (5) (c) sales by persons engaged primarily in the business of making nontaxable 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.

(5) SALES WHICH ARE OCCASIONAL SALES. The following sales are exempt occasional sales:

(a) Auction sales of personal farm property and household goods.

(b) Sales by a sole proprietor, who is required to be a holder of a seller's permit, of tangible personal property which has not been used in the course of the person's business and is not the type of property sold in the course of the person's business. However, all tangible personal property sold by a corporation or partnership holding or required to hold a seller's permit shall be considered to be used or sold in the course of the organization's business activities and is taxable.

*Note: Example.* Taxpayer operates a service station as a sole proprietor and holds a seller's permit for the purpose of selling cigarettes and repairing motor vehicles. The gross receipts from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the gross receipts from the sale of a desk and refrigerator which were used in the service station's business activities are subject to the sales tax.

(c) Sales of tangible personal property or taxable services by a person not otherwise required to hold a seller's permit, if the total taxable gross receipts of tangible personal property and taxable services are less than \$1,000 during the calendar year. However, purchases of tangible personal property or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person, except when the person is able to claim exemption under s. 77.54 (9a), Stats.

*Note: Examples.* 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fisherman, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (c).

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2) Sales of soft drinks by employe groups are not taxable if the gross receipts from soft drink sales do not exceed \$1,000 per year. These groups are deemed consumers and suppliers' sales to them are taxable retail sales.

**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: (a) sub. (5) (b) became effective on March 1, 1979, (b) the \$7,000 per calendar year standard in sub. (3) (c) 2 became effective on January 1, 1988, (c) the standard in sub. (3) (c) 2 was \$2,500 per year for the calendar years 1985, 1986 and 1987. Prior to January 1, 1985 the standard in sub. (3) (c) 2 was \$1,000 per year and the standard in sub. (5) (c) was \$500 per year for persons who had gross receipts from sales of fishing bait; soft drinks; garage, lawn or rummage sales; lawn maintenance and landscaping services; parking; firewood and books.

**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; am. (3) (c) 2., (d) and (e), (4) (d) and (f), cr. (5), r. (6), Register, April, 1985, No. 352, eff. 5-1-85; am. (4) (c), Register, July, 1987, No. 379, eff. 8-1-87; (3) (c) 2., (d) and (e), Register, December, 1987, No. 384, eff. 1-1-88.

**Tax 11.11 Waste treatment facilities (industrial or governmental).** (s. 77.54 (26), Stats.) (1) **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.