

Chapter Tax 11

SALES AND USE TAX

General Provisions

Tax 11.001 Forward and definitions (p. 150)

Tax 11.002 Permits, application, department determination (p. 150)

Tax 11.01 Sales and use tax return forms (p. 151)

Exempt Entities

Tax 11.03 Elementary and secondary schools and related organizations (p. 152)

Tax 11.04 Constructing buildings for exempt entities (p. 154)

Tax 11.05 Governmental units (p. 154)

Exemptions

Tax 11.08 Medical appliances, prosthetic devices and aids (p. 158)

Tax 11.09 Medicines (p. 160)

Tax 11.11 Industrial or governmental waste treatment facilities (p. 162)

Tax 11.12 Farming, agriculture, horticulture and floriculture (p. 164)

Tax 11.14 Exemption certificates, including resale certificates (p. 171)

Tax 11.15 Containers and other packaging and shipping materials (p. 176)

Tax 11.16 Common or contract carriers (p. 179)

Tax 11.17 Hospitals, clinics and medical professions (p. 182)

Tax 11.18 Dentists and their suppliers (p. 184)

Tax 11.19 Printed material exemptions (p. 185)

Gross Receipts

Tax 11.26 Other taxes in taxable gross receipts and sales price (p. 188)

Tax 11.27 Warranties (p. 189)

Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps (p. 190)

Tax 11.29 Leases and rentals of tangible personal property (p. 193)

Tax 11.30 Credit sales, bad debts and repossessions (p. 195)

Tax 11.32 "Gross receipts" and "sales price" (p. 197)

Occasional Sales

Tax 11.33 Occasional sales (p. 200)

Tax 11.34 Occasional sales exemption for sale of a business or business assets (p. 202)

Tax 11.35 Occasional sales by nonprofit organizations on or after January 1, 1989 (p. 204)

Manufacturers and Producers

Tax 11.38 Fabricating and processing (p. 208)

Tax 11.39 Manufacturing (p. 209)

Tax 11.40 Exemption of machines and processing equipment (p. 211)

Tax 11.41 Exemption of property consumed or destroyed in manufacturing (p. 213)

Types of Retailers

Tax 11.45 Sales by pharmacies and drug stores (p. 215)

Tax 11.46 Summer camps (p. 217)

Tax 11.47 Commercial photographers and photographic services (p. 218)

Tax 11.48 Landlords, hotels and motels (p. 220)

Tax 11.49 Service stations and fuel oil dealers (p. 222)

Tax 11.50 Auctions (p. 224)

Tax 11.51 Grocers' guidelist (p. 226)

Tax 11.52 Coin-operated vending machines and amusement devices (p. 230)

Tax 11.53 Temporary events (p. 232)

Tax 11.535 Operators of a swap meet, flea market, craft fair or similar event (p. 234)

Tax 11.54 Temporary amusement, entertainment or recreational events or places (p. 235)

Tax 11.55 Agents, consignees, lienors and brokers (p. 236)

Tax 11.56 Printing industry (p. 236)

Tax 11.57 Public utilities (p. 239)

Service Enterprises

Tax 11.61 Veterinarians and their suppliers (p. 242)

Tax 11.62 Barber or beauty shop operator (p. 243)

Tax 11.63 Radio and television stations (p. 244)

Tax 11.64 Background music (p. 245)

Tax 11.65 Admissions (p. 245)

Tax 11.66 Telecommunication and CATV services (p. 248)

Tax 11.67 Service enterprises (p. 251)

Tax 11.68 Construction contractors (p. 253)

Tax 11.69 Financial institutions (p. 261)

Tax 11.70 Advertising agencies (p. 262)

Tax 11.71 Computer industry (p. 264)

Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers (p. 268)

Types of Tangible Personal Property

Tax 11.78 Stamps, coins and bullion (p. 269)

Tax 11.79 Leases of highway vehicles and equipment (p. 269)

Tax 11.80 Sales of ice (p. 271)

Tax 11.81 Industrial gases, welding rods and fluxing materials (p. 271)

Tax 11.82 Mailing lists and mailing services (p. 273)

Tax 11.83 Motor vehicles (p. 274)

Tax 11.84 Aircraft (p. 277)

Tax 11.85 Boats, vessels and barges (p. 280)

Tax 11

Tax 11.86	Utility transmission and distribution lines (p. 282)	Tax 11.93	Annual filing of sales tax returns (p. 295)
Tax 11.87	Meals, food, food products and beverages (p. 283)	Tax 11.94	Wisconsin sales and taxable transportation charges (p. 295)
Tax 11.88	Mobile homes (p. 287)	Tax 11.95	Retailer's discount (p. 297)
Administrative Provisions		Tax 11.97	"Engaged in business" in Wisconsin (p. 297)
Tax 11.91	Successor's liability (p. 289)	Tax 11.98	Reduction of delinquent interest rate under s. 77.62 (1), Stats. (p. 300)
Tax 11.92	Records and record keeping (p. 290)		
Tax 11.925	Sales and use tax security deposits (p. 293)		

Tax 11.001 Forward and definitions. (subchs. III and V, ch. 77, Stats.) Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to county sales and use taxes authorized under subch. V of ch. 77, Stats. In this chapter, unless otherwise specified:

(1) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

(2) "Department" means the Wisconsin department of revenue.

