

ation as "a publication that has at least 24 pages, is issued at regular intervals not exceeding 3 months, that devotes not more than 75% of its pages to advertising and that is not conducted as an auxiliary to, and essentially for the advancement of, the main business or calling of the person that owns and controls it".

Example: A taxpayer publishes a quarterly publication which it mails to current and prospective customers. The publication contains articles of interest to customers which contain endorsement of the taxpayer's business and products. The publication also contains advertising of the taxpayer's products as well as products of other vendors. This publication is conducted essentially for the advancement of the taxpayer's business and does not qualify as a controlled circulation publication.

(c) The exemption for periodicals is limited to publications which are sold by subscription and which are regularly issued at average intervals not exceeding 3 months each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To qualify for the exemption, the publication must qualify for the second class mail rate or as a controlled circulation publication under U.S. postal laws and regulations.

(d) The newspaper and periodical exemption does not apply to books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The exemption also does not apply to catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price or order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

Example: Books sold by the Book of the Month Club or similar organizations do not qualify for the newspaper and periodical exemption.

(4) **PRINTED ADVERTISING MATERIALS FOR OUT-OF-STATE USE.** (a) Printed advertising materials, including catalogs and their mailing envelopes, may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54 (25), Stats., when those materials are purchased and stored for the purpose of subsequently transporting the same outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. The exemption applies to catalogs designed to be used by a retailer's potential customers.

(b) The exemption does not apply to materials shipped to Wisconsin addresses. It also does not apply to parts price lists, parts stock order books, order forms, stocking and purchasing guides, stockholders' annual reports or proxy statements, display racks, or 3-dimensional plastic items designed to be used by wholesalers and retailers. Envelopes which do not contain exempt advertising, matchbooks, calendars, calendar pads, desk pads, folders, binders and playing cards also do not qualify for the exemption.

(5) **EXEMPT PURCHASERS.** Sales of printed material to governmental units, public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to governmental

units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained. Sales to persons holding a certificate of exempt status can be shown to be exempt by recording the certificate number on the bill of sale.

Note: The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state in sub. (2) (a) became effective March 1, 1970; (b) The exemption for advertising materials used out-of-state in sub. (4) (a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective on August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1973; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1985 Wis. Act 149; and (h) The exemption for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (c) and (4) (b), Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (b) and (3) (c), cr. (2) (d), r. and recr. (3) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (a) and (b), (3) (b) and (4) (a), Register, June, 1990, No. 414, eff. 7-1-90; am. (1), (2) (a), (c) and (d), (3) (d), (4) (a) and (b) and (5), cr. (2) (e), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.26 Other taxes in taxable gross receipts and sales price. (s. 77.51 (4) (a) 4 and (15) (a) 4, Stats.) (1) **GENERAL RULE.** (a) Tangible personal property sold at retail often is subjected to many direct and indirect taxes prior to reaching a retailer. The taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. The tax may be imposed by Wisconsin, the federal government or a municipality.

(b) In determining the measure of sales and use taxes, certain separately stated or separately passed on taxes are included in gross receipts and the sales price, while others are not. However, the same taxes that are included or excluded from gross receipts are also included or excluded from sales price. Thus, the treatment of the taxes for sales and use tax purposes is identical, even though the measure of tax for each is gross receipts and sales price, respectively.

(2) **TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE.** The following taxes are included in a retailer's gross receipts and sales price, except as provided in sub. (3):

(a) The fermented malt beverage tax imposed by s. 139.02, Stats.

(b) The taxes imposed upon intoxicating liquors, including wine, by s. 139.03, Stats.

(c) Any federal stamp tax and manufacturer's or importer's excise tax. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel, tires, firearms, sporting goods and air or ship transportation.

(d) A federal, county or municipal fuel tax included in the price of special fuels and general aviation fuel subject to sales tax.

Example: Fuel taxes are included in the price of fuel used in aircraft, boats and for other nonhighway use. The taxes are included in gross receipts.

Register, January, 1994, No. 457

- (e) The cigarette tax imposed by ss. 139.31 and 139.33, Stats.
- (f) The Canadian or any other country's export gallonage tax on fuels.
- (g) The tobacco products tax imposed under ss. 139.76 and 139.78, Stats.

(3) **TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE.** The following taxes are excluded from a retailer's gross receipts or sales price:

(a) The federal communications tax imposed upon telegraph service and telephone service.

(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if that federal, state or municipal tax is measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax.

Examples. Taxes which are not included in a retailer's gross receipts include:

- 1) The room tax imposed under s. 66.75, Stats., which municipalities impose on persons furnishing lodging to transients.
- 2) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the internal revenue code.
- 3) The county sales and use tax imposed under s. 77.71, Stats.

Note: The interpretations in s. Tax 11.26 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; am. (2) (d) and (e) and cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; cr. (2) (g), Register, December, 1983, No. 336, eff. 1-1-84; am. (3) (b), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (a) and (b), (2) (intro.), (b), (c), (d) and (e) and (3) (a), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (intro.), (c), (3) (intro.) and (b), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.27 Insurance and warranties. (ss. 77.51 (4) (a) and (14) (intro.), 77.52 (2) (a) 10 and 77.54 (8), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Insurance" means a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property.

