

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 11.13 Direct pay (p. 171)
 Tax 11.14 Exemption certificates, including resale certificates (p. 174)
 Tax 11.15 Containers and other packaging and shipping materials (p. 176-3)
 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

| | | | |
|----------------------------------|--|-----------|---|
| Tax 11.85 | Boats, vessels and barges (p. 280) | Tax 11.93 | Annual filing of sales tax returns (p. 295) |
| Tax 11.86 | Utility transmission and distribution lines (p. 282) | Tax 11.94 | Wisconsin sales and taxable transportation charges (p. 295) |
| Tax 11.87 | Meals, food, food products and beverages (p. 283) | Tax 11.95 | Retailer's discount (p. 297) |
| Tax 11.88 | Mobile homes (p. 287) | Tax 11.97 | "Engaged in business" in Wisconsin (p. 297) |
| Administrative Provisions | | Tax 11.98 | Reduction of delinquent interest rate under s. 77.62 (1), Stats. (p. 300) |
| Tax 11.91 | Successor's liability (p. 289) | | |
| 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, 1995, No. 474

retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department will act on the application.

(2) **PERMITS AND CERTIFICATES REQUIRED.** (a) *Seller's permit.* Every individual, partnership, corporation or other organization making retail sales or rentals of tangible personal property or selling, performing or furnishing taxable services at retail in Wisconsin shall have a seller's permit for each place of operation, unless the seller is exempt from taxation.

Note: A nonprofit organization's gross receipts are exempt from taxation if it meets the requirements under s. 77.54 (7m), Stats. Also see s. Tax 11.35.

(b) *Use tax registration certificate.* Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit or who is not engaged in business in this state but elects to collect use tax for the convenience of its Wisconsin customers shall have a use tax registration certificate.

(c) *Consumers use tax registration certificate.* Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a consumers use tax registration certificate.

(3) **APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES.** A person required to have a seller's permit or one of the use tax certificates described in sub. (2) shall file an "Application for Permit", form A-101, with the department at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required.

Note: Form A-101 may be obtained at any department office, or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(4) **REVIEW AND ACTION BY DEPARTMENT.** The department shall review and make a determination on an application for a seller's permit or use tax certificate described in sub. (2) within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that security is required or that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; am. (2) (a), (3), and (4) (intro.), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.01 Sales and use tax return forms. (ss. 77.58 and 77.75, Stats.)

(1) For filing sales and use tax returns, the following forms shall be used:

Register, April, 1993, No. 448

(a) Form MV-1. A department of transportation form for occasional and dealer sales of motor vehicles, mobile homes, trailers and semi-trailers.

(b) Form S-012. Also called form ST-12. The monthly, quarterly or annual return for each person holding a Wisconsin seller's permit, use tax registration certificate or consumer's use tax registration certificate.

(c) Form S-013. The annual return for concessionaires and temporary sellers.

(d) Form S-014. The individual event permit and return for concessionaires and temporary sellers.

(e) Form SU-002. For occasional and dealer sales of boats, snowmobiles and all-terrain vehicles.

(f) Form SU-050. Also called form UT-5. For consumers other than persons holding a Wisconsin seller's permit, use tax registration certificate or consumer's use tax registration certificate.

(g) Form AR-1. A department of transportation form for occasional and dealer sales of aircraft.

(h) Form S-108. Also called form ST-12X. The amended sales and use tax return for filing refund claims or reporting additional taxes for prior periods.

(2) Forms required to be filed with the department shall be filed by mailing them to the address specified on the forms or by delivering them to 4638 University Avenue, Madison, Wisconsin.

Note: Forms may be obtained by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (a), r. (1) (d), cr. (1) (m), Register, January, 1983, No. 325, eff. 2-1-83; r. and recr., Register, March, 1991, No. 423, eff. 4-1-91; r. (1) (e), renun. (1) (f) to (i) to be (1) (e) to (h), Register, January, 1992, No. 433, eff. 2-1-92.

Tax 11.03 Elementary and secondary schools and related organizations. (ss. 77.52 (2) (a) and 77.54 (4), (9) and (9a), Stats.) (1) DEFINITIONS.

(a) In this section:

1. "Elementary school" means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable.

2. "Secondary school" means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in s. 119.30, Stats.