(3) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and
- (d) Keeping proper records.

Note: See s. Tax 11.92 regarding proper record keeping.

(4) "Tax" means the Wisconsin sales or use tax in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats.

(5) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "_____ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of _____ (specific tangible personal property or a specific service) is taxable", means that:

- (a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or
- (b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (12), Register, January, 1983, No. 325, eff. 2-1-83; emerg. am. (intro.), eff. 3-24-86; am. (intro.), Register, October, 1986, No. 370, eff. 11-1-86; renum. (3), (5), (8), (12) and (13) to be (1) to (5), am. (3) (d), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.002 Permits, application, department determination. (ss. 77.52(7), (8), (9) and (12), 77.61(2) and 227.116, Stats.) (1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate or consumers use tax registration certificate on the part of persons intending to operate as a seller at Register, June, 1991, No. 426

(2) (a) to (d) and (4) (b) 7. and 8. to be (2) (c), (g), (f), (b), (h) and (e), cr. (2) (a), and (d) and (i), am. (4) (b) (intro.) and 3. b., Register, June, 1990, No. 414, eff. 7-1-90; cr. (2) (b), (4) (a) 2., 4. c. and d. and 5. a., am. (1), (4) (a) (intro.), (4) (b) 3. a., 4. b. and 6. b. and d., renum. (2) (b) to be (2) (c), renum. (2) (c) 1. and 2. to be (2) (d) and (g) and am. (g), renum. (2) (d) to (g) to be (2) (e), (f), (h) and (i) and am. (f), renum. (2) (h) and (i) to be (2) (j) and (k), renum. (4) (a) 2. to be 3., and am., renum. (4) (a) 3. and 4. a. and b. to be (4) (a) 4. and 5. b. and c., and am. 4. a. and b. and 5. b. and c., renum. (4) (a) 5., 6., and 7. to be (4) (a) 6., 7. and 8. and am. 7. b. and 8., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d), (e), (i) and (3), (4) (a) (intro.), 3., 5. c., 6., 7. c., (b) (intro.), 4. a., 5. and 6. c., renum. (4) (b) 9. to be (4) (b) 7., r. (5) (d), Register, April, 1993, No. 448, eff. 5-1-93.

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Tax 11.14 Exemption certificates, including resale certificates. (ss. 77.52 (13) to (16), 77.53 (10) and (11) and 77.77 (3), Stats.) (1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52 (13) to (16), Stats., and the use tax status of exemption certificates is contained in s. 77.53 (10) and (11), Stats.

(2) GENERAL. (a) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors shall exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with 6 types of exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this section are the following:

1. Resale certificate, form S-205.
2. Certificate of exemption, form S-207.
3. Manufacturer's exemption certificate, form S-207m.
4. Farmer's exemption certificate, form S-206.
5. Certificate of exemption for fuel oil, propane, coal, steam and wood used for fuel for residential or farm use, form S-016.
6. Certificate of exemption for electricity and natural gas sold for residential or farm use, form S-017.

(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. The law requires that the certificate be signed by and bear the name and address of the purchaser and that it indicate the general character of the property or service being purchased and the basis of the claimed exemption.

(c) Under ss. 77.54 (3) and 77.57, Stats., if a purchaser certifies in writing by using an exemption certificate, other than a resale certificate, that the property purchased will be used for activities or under circumstances which makes the purchase of the property exempt from the sales tax, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

(3) EFFECT OF OBTAINING CERTIFICATE. (a) A seller is relieved of liability for the tax if the seller takes from the purchaser a valid, written resale or exemption certificate which certifies that the purchaser will use the property or service in a manner or for a purpose entitling the seller to accept the certificate in good faith.

(b) To be valid, a resale or other exemption certificate must upon its face disclose a proper basis for exemption. The use of phrases such as "nontaxable", "exempt" or similar terminology do not provide a proper basis for an exemption. A certificate must be properly executed, dated and contain all the necessary information. Thus, all retailers should be familiar with the instructions contained in the certificate. A certificate claiming an exemption not provided by law is not valid.

(c) If a certificate is valid, a seller or lessor who accepts the certificate in good faith is relieved of any liability for collection or payment of tax upon transactions covered by the certificate. For good faith to be shown, the certificate shall contain no statement or entry which the seller or lessor knows, or has reason to believe, is false or misleading. The question of good faith is one of fact and depends upon a consideration of all the conditions surrounding the transaction. If the seller accepts a certificate with knowledge which gives rise to a reasonable inference that the purchaser does not intend to use the item or service as claimed, the good faith of the seller will be questioned. The seller is presumed to be familiar with the law and rules of the department relating to the business or businesses in which the seller is involved.

(4) FAILURE TO OBTAIN CERTIFICATE. If a seller does not obtain a certificate, a seller is not relieved from liability for the tax, nor from the burden of proving the sale was for resale or otherwise exempt. It is not a satisfactory substitute for obtaining an exemption certificate from the purchaser, for the seller to accept payment of the seller's billing with the tax or tax reimbursement deleted, or to accept the purchaser's permit number, or a statement that the transaction is not taxable.