(b) "Warranty" means a contract or agreement which promises indemnity against defects in tangible personal property sold.

(2) **RECEIPTS FROM INSURANCE.** Gross receipts from the sale of insurance are not subject to Wisconsin sales or use tax when separately stated on the invoice.

Examples: 1) Company A rents a vehicle to Customer A for \$200 which includes insurance. The entire charge of \$200 is subject to Wisconsin sales or use tax because the charge for insurance is not separately stated.

2) Company A rents a vehicle to Customer B for \$200. On the invoice, Company A shows a charge for vehicle rental of \$175 and a charge for insurance of \$25. The charge of \$175 is subject to Wisconsin sales or use tax.

(3) **RECEIPTS FROM WARRANTIES.** Gross receipts from the sale of warranties are subject to Wisconsin sales or use tax provided the tangible personal property to which the warranty relates is or was subject to Wisconsin sales or use tax.

Examples: 1) Company A sells a machine to Customer C which will be used exclusively and directly in manufacturing. Customer C purchases an extended warranty with the machine. Customer C provides Company A with a properly completed manufacturer's exemption certificate. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the machine to which it relates is not subject to Wisconsin sales or use tax.

2) Customer D, a resident of Minnesota, purchases an automobile from a dealership in Wisconsin. Customer D makes no use of the automobile in Wisconsin other than to drive it to his home in Minnesota. Customer D purchases an extended warranty with the automobile. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the sale of the automobile is not subject to Wisconsin sales or use tax.

3) Assume the same facts as in Example 2, except that Customer D does not purchase the extended warranty at the time of sale of the automobile. Instead, six weeks after the sale, Customer D purchases the extended warranty from the dealer. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the automobile to which the sale relates was not subject to Wisconsin sales or use tax.

4) Customer E, a resident of Wisconsin, purchases an appliance from a store in Wisconsin. Customer E purchases an extended warranty with the appliance. The sale of the extended warranty is subject to Wisconsin sales tax because the sale of the appliance is subject to Wisconsin sales tax.

5) Assume the same facts as in Example 4, except that Customer E does not purchase the extended warranty at the time of sale of the appliance. Instead, 2 months after the sale, Customer E purchases the extended warranty from the store. The sale of the extended warranty is subject to Wisconsin sales tax because the appliance to which the sale relates was subject to Wisconsin sales tax.

(4) REPAIRS BY RETAILERS UNDER INSURANCE PLANS. (a) Gross receipts from charges by a retailer to a customer or an insurer for taxable repair parts or taxable services performed under an insurance plan are subject to Wisconsin sales or use tax.

Examples: 1) Company A sold an appliance to Customer E. Company A also sold an insurance plan for the appliance to Customer E. The appliance is later repaired by Company A under the insurance plan. Company A bills the insurance company for the repair. The charge to the insurance company is subject to Wisconsin sales or use tax.

2) Company A sold an appliance to Customer F. Company A also sold an insurance plan for the appliance to Customer F. The appliance is later repaired by Company A under the insurance plan. Company A bills the customer for the repair. Customer F submits the bill to the insurance company and receives reimbursement from the insurance company. The charge to Customer F for the repair is subject to Wisconsin sales tax.

(b)1. A retailer who provides parts or performs taxable repair services to tangible personal property under an insurance plan may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under an insurance plan is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property.

(5) REPAIRS BY RETAILERS UNDER WARRANTIES. (a) Gross receipts from charges by a retailer to a customer for taxable repair parts or taxable services performed under a warranty are subject to Wisconsin sales or use tax.

Example: Customer A purchased an automobile from a dealership in Wisconsin. Customer A purchased an extended warranty from the dealership which was subject to Wisconsin sales or use tax. Customer A brings the automobile to the dealership for repair under the warranty. Under the terms of the warranty, Customer A must pay a deductible of \$100. The \$100 charge to Customer A is subject to Wisconsin sales or use tax.

(b) Reimbursement to a retailer from a manufacturer or other person, whether in the form of money or replacement of parts used to perform repair services under a warranty is not subject to Wisconsin sales or use tax.

Example: Customer B purchased a television with an extended warranty from an appliance store. Customer B has the television repaired under the warranty. The appliance store is reimbursed \$200 by the warranty company for the repair of the television. The \$200 reimbursement is not subject to Wisconsin sales or use tax.

(c)1. A retailer who provides parts or performs taxable repair services to tangible personal property under a warranty may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under a warranty is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property.

(6) **REPAIRS NOT BY RETAILERS.** If a retailer does not repair tangible personal property under a warranty or insurance plan, but instead has another person perform the repairs covered under the warranty or insurance plan, the person's gross receipts from the sale of the repair to the retailer are not subject to Wisconsin sales or use tax provided the retailer gives the person a properly completed resale certificate. The charge for repairs by the other person is exempt as a sale for resale whether or not the original sale of the property to which the warranty or insurance plan relates occurred in Wisconsin. The sales and use tax treatment of the charge by the retailer to the customer or plan provider is the same as provided in subs. (4) and (5).