3. "School district" has the same meaning as provided for in s. 115.01 (3), Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par. (a) 1 and 2 and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year. Elementary and secondary schools also include school districts for purposes of exemption under s. 77.54 (4), Stats.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.
2. School lunches and library and book fines.
3. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees and equipment, when used for other than recreational, athletic, amusement or entertainment purposes.

Example: A school auditorium is rented to a religious group which conducts a religious revival. The gross receipts from the rental are exempt.

4. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees and equipment, when used by a promoter or professional group which will sell admissions to the public for recreational, athletic, amusement or entertainment purposes.

Examples: 1) A school gymnasium is rented to a professional basketball team which will sell tickets to the event. The gross receipts from the rental are exempt.

2) A school auditorium is rented to a popular band for one night. The band will sell tickets to its performance. The gross receipts from the rental are exempt.

5. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, films or other exhibits, lectures and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

6. The transfer of tangible personal property to a contractor for performance of a real property construction activity in exchange for a reduction in the contract price, even though the contract provides that the contractor is to supply all materials.

(b) Sales by elementary or secondary schools, the gross receipts from which are taxable, include:

1. Admissions to recreational facilities, such as golf courses, swimming pools, ball fields and gymnasiums which are open to the general public for recreational purposes.
2. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees and equipment, when used by persons for their own recreation, entertainment or amusement where there is no charge for admission.

Example: A local neighborhood group rents the school gymnasium for its residents to play volleyball. The neighborhood group does not charge its residents to play volleyball. The gross receipts from the rental are taxable. If the group charged an entry fee to play volleyball, the gross receipts from the rental of the gymnasium are not taxable because the rental is for resale.

3. Taxable services under s. 77.52 (2) (a), Stats., such as parking and repair services.

Example: A school sponsors an athletic tournament and charges \$1 for parking. The gross receipts from parking are taxable.

(3) **SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS.** Sales by school-related organizations and others, not including school districts, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers where the school acts as a collection agent for the seller, whether or not the school receives a commission for the collection. The retailer, such as a photographer, is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) **SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS.** Under s. 77.54, Stats., gross receipts from sales to the following organizations are exempt:

(a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status, such as parent-teacher associations and student organizations.

Note: The interpretations in s. Tax 11.03 are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972, through October 3, 1973.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (a), (2) (a) 3., (3) (a) and (4) (c), renum. (2) (a) 4. to be 5., cr. (2) (a) 4., r. and recr. (2) (b), Register, September, 1991, No. 429, eff. 10-1-91; r. and recr. (1) (a), am. (1) (b), (3) (intro.) and (a), cr. (2) (a) 6., Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.04 Constructing buildings for exempt entities. (ss. 77.51 (2) and (14), 77.54 (9a) and 77.55 (1), Stats.) (1) **DEFINITION.** In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, or any county, municipality as defined in s. 41.02 (4), Stats., school district or other political subdivision; any 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. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated agency of instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) **TAXABLE GROSS RECEIPTS.** Sales of building materials to contractors or subcontractors used in the construction of buildings or structures, Register, April, 1993, No. 448

or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) **PURCHASES PRESUMED TAXABLE.** When a contractor and an exempt entity enter into a construction contract to improve real property, which provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(4) **SUPPLIER IS CONTRACTOR.** A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. The sale of building materials to the consumer is subject to the tax.

(5) **EXEMPT GROSS RECEIPTS.** A supplier's sales of building materials made directly to an exempt entity are not taxable, even though such tangible personal property is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received from the exempt entity.

Note: The interpretations in s. Tax 11.04 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

Tax 11.05 Governmental units. (ss. 77.51 (4) (c) 6 and (10), 77.52 (2) (a) 1, 2, 9 and 20 and 77.54 (9a), (10), (15), (17), (20), (30), (32), (37) and (42), Stats.) (1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following:

(a) Admissions to recreational facilities.

Example: Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable.

(b) Food and gift stand sales, including sales of sandwiches, beverages, candy, cigarettes, ice cream, confections, tobacco products, postcards, books, magazines and other periodicals described in s. Tax 11.19, and novelties. Newspaper sales are exempt.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities, such as baseball and softball diamonds, stadiums and gymnasiums, including entry fees.

(e) Sales of electricity, gas and steam by municipal utilities, except as provided in sub. (3) (b).

