

(e) The gross receipts from the sales of tangible personal property, tickets or admissions by any baseball team affiliated with the Wisconsin department of American legion baseball.

(f) Campground fees in Wisconsin state parks.

(g) Admissions to events conducted by nonprofit organizations when the event does not involve entertainment as provided in s. 77.54 (7m), Stats., the organization is not engaged in a trade or business as defined in s. 77.54 (7m), Stats., and is not otherwise required to hold a seller's permit.

(3) **PRIZE MONEY.** Bowling alley proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable gross receipts the amount advertised and set aside for prize money.

(4) **DONATIONS.** (a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment shall be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation shall be obvious that admittance is not restricted to those making a donation. A set amount for the donation, such as through newspaper publicity or signs at the entrance, a turnstile or restrictive device that shall be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

(b) When a charge to a patron bears little or no relationship to the actual value received, such as \$100 per ticket for a fund raising dinner dance, the tax may be based on reasonable value of the tangible personal property and taxable services received.

(5) **LOCATION OF EVENT.** The receipts from sales of tickets of admissions to places of amusement or athletic events which take place in Wisconsin are taxable, even though some of the tickets may be sold out-of-state. For example, all sales of university of Wisconsin football tickets for games played in Wisconsin are taxable. However, if the university of Wisconsin, as agent, sells tickets for the university of Michigan, the receipts are not subject to the Wisconsin sales tax.

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973, pursuant to Chapter 156, Laws of 1973; (b) The exemption for admissions to museums operated under a lease with the State Historical Society became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The exemption for admissions to American Legion baseball became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) Recreational facilities and rights sold in connection with the sale of time-share property became taxable May 17, 1988, pursuant to 1987 Wis. Act 399; and (e) The exemption for state park campground fees became effective September 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (d), cr. (1) (g) and (h), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (b), cr. (2) (e), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (b), (e), (f) and (g) and (4) (a) and (b), cr. (2) (f) and (g), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.66 Telecommunication and CATV services. (ss. 77.51 (13) (p) and (14) (m), 77.52 (2) (a) 5 and 12 and (am) and 77.54 (24), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Charged to a subscriber . . . located in this state" means that the charge for service which originates in Wisconsin accrues to a person who has agreed to satisfy that liability in exchange for access to or use of the service, and the billing document setting forth the obligation to pay for the telecommunication service is furnished, mailed, or delivered to a location in Wisconsin.

(b) "Charged to a . . . telephone located in this state" means that the obligation to pay for the cost of a transmission can be identified in the service provider's records as pertaining to a particular telephone number or to a telephone line, wire, microwave, or other transmission medium located in Wisconsin.

(c) "Telephone" includes any device which a customer uses to originate, transmit or receive voice, sound, vision, information, data or other material to, from, or over a telecommunication service provider's network.

(2) **TAXABLE TELECOMMUNICATION SERVICES.** Under s. 77.52 (2) (a) 5, Stats., interstate telecommunication services where the transmission begins in Wisconsin, other than services paid for by inserting coins a coin-operated telephone, are subject to the sales or use tax, if:

(a) The service is charged to a subscriber located in this state.

Examples: 1) John Smith has a credit card from XYZ Corporation, which is an inter-LATA long distance telecommunications carrier. When John wants to place a long distance call from his home in Wisconsin he (1) dials XYZ Corporation's telephone number to access the carrier's systems, called Point of Presence, or POP, (2) enters his credit card number to identify himself as the party paying for the call and (3) then dials the destination number. The bill for John's call is mailed to his home in Wisconsin. In this circumstance, the telephone calls are charged to a subscriber in Wisconsin.

2) Harry Jones has chosen ABC Corporation as his inter-LATA long distance telecommunications carrier. Harry lives in Wisconsin in an area where the local exchange does not provide dial 1 equal access service to long distance carriers other than AT&T. When Harry wants to make a long distance call from his home in Wisconsin he (1) dials a number to access ABC Corporation's system, (2) enters his account number to identify himself as the party paying for the call and (3) then dials the destination number. The bill for Harry's call is mailed to his home in Wisconsin. In this circumstance, the telephone calls are charged to a subscriber in Wisconsin.