Note: Refer to s. Tax 11.14 for information regarding exemption certificates, including resale certificates.

(7) **GOODWILL WORK.** A retailer who provides free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, maintenance agreement, express warranty, or insurance plan may purchase the parts without Wisconsin sales or use tax as property for resale.

Example: Customer Z, a resident of Wisconsin, purchased an automobile and extended warranty from a Wisconsin dealership. The dealership charged Wisconsin sales tax on the sale of the automobile and warranty. Customer Z brought the vehicle to the dealership for repairs that were covered under the warranty. While performing the repairs, a part is damaged. The dealership, who is not required by the terms of the warranty to provide the part, provides the part free of charge to Customer Z. The dealership may purchase the part provided free to Customer Z without Wisconsin sales or use tax as property for resale.

Note: The interpretations in s. Tax 11.27 are effective under the general sales and use tax law on and after September 1, 1969, except that the definitions in sub (1) and the provisions in subs. (4) (b), 2 and (5) (c) 2 became effective on February 1, 1994.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1), (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94.

Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps. (ss. 77.51 (4) (a) and (14) (k) and 77.56 (3), Stats.) (1) **DEFINI-**

Register, January, 1994, No. 457

CTIONS. (a) Section 77.51 (14) (k), Stats., provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms includes the sale of tangible personal property to a purchaser even though the property may be used or consumed by another person to whom the purchaser transfers the property without valuable consideration, such as gifts and advertising specialties distributed gratis apart from the sale of other tangible personal property or services.

(b) Section 77.51(4) (a) (intro.), Stats., provides that "gross receipts" means the total amount of the sale, lease or rental price from sales at retail of tangible personal property or taxable services, valued in money or otherwise.

(2) GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS. Persons who make gifts of taxable tangible personal property or distribute tangible personal property gratis to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to persons making gifts. Taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring the property for the purpose of giving it to retailers for use in selling merchandise to customers.

Examples: 1) A paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint.

2) A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given to customers.

3) Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer and the sales or use tax, pursuant to s. Tax 11.14 (2) (c), applies to the cost of the ingredients.

(a) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event, such as an open house, celebrity appearance or "farm days," cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in this volume. In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person furnishing the property to the retailer is subject to the sales or use tax pursuant to s. Tax 11.14 (2) (c) on its cost of the property donated.

Next page is numbered 191

production machinery or equipment, a nonmanufacturing activity, they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

Note: The interpretations in s. Tax 11.81 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; am. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.82 Mailing lists and mailing services. (ss. 77.51 (20), 77.52 (1), 77.53 (1) and 77.54 (2), Stats.) (1) MAILING LISTS. (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property, except for written, typed or printed lists of names and addresses and lists stored in machine-readable form, such as microfilm and computer tapes and disks, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use those lists. Taxable mailing lists include, but are not limited to mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels and heat transfers.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing these lists. However, any tangible personal property becoming a component part of mailing lists when the mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to the property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for the property. However, addressing does not include these tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax does not apply to charges for services rendered in preparing material for mailing, including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations, if the charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing these services. Consequently, they shall pay the tax when purchasing the property.

Note: The interpretations in s. Tax 11.82 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Written or typed lists of names and addresses

Register, January, 1994, No. 457

are not tangible personal property effective January 1, 1979, pursuant to the Minnesota Supreme Court's decision in *Fingerhut Products Company et al. vs. Commissioner of Revenue*, 258 N.W.2d 606 (1977); and (b) Mailing lists stored in machine-readable form are not tangible personal property, pursuant to the Wisconsin Tax Appeals Commission decision in *A-K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue* (1/15/87).

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (b), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (b) and (c) and (2), Register, January, 1994, No. 457, eff. 2-1-94.

Tax 11.83 Motor vehicles. (ss. 77.51 (13) (am) and (14) (j), 77.52 (1) and (15), 77.53 (1), (16), (17) and (18), 77.54 (5) (c) and (d), (7) and (22) (f), 77.56 (2) and (3), 77.61 (1) and 77.71 (4), Stats.) (1) **DEFINITION.** In this section, "motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor and motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck and road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

(2) **RETAILERS' TAXABLE GROSS RECEIPTS.** (a) Gross receipts from the sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value, called a "trade-down."

(b) Gross receipts from charges for delivery, handling, preparation and any warranty.

(c) Gross receipts from equipment and accessories sold with a motor vehicle. However, adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as defined in s. 27.01 (7) (a) 2, Stats., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting directly on behalf of the handicapped person or a nonprofit organization.

(d) Gross receipts from charges for all parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as described in par. (c).

Example: Charges for installation of a radio or air conditioner into a motor vehicle are taxable.

(3) **OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS.** (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered in Wisconsin in the name of the transferor; and the transferor is not a motor vehicle dealer.

Register, January, 1994, No. 457