(f) Sales of maps, plat books, photocopies or other printed material, except as provided in sub. (3) (p).

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units may collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.

(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges or universities operated by governmental units.

(j) Vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer, including sales of these items by hospitals, sanatoriums and nursing homes to patients, employees or guests.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies, including sales by vocational, technical and adult education schools. Sales of tangible personal property by elementary and secondary schools are exempt under s. 77.54 (4), Stats.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles as provided in par. (g).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

(r) The gross receipts from parking and providing parking space for motor vehicles and aircraft, and docking or providing storage space for boats.

(s) The gross receipts from landscaping and lawn maintenance services, including weed cutting in lawn, garden and other developed areas, but not charges for damages described in sub. (3) (c).

(3) NONTAXABLE RECEIPTS. Gross receipts of governmental units from the following are not taxable:

(a) Fees for licenses and permits, including tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits or I.D. cards issued exclusively for obtaining admission to facilities or events taxed under s. 77.52 (2) (a) 2, Stats.

(b) Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use. Electricity and natural gas sold for residential use and electricity sold for farm use during the months of November through April. "Sold" is defined in s. 77.54 (30) (b), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (1) 7.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines, including charges for books that are not returned or charges for a duplicate library card.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable unless a combined charge is made for removal and bags or receptacles and the amount allocated to the bag or receptacle is incidental to the charge for removal.

Example: A city government provides that in order to have trash removed by the city, the trash must be put in special bags which are sold for \$1 each. The \$1 charge is allocated as follows: 18¢ for the bag, 42¢ for removal and 40¢ for cost of the disposal site. The \$1 charge for the bag is not subject to tax because the transfer of the bag is incidental to the sale of the waste removal service.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.

(k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(l) Meals, food, food products or beverages, except soda water beverages and beer, sold by hospitals, sanatoriums and nursing homes to patients, employees or guests; meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals; and meals sold to the elderly or handicapped by "mobile meals on wheels."

(m) Service charges for snow removal, police officers at social gatherings, service of legal papers including summons, complaints and civil process, and ushers and door guards.

(n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.

(o) Fees charged for admission to a university student union building.

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officer and clerk of court under ss. 59.42, 59.57 and 69.22, Stats., or by a filing officer under s. 409.407 (2), Stats., and fees charged by a register in probate pursuant to s. 814.66, Stats. Also, charges by an "authority," as defined in s. 19.32 (1), Stats., for copying a record under s. 19.35 (1) (a), Stats., including charges for a search of records.

(q) The sale of all admission fees or admission stickers to state parks and recreational areas in state forests imposed under s. 27.01 (7), (8) and (9), Stats.

(r) Camping fees in Wisconsin state parks imposed under s. 27.01 (10) (d), Stats.

(s) Admissions to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

(t) Gross receipts from telecommunications revenues collected in establishing a "911" emergency telephone system under s. 146.70 (3), Stats.

(u) Animal identification tags and standard samples representing product or commodity grades only when sold by the Wisconsin department of agriculture, trade and consumer protection.

(4) PURCHASES. (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 144.07 (4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26, Stats., or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

Note: Refer to s. Tax 11.04 regarding the purchase of building materials used in the construction of buildings for governmental units.

(b) A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

(c) A Wisconsin governmental unit's payments to retailers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and all 3 of the following conditions apply:

1. The governmental unit gives the retailer a purchase order.
2. The retailer issues the billing or invoice for the purchases in the name of the governmental unit.
3. The retailer keeps a copy of the governmental unit's purchase order and the retailer's billing or invoice to substantiate that the sale was exempt from sales and use tax.

Example: A governmental unit intends to purchase clothing for a welfare recipient. The governmental unit gives a purchase order to the retailer and the retailer makes the invoice out to the governmental unit. The sale is not subject to sales tax if the welfare recipient pays the retailer with funds given to the recipient by the governmental unit or if the governmental unit pays the retailer directly.

(d) Purchases by state chartered credit unions are subject to the tax. Purchases by federally chartered credit unions and federal reserve banks are not subject to the tax.

(e) Purchases, including lodging, meals or uniforms, by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental

unit, receives a purchase order or similar written document from the governmental unit and keeps a copy of both documents.