(5) CONTINUOUS CERTIFICATES. (a) Continuous exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(b) Continuous exemption certificates, including continuous resale certificates, approved by the department do not allow a purchaser to issue "this time only" purchase orders cancelling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for a previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6) RESALE CERTIFICATE, FORM S-205. (a) *Effect of obtaining resale certificate.* 1. The burden of proving that a sale of property or services is not at retail is upon the seller unless the seller accepts a certificate from the purchaser certifying that the property is purchased for resale. If valid and accepted in good faith from a person who is in the business of selling tangible personal property or taxable services and who holds a seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives a resale certificate for property acquired and then makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax shall be reported and paid by the purchaser with the tax return for the period in which the property is first so stored or used.

(b) *Contents of resale certificates.* A resale certificate, form S-205, shall contain the following information for the seller to be relieved from the burden of proving the sale of property or services was not a taxable sale:

1. The name and address and the signature of the purchaser.
2. A description of the general character of the tangible personal property or service sold by the purchaser.
3. A general description of the property or service purchased for resale if a "continuous" resale certificate is used, or an itemization of the property or service purchased if a "single purchase" certificate is used.
4. The seller's permit number of the purchaser, except that:
 - a. A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a seller's permit number; or
 - b. A person registered as a seller in another state, who makes no retail sales in Wisconsin, may insert the name of the state in which registered and the permit number issued to the person by that state.
5. An indication of the general character of the purchaser's business. This is for the protection of the seller, since it may enable the seller to determine whether a particular type of property or service may be sold without collecting the tax. If the nature of the business described is such that the property or services purchased normally would not be resold, the seller should question the purchaser's reason for issuing the certificate. If a satisfactory answer cannot be provided, the certificate should not be accepted. If all of these conditions are met, the seller is relieved from the burden of proving that the sale of property or services was not a taxable sale.

Example: A "continuous" resale certificate describing a business as a "tavern" normally should not be accepted for the sale of a radio, camera, auto part or other item not regularly sold by taverns.

(7) **CERTIFICATE OF EXEMPTION, FORM S-207.** (a) The certificate of exemption, form S-207, is a multiple purpose form which may be used for purchasing any of the following 6 exempt types of property or services:

1. Containers and other packaging, packing and shipping materials used to transfer merchandise to customers of the purchaser.
2. Tangible personal property becoming an ingredient or component part of an article of tangible personal property in any form destined for sale.
3. Trailers or accessories, attachments, parts, supplies, materials and service on motor trucks, tractors and trailers which are used exclusively in common or contract carriage.

4. Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization holding a certificate of exempt status, CES. Sales to organizations holding a CES also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, which is located out-of-state, may use the certificate of exemption, form S-207, to purchase without tax even though it has not been issued a Wisconsin certificate of exempt status.

5. Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.

6. Commercial vessels and barges of 50-ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts and fuel therefor.

(b) A certificate of exemption may also be used for any other exemption provided by law, except for resale, or for farmers' or manufacturers' exemption claims. The use of the form S-207 is explained on the back of the certificate.

(8) MANUFACTURER'S EXEMPTION CERTIFICATE, FORM S-207m. (a) A supplier which accepts a properly completed manufacturer's exemption certificate, form S-207m, in good faith marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of the property or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If a form S-207m is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser shall designate which items are taxable.

(b) If the manufacturer uses "single purchase" certificates, it may print these as an integral part of its purchase orders, as long as the essential information on the approved form is retained.

(9) FARMER'S EXEMPTION CERTIFICATE, FORM S-206. A retailer shall have a signed farmer's exemption certificate, form S-206, for every exempt sale made to a farmer.

Note: Section Tax 11.12 describes the types of property which may be sold to farmers without tax, and the use of the farmer's exemption certificate.

(10) CERTIFICATE OF EXEMPTION FOR FUEL OIL, PROPANE, COAL, STEAM AND WOOD FOR FUEL FOR RESIDENTIAL OR FARM USE, FORM S-016. (a) A retailer shall have a signed exemption certificate, form S-016, if the sale of fuel oil, propane, coal, steam or wood for residential or farm use is partially exempt from sales or use tax. If the sale is 100% exempt, an exemption certificate is not required.

(b) Farmers claiming an exemption for fuel used directly in farming may use the farmer's exemption certificate, form S-206, in lieu of form S-016.

(11) CERTIFICATE OF EXEMPTION FOR ELECTRICITY AND NATURAL GAS SOLD FOR RESIDENTIAL OR FARM USE, FORM S-017. (a) A retailer of electricity or natural gas shall have a signed exemption certificate, form S-017, for all sales of electricity or natural gas for residential or farm use

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. (ss. 77.51 (4) (a) and (b) and (14) (intro.) and (j), 77.52 (1) and (2) (a) 10 and 77.54 (3m) and (6) (b), Stats.) (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 fisher inside a box of fish to preserve the fish during shipment to market.