

which are exempt from sales or use tax unless any, or all, of the following apply:

1. 100% of the electricity or natural gas is for exempt use.

2. The sale is to an account which is properly classified as residential or farm pursuant to schedules which are filed for rate tariff with the Wisconsin public service commission which are in force at the time of the sale.

3. The sale is to an account which is properly classified as residential or farm for classification purposes as directed by the federal rural electrification administration.

(b) Farmers claiming the 12-month exemption for natural gas should use farmer's exemption certificate, form S-206, instead of form S-017.

(12) **DIRECT PAY PERMITS.** The law does not provide for use of direct pay permits by manufacturers or other businesses. The permits are allowed in certain states and authorize a purchaser to report taxes directly to the state, even when making taxable purchases from in-state suppliers. Thus, under Wisconsin law, a purchaser shall furnish a supplier with the appropriate exemption certificate when making exempt purchases. Assertions by a purchaser that the purchaser will pay the use tax or sales tax pursuant to sub. (2) (c) directly to the state shall not be accepted, as they do not relieve the seller of the obligation to report the tax on the sales.

(13) **IMPROPER USE OF CERTIFICATES.** A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor under s. 77.52 (16), Stats. The purchaser may also be liable for other penalties provided by law for filing incorrect returns.

(14) **CONSTRUCTION CONTRACT ENTERED INTO BEFORE THE EFFECTIVE DATE OF COUNTY TAX, FORM S-207CT-1.** (a) The certificate for a construction contract entered into before the effective date of county tax, form S-207CT-1, is used by contractors to purchase building materials without the county tax. The certificate shall be used by a contractor only if the following 3 conditions are met:

1. The contractor entered into a written contract or made a formal bid before the effective date of the county tax to construct, alter, repair or improve real estate for another person.

2. The written contract is for a fixed price that cannot be changed or the formal written bid cannot be altered or withdrawn.

3. The building materials purchased on or after the effective date of the county tax are affixed and made a part of real estate in fulfilling the written contract or formal written bid.

(b) The certificate shall give the descriptive name of the contract, job site, county tax effective date, date of prime contract and bid, date contract was signed, the seller's name, the date of performance of the contract and the contractor's name and address and shall be signed by the contractor.

Note: The interpretations in s. Tax 11.14 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for railroad lubricants is effective July 1, 1978, pursuant to Chapter 418, Laws of 1977.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (7) (a), Register, June, 1983, No. 330, eff. 7-1-83; cr. (2) (c) and am. (10), Register, July, 1987, No. 379, eff. 8-1-87; cr. (2) (a) 5. and 6., (10), (11) and (14), am. (2) (a), (5) (b), (6) (b) (intro.) and 5., (7) (a) (intro.) and 4. and 5., (8) (a) and (9), renum. (10) and (11) to be (12) and (13) and am., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.15 Containers and other packaging and shipping materials. (1) ITEMS EXEMPT UNDER S. 77.54 (6) (b), STATS. (a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be "used by the purchaser to transfer merchandise to customers". Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor. The exemption shall not apply to containers used in the incidental transfer of property to customers by persons providing services.

(b) Containers include barrels, bottles, cartons, chemical carboys and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize or protect the contents, such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice and batting, and rope, twine, gummed tape, wrapping paper, rubber bands, crates and crating materials, pallets, skids and mailing tubes.

(c) Gross receipts from the sale of the following items are within the exemption:

1. Cans in which canned goods, paints and other commodities are contained; medicine bottles; boxes in which jewelry, candy, suits, dresses and hats are delivered to customers; and ice cream cartons.

2. Bottles and cases used by breweries, wineries or soda water beverage producers to transfer the product to customers.

3. Barrels, half-barrels, kegs and the like, used by a brewery to transfer draft beer to wholesalers or retailers.

4. Caps for milk, beer and soda water bottles.

5. "Fragile", "Handle with Care" or other shipping labels.

6. Paper food dividers used to separate food sections in a container for transfer to a customer.

7. Paper bags purchased by grocery stores, bakeries or other retailers and used by their customers in carrying out their purchases.

8. Feed bags purchased by feed dealers who use the bags to transfer merchandise sold to their customers.

9. Bale ties sold to a hay owner and used to deliver hay to the owner's customers.

10. Ice used by a commercial fisherman inside a box of fish to preserve the fish during shipment to market.

11. LPG tanks used to transfer fuel to customers which are replaced each time the fuel is exhausted.

12. Packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether these items are used to transfer merchandise to customers.

(2) ITEMS NOT EXEMPT UNDER s. 77.54 (6) (b), STATS. Gross receipts from the sales of the following items are not within the exemption:

(a) Wrapping equipment such as paper holders, tape dispensers, staplers and string holders.

(b) Coat hangers used on display racks in stores.

(c) Shopping carts or baskets and similar equipment.

(d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property to customers are exempt.

(e) Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers.

(f) Lumber or other material used for bracing, blocking, skidding or shoring items while in transit; and cardboard and paper used to line box cars.

(g) "Valuable containers" such as fondue bowls, steins and popcorn poppers which are filled with cheese or other exempt food items and sold as a gift package. A "valuable container" is a container which has some use by virtue of its shape or design such that the purchaser envisions further use of the container after the contents have been removed. If the container's contents are not subject to the tax and the cost to the seller of the container or containers in a particular package is \$1 or more, the seller shall assign a reasonable part of the retail selling price of the total package to the valuable container or containers and pay a sales tax on that part of the selling price. If the contents of the container or containers are taxable items, such as candy, the entire gross receipts from the sale of the package are subject to the tax.

(h) Price tags and advertising matter used in connection with the sale of tangible personal property, including counter display cards used for advertising and display purposes.

(i) Tanks on trucks used to deliver merchandise to customers.

(k) Corrugated boxes and other containers and related packing materials purchased by movers for use in transporting a customer's goods.

(l) Bags, boxes, hangers and other containers transferred to customers by laundries, dry cleaners and other persons providing services.

Note: In a decision dated November 23, 1979 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Wisconsin Tax Appeals Commission held that corrugated boxes and related packing materials used by Leicht to transport a customer's property from one location to another do not come within the exemption in s. 77.54 (6) (b), Stats. This decision was affirmed by the Dane County Circuit Court on May 19, 1980, by the Court of Appeals, District IV on May 26, 1981.

(3) FARMER'S CONTAINER EXEMPTION. (a) Gross receipts from the sales of the following items are within the exemption in s. 77.54 (3m), Stats.:

1. Fruit baskets used by commercial orchards.
2. Grain storage bins purchased by farmers to store unprocessed corn, wheat, oats or other types of grain.
3. Boxes and crates used by a potato or berry farmer.
4. Animal waste containers or component parts thereof. This includes the usual building materials used to construct an animal waste container.

(b) Gross receipts from sales of the following items are not within this exemption:

1. Silos.
2. Egg cases and crates used by a poultry farm for gathering and storing eggs.
3. Plastic or wooden boxes used by apiaries for the collection and storage of honey.
4. Fruit jars or other containers used for home canning.
5. Gasoline or fertilizer storage tanks used on a farm.

(4) **DEPOSITS ON RETURNABLE CONTAINERS.** (a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property, such as soft drink bottles, beer bottles and milk containers, and refunds of the deposits may be excluded from the computation of taxable gross receipts if they are excluded from gross receipts on the retailer's books of account.

(b) If a retailer's books of account include container deposits in gross receipts and if refunds of the deposits are deducted from gross receipts, the retailer shall use this method of reporting taxable gross receipts on a sales tax return. Under this method, the gross receipts from the deposit are subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

(5) **DISPOSABLE ITEMS USED BY RESTAURANTS.** Gross receipts from sales to restaurants, cafeterias, caterers, nursing homes or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, wrapping materials and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products and beverages to customers are not subject to the tax.

(6) **DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS.** A gas supplier's monthly charge to a customer for the use of an LPG storage tank or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a reasonable charge is made to the customer for the use of the container and the container is used *exclusively* for such leasing purposes, the gas supplier can issue a resale certificate when such supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer with-

out making a separately itemized charge for its use or charges only a nominal rental, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of such containers or tanks.

(7) **CONTAINERS SOLD.** If a separate charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge and is subject to the tax.

(8) **GIFT WRAPPING.** The amount charged for gift wrapping packages is taxable.

Note: 1) The interpretations in s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for meat packaging and shipping materials became effective on May 20, 1978, pursuant to Chapter 368, Laws of 1977; and (b) Laundries and dry cleaners became the consumers of bags, boxes, hangers and other containers transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27.

2) In *Dernehl-Taylor Co. v. Department of Revenue* (Wisconsin Tax Appeals Commission, May 26, 1978), it was held that the gross receipts for doggie bags qualify for the exemption under s. 77.54 (6) (b), Stats., because they are used to transfer merchandise to customers.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (a) and (8), r. (5) (b), Register, June, 1983, No. 330, eff. 7-1-83; cr. (2) (k), Register, December, 1983, No. 336, eff. 1-1-84; renum. (2) (j) to be (1) (c) 12, and am., Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (a), (b), (c) 8, 11, and 12., (2) (g), (4) (a) and (b) and (5) (a), cr. (2) (L), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.16 Common or contract carriers. (ss. 77.54 (5) (b), (12) and (13), 77.55 (2m) and 77.57, Stats.) (1) **MOTOR CARRIERS.** (a) *Exemption.* Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for: "*Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38.*"

(am) *Exclusively.* As used in s. 77.54 (5) (b), Stats., and this section, "exclusively" means that the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for this tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

Note: Under department of transportation rules, a licensed carrier (LC) number is required if a common or contract carrier hauls goods of others for hire. The sales and use tax exemption in par. (a) applies only if the common or contract carrier used the vehicle *exclusively* for hauling goods of others for hire.

(b) *Accessories and attachments.* Accessories, attachments, parts and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54 (5) (b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle's load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps and shoring beams. This exemption does not in-

clude corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. (h).

Note: In a decision dated May 19, 1980 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Dane County Circuit Court reversed the November 23, 1979 decision of the Wisconsin Tax Appeals Commission and held that van equipment and supplies that are exempt under s. 77.54 (5) (b), Stats., include furniture pads, covers, packing supplies, tape, pianoboards, ladders, walkboards, straps, lining paper and corrugated boxes. The Court also stated that "It must be kept in mind that it is undisputed that all of the items are assigned to and carried on the vans." The Court of Appeals District IV, affirmed the Circuit Court's decision. Under this interpretation, the only corrugated boxes and packing materials that qualify for exemption under s. 77.54 (5) (b), Stats., are those that are assigned to and carried on an exempt van and that are not transferred to a customer.

(c) *Repairs.* The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt vehicles shall be exempt.

(d) *Exceptions.* The exemption shall not apply to the following property used by common or contract carriers: automobiles as defined in s. 340.01 (4), Stats., except an automobile registered as a truck, station wagons as defined in s. 340.01 (61), Stats., and self-propelled vehicles for off-highway use, such as road machinery, fork lifts and other industrial trucks.

(e) *Equipment and supplies.* Equipment acquired by a carrier for the repair, service or maintenance of its exempt vehicles is not exempt, including repair tools, welding torches, battery chargers and grinding discs.

(f) *Conversion to private use.* If a vehicle purchased without tax is converted to private use, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) is due. The tax is measured by the sales price of the vehicle to the purchaser, except that if the taxable use first occurs more than 6 months after the sale to the purchaser, the measure of the tax may be, at the purchaser's option, either the sales price or the vehicle's fair market value at the time the taxable use first occurs.

(g) *Packaging materials.* The transfer to a customer of corrugated boxes, containers and related packing materials in conjunction with moving or transporting a customer's goods is incidental to the selling, performing or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

(h) *Occasional sales.* Motor carriers shall not be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property or taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property for resale without paying tax by issuing to their supplier a properly completed resale certificate or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

Note: Refer to s. Tax 11.002 for 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.