(f) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United States government providing for sales and use tax exemptions are exempt provided the personnel present their tax exemption card issued by the United States department of state showing their tax exemption number.

Note: The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972, through October 3, 1973; (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973; (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977; (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, and the electricity and natural gas six-month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979; (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980, pursuant to Chapter 221, Laws of 1979; (f) Landscaping and lawn maintenance services became taxable on May 1, 1982, pursuant to Chapter 317, Laws of 1981; (g) A governmental unit's charges for copying public records became exempt effective April 27, 1984, pursuant to 1983 Wis. Act 287, later amended effective April 2, 1986, pursuant to 1985 Wis. Act 149 to clarify that the exemption also applies to confidential records, and again amended effective May 1, 1992, pursuant to 1991 Wis. Act 269, to include records under s. 19.35 (1) (a), Stats.; (h) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption for an agency or instrumentality of a Wisconsin governmental unit became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wis. Act 27; (k) The exemption for admissions to a museum operated by a nonprofit corporation under lease with the state historical society became exempt July 20, 1985, pursuant to 1985 Wis. Act 29; (L) The exclusion of hospital service insurance corporation from the definition of exempt entity became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (m) Revenues from establishing a "911" emergency telephone system became exempt August 1, 1987, pursuant to 1987 Wis. Act 27; (n) State park camping fees became exempt effective September 1, 1989, pursuant to 1989 Wis. Act 31; and (o) The exemption for animal identification tags and standard samples by the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (e) and (i), cr. (2) (r), r. and recr. (3) (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (b) and (m), (3) (a), (l), (m) and (p), cr. (2) (s) and (3) (q), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (p), Register, July, 1987, No. 379, eff. 8-1-87; reprinted to correct error in (2) (p), Register, October, 1987, No. 382; am. (3) (b) and (4) (intro.), Register, June, 1990, No. 414, eff. 7-1-90; am. (2) (a), (d), (i), (k) and (o), (3) (i), (L), (p) and (q), and (4) (intro.), (d) and (e), cr. (3) (r), (s) and (t), r. and recr. (4) (b), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (p), renum. (4) (intro.) to (e) to be (4) (a) to (f), Register, April, 1993, No. 448, eff. 5-1-93; am. (2) (f) and (g), (3) (l), (4) (c) (intro.), 1. and 2., cr. (3) (u), Register, April, 1994, No. 460, eff. 5-1-94.

Tax 11.08 Medical appliances, prosthetic devices and aids. (s. 77.54 (14s), (22) and (28), Stats.) (1) **DEVICES FOR HANDICAPPED PERSONS.** Section 77.54 (22) (a), Stats., exempts gross receipts from the sale of "*Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a*

Next page is numbered 159

brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes parts and accessories and trusses, supports, shoes and braces when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays. The following items normally are not designed for use by a particular person, and if that is the case, do not qualify for the exemption:

- (a) Kidney dialysis equipment.
- (b) Special communication equipment for the deaf.
- (c) Hydraulic lifts for wheelchairs.
- (d) Humidifiers.
- (e) Stationary walking machines.
- (f) Stairway chair elevators.

Note: The gross receipts from the sale and installation of a stairway chair elevator considered to be a real property improvement are exempt from sales tax.

(g) Electric nerve stimulators.

(h) Insertion or application equipment and supplies used to insert or apply exempt devices.

(2) PROSTHETIC DEVICES, APPLIANCES AND AIDS. Section 77.54 (22) (b), Stats., exempts gross receipts from the sale of "*Artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body.*" This exemption includes parts and accessories. "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to:

(a) Garments designed to restrict or enhance the body's shape for cosmetic purposes, or to wigs or hair pieces.

(b) Incontinent briefs, pads, shields or adult diapers.

Note: Gross receipts from the sale of adult cloth diapers are exempt from tax under s. 77.54 (40), Stats.

(d) Bed wetting alarm systems.

(e) Blood pressure kits.

(f) Insertion or application equipment and supplies used to insert or apply exempt devices.

(3) EYE GLASSES. Section 77.54 (22) (d), Stats., exempts gross receipts from the sale of "*Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser.*" This exemption does not include tools and supplies, eyeglass cases and thermal and chemical care units for contact lenses associated with eye glasses. Frames, parts and accessories for prescription glasses are exempt.