3) Corporation X has offices in Eau Claire, Wisconsin, and Minneapolis, Minnesota. All corporation X employees use credit cards issued by a telephone service provider in Minneapolis, which results in the calls being charged to a Minneapolis telephone number. However, the bills for payment of calls originating in Wisconsin and made by employees assigned to the Eau Claire office are mailed by the service provider to the Eau Claire office. The calls were charged to a subscriber located in Wisconsin, since the bills were mailed to a subscriber at a location in Wisconsin. This is true regardless of the fact that the calls were charged to a telephone in Minneapolis.

(b) The service is charged to a telephone located in this state. Interstate telecommunication service charges are considered to be charged to a telephone located in Wisconsin regardless of whether the associated telephone number is identified on the billing document and regardless of where the billing document is mailed. These charges include:

1. Telephone calls or transmissions placed via dial 1 equal access systems. The service provider identifies the telephone number of the line from which the call originates and the charge for that call is added to the account of the person responsible to pay that charge.

Note: "Dial 1" and "equal access" are different terms which describe the same thing, namely the procedure by which a customer accesses the system or network of a long distance telecommunications service provider. Prior to the breakup of AT&T and the entrance of other common carriers, collectively OCC's, into the competitive market, a customer wanting to make a long distance call dialed 1 + area code + local exchange telephone number. Thus, the

term "dial 1" access applies. Initially, customers of OCC's entering the market were required to go through the 3 step procedure described in Example #2 following paragraph (a). The Court, in part of the proceedings concerning the breakup of AT&T, ordered that OCC's be allowed to provide this same "dial 1" access procedure as AT&T. Thus, this procedure is also called "equal access."

Examples: 1) An employe of Corporation A located in Milwaukee, Wisconsin, places a telephone call to Corporation B in Minneapolis, Minnesota. The telephone bill does not identify the originating telephone number of Corporation A; however, the telephone company's backup records identify the call as originating in and taking place over telephone lines serving Corporation A. In this circumstance, the call is charged to a telephone located in Wisconsin.

2) Corporation C has offices in Milwaukee, Wisconsin, and Chicago, Illinois. Employes at Corporation C's Milwaukee office originate telephone calls to customers and others at various locations outside Wisconsin. The telephone calls are identifiable in the telephone service provider's records as originating in Milwaukee and taking place over telephone lines serving Corporation C's Milwaukee office. Because Corporation C's accounting office is in Chicago, Illinois, the telephone bill is mailed by the service provider to Corporation C's Chicago office. The service originated in Wisconsin and was charged to a telephone located in Wisconsin since the calls were identifiable as taking place over telephone lines serving Corporation C's Milwaukee office.

3) An employe of Corporation D initiates the transmission of data from Corporation D's office in Wisconsin to Corporation D's office in another state via a telecommunication service provider's facilities. The service provider's records and equipment identify the transmission as originating in and taking place over telephone lines or other transmission mediums serving Corporation D's office in Wisconsin. The service originated in and was charged to a telephone located in Wisconsin since the calls were identifiable as taking place over telephone lines or other transmission mediums serving Corporation D's Wisconsin office.

2. Telephone calls made from a location in Wisconsin other than the caller's own telephone for which the caller instructs the operator to charge the call to the caller's own telephone located in Wisconsin.

Example: A customer is away from her home telephone but wishes to place a long distance call from another location in Wisconsin. The customer requests that the charge for that call be included with other calls made from the caller's home or business phone in Wisconsin rather than appear on the bill of the person from whose telephone the call was placed.

3. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is also the dial 1 equal access service provider for the customer's telephone in Wisconsin, the credit card number is derived all or in part from the customer's telephone number and the charge for the call is made to the customer's account.

Example: Tom Edwards has a credit card from DEF Corporation, which is his dial 1 equal access telecommunication service provider. Tom's local telephone number is area code (608) 555-1234 and his credit card number is 608-555-1234-7777. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a telephone in this state, regardless of whether the telephone number or credit card account number appear on the bill and regardless of where the bill is mailed.

4. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is not the cardholder's dial 1 equal access service provider, but where the cardholder's telephone is in Wisconsin and the telephone number is a part of the credit card account number.

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. Ed's local telephone number is area code (608) 555-4321 and his number on the credit card issued by DEF Corporation is 608-555-4321-8888. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a telephone in this state, regardless of whether the telephone number or account number appear on the bill and regardless of where the bill is mailed.

5. Service which originates in a local exchange that does not provide dial 1 equal access, but where the account number used to identify the

customer is or contains the customer's telephone number as assigned by the local telephone company.

Example: Jill Green has chosen GHI Corporation as her inter-LATA long distance telecommunication service provider for her law office. Jill's office is in an area where the local exchange does not yet provide dial 1 equal access service to long distance carriers other than AT&T. When Jill wants to send data to an out-of-state client she 1) dials the access number called Point of Presence or POP number, of GHI Corporation's system, 2) enters her account number, to identify herself as the party paying for the call; the account number is 0555-9630 and her local telephone number is 555-9630, and 3) enters the area code and telephone number of her out-of-state client. All long distance service which originates in Wisconsin and which Jill charges to her account is considered to be charged to a telephone in this state, regardless of whether the account number or her telephone number appear on the bill and regardless of where the bill is mailed.

(3) **OTHER TAXABLE COMMUNICATION SERVICES.** Other communication services which are subject to the sales or use tax include:

(a) Two-way voice communication services over telephone or radio, commonly referred to as mobile telephone service.

(b) One-way paging service.

(c) Cable television system service, including installation charges.

(d) Facsimile, or FAX, transmission service.

(4) **NONTAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are not taxable:

(a) Interstate or international telecommunication service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a telephone located in another state or country and is not billed to a subscriber in this state.

(b) Basic or sophisticated emergency telephone system serviced provided by a telecommunication utility for which charges are levied pursuant to a county ordinance under s. 146.70 (3), Stats.

(c) Access services, Measured Toll Service, or MTS, and Wide Area Transport Service, or WATS, services resellers purchase, repackage, and resell to customers.

(d) Interstate private line circuits, including tie lines and foreign exchange service, charged on a flat rate periodic basis which consist of a circuit or circuits dedicated to the use of that subscriber.

(e) Nonmechanical telephone answering services.

(f) Transfers of services, commonly called "access services" to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange.

(5) **PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing those services. The tax applies to the sale of property to them. However, s. 77.54 (24), Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals."

Note: 1) The Dane County Circuit Court's decision of May 22, 1981 in *Wisconsin Department of Revenue v. North-West services Corporation and North-West Telephone Company* held that a telephone company may purchase without tax tangible personal property leased or Register, June, 1991, No. 426

rented to customers in conjunction with an activity open to competition with others who are not public utilities.

2) The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (d) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; and (e) Telecommunication services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (a), (b), (d) and (e), (2), Register, January, 1983, No. 325, eff. 2-1-83; cr. (1) (f), Register, July, 1987, No. 379, eff. 8-1-87; emerg. r. and recr. (1) (a) and (b), eff. 10-1-89; r. and recr. Register, April, 1990, No. 412, eff. 5-1-90; renum. (3) (d) and (e) to be (4) (f) and (3) (d), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.67 Service enterprises. (ss. 77.51 (4), (12), (13), (14) (intro.), (h) and (L), (15), (20) and (22) (a) and (b) and 77.52 (1) and (2m) (a) and (b), Stats.) (1) **GENERAL.** When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which are furnished without separate charge as an incidence to the service.

(2) **RECEIPTS AND PURCHASES OF PERSONS PROVIDING SERVICES.** (a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales, and the tax applies to the total gross receipts therefrom without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax. However, if the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge attributable to the taxable services.

(3) **SPECIAL SITUATIONS.** (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

Tax 11

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.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject to the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) *Artistic expressions.* Sales of works of art, such as paintings and sculptures, are taxable.

(d) *Interior decorator's fee.* 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered (such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply) and there is no sale of tangible personal property involved with the transaction.

(e) *Research and development.* 1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the researcher owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production for the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not