(4) CRUTCHES AND WHEELCHAIRS. Section 77.54 (22) (e), Stats., exempts gross receipts from the sale of "*Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled.*" This exemption includes parts and accessories and open and

closed end walkers with or without casters and canes which provide walking support by making contact with the ground at more than one point.

(5) **ELASTIC HOSE AND STOCKINGS.** Section 77.54 (22) (f), Stats., exempts gross receipts from the sale of "*Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer.*" This exemption includes parts and accessories.

(6) **OXYGEN EQUIPMENT.** Section 77.54 (14s), Stats., exempts the gross receipts from the sale of "*equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen.*" The exemption applies to oxygen carts acquired for use by patients with a prescription for oxygen.

(7) **DIABETES EQUIPMENT.** Section 77.54 (28), Stats., exempts gross receipts from the sale to the "*ultimate consumer of apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level.*"

Example: Gross receipts from the sale of blood glucose test strips and blood glucose monitors are exempt from sales and use tax.

(8) **ADAPTIVE EQUIPMENT FOR MOTOR VEHICLES.** Section 77.54 (22) (g), Stats., exempts gross receipts from the sale of 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., if that equipment is purchased by the handicapped person who will use it, a person acting directly on behalf of that handicapped person or a nonprofit organization.

(9) **PARTS, ACCESSORIES AND SERVICE.** Gross receipts from the sale of repair parts and service for exempt property are exempt. In addition, gross receipts from the sale of parts and accessories for items exempt under s. 77.54 (22), Stats., are exempt.

Note: The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a handicapped person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; and (f) The exemption for parts and accessories became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (1) and (4), Register, July, 1978, No. 271, eff. 8-1-78; am. (1), (2) and (3), Register, January, 1983, No. 325, eff. 2-1-83; r. (2) (c), renum. (5) to be (6), cr. (5), Register, September, 1984, No. 345, eff. 10-1-84; am. (4), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), cr. (5), (7) and (8), renum. (5) and (6) to be (6) and (9), Register, March, 1991, No. 423, eff. 4-1-91; am. (1) (intro.), (2) (intro.), (3) to (6), (8) and (9), r. (1) (d), renum. (1) (e) to (i) to be (1) (d) to (h), Register, May, 1993, No. 449, eff. 6-1-93.

Tax 11.09 Medicines. (s. 77.54 (14), (14g), (14m), (14r), (14s) and (33), Stats.) (1) **DEFINITION.** For the exemption in s. 77.54 (14), Stats., "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use.

Register, May, 1993, No. 449

(2) **EXAMPLES OF MEDICINES.** Medicines include the following items described in sub. (1):

- (a) Bone pins.
- (b) Dyes.
- (c) Insulin furnished by a registered pharmacist.

Next page is numbered 161

- (d) Liquids.
- (e) Oxygen for medicinal purposes.
- (f) Oral contraceptives.
- (g) Pacemakers.
- (h) Pills.
- (i) Powders.
- (j) Salves and ointments.
- (k) Suppositories.
- (l) Sutures.
- (m) Vaccines.
- (n) Vitamins.
- (o) Other medicinal preparations consumed orally, injected or applied.
- (p) Other articles permanently implanted in the human body which remain or dissolve in the body.

(3) ITEMS WHICH ARE NOT MEDICINES. Items which are not described in sub. (1) and which are not medicines include:

- (a) Alcoholic beverages, soda water beverages or distilled water.
- (b) Auditory, prosthetic, ophthalmic or ocular devices or appliances.
- (c) Medical supplies, including bandages, compresses, dressings, pads, splints and supports.
- (d) Medical instruments or equipment.
- (e) Cast materials.
- (f) Intra-uterine devices.

(4) EXEMPT SALES OR USE OF MEDICINES. Medicines shall be exempt if:

(a) Prescribed by a licensed physician, surgeon, podiatrist or dentist for treatment of a human being and dispensed on prescription filled by a registered pharmacist in accordance with law. However, oxygen prescribed by a licensed physician, surgeon, podiatrist or dentist shall be exempt even if it is not dispensed by a registered pharmacist.

(b) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being.

(c) Furnished by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment of the patient.

(d) Furnished by a hospital for treatment of any person by the order of a licensed physician, surgeon, dentist or podiatrist. For this exemption, "hospital" has the meaning described in s. 50.33 (2), Stats., and does not include nursing homes.

(e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for

the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(5) **TAXABLE SALES OF MEDICINES.** Taxable sales of medicines include:

- (a) Retail sales for use in laboratories.
- (b) Retail sales of medicines for pets and work stock, but not for farm livestock.

Note: For exemption of medicines used on farm livestock or other animals, refer to ss. Tax 11.12 and 11.61.

(6) **TAXABLE USE OF MEDICINES.** Persons who sell medicines are subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) on samples furnished without charge to hospitals, physicians, surgeons, podiatrists or dentists.

Note: The interpretations in s. Tax 11.09 are effective under the general sales and use tax law on and after September 1, 1969.

History: History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; r. (3) (g), Register, September, 1984, No. 345, eff. 10-1-84; am. (4) (d) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (b), Register, June, 1990, No. 414, eff. 7-1-90; am. (2) (c), (3) (c) and (4) (a), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.10 Occasional sales. History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (6) (e), Register, February, 1979, No. 278, eff. 3-1-79; am. (4) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (b) (intro.) and (e), (4) (c), (6) (a), (b) and (d), r. and recr. (3) (c), cr. (6) (f) to (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (a) 3. and (b) 2., Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (c) 2., (d) and (e), (4) (d) and (f), cr. (5), r. (6), Register, April, 1985, No. 352, eff. 5-1-85; am. (4) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (3) (c) 2., (d) and (e), Register, December, 1987, No. 384, eff. 1-1-88; cr. (3) (f), Register, April, 1989, No. 400, eff. 5-1-89; am. (4) (c), Register, April, 1990, No. 412, eff. 5-1-90; r. Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.11 Industrial or governmental waste treatment facilities. (s. 77.54 (26), Stats.) (1) **GENERAL.** Section 77.54 (26), Stats., provides a sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility.

(2) **INDUSTRIAL WASTE TREATMENT EXEMPTION.** (a) If an industrial or utility waste treatment facility qualifies for the property tax exemption under s. 70.11 (21) (a) or 76.02 (10), Stats., as approved by the department, it qualifies for the sales and use tax exemption under s. 77.54 (26), Stats.

(b) When any plant or equipment has been approved as exempt from the property tax on January 1, the repair, service, alteration, cleaning, painting and maintenance of the exempt property and the repair parts and replacements related to that property are also exempt through the following December 31. The sales and use tax exemption applies to chemicals and supplies used or consumed in operating a waste treatment facility, except as provided in par. (c).

(c) The sale of electricity for the operation of an industrial waste treatment facility is not a supply and, therefore, is not exempt.

(3) **MUNICIPAL WASTE TREATMENT EXEMPTION.** (a) Only the central waste treatment plant which actually treats the sewage qualifies for the exemption.

Register, June, 1991, No. 426

(b) Storm sewers, water supply systems and private domestic waste water facilities do not qualify for the sales and use tax exemption.

(c) The collection system throughout the area served by the treatment facility, the effluent pipeline carrying the treated sewage away from the central treatment plant, earthen dikes and chain link fences on the boundary of a treatment plant, and dredge material disposal sites are not exempt. The collection systems includes the lift stations, force mains and associated pumping equipment used to bring the raw sewage to the central treatment plant.

(d) The repair, service, alteration, cleaning, painting and maintenance of a municipal central waste treatment facility, the repair parts and replacements therefor, and chemicals and supplies used or consumed in operating a waste treatment facility are exempt from the sales and use tax.

(4) CONTRACTORS AND SUBCONTRACTORS. (a) *Exempt purchases.* The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates the property into an approved industrial waste treatment facility or who incorporates the property into a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sale. Certification of exempt use shall be made on a certificate of exemption, form S-207.

Note: Form S-207 may be obtained by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b) *Taxable purchases.* A contractor's purchases of items used or consumed in the performance of the construction contract, and which do not become a component part of the waste treatment facility, are subject to the tax. This includes industrial gases, form lumber, tunnel shields and supplies used by a contractor during construction. Payments by a contractor for equipment purchased or leased to perform a construction job are also taxable.

(c) *Determining exemptions.* Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department for a property tax exemption under s. 70.11 (21), Stats. If there has been no "approval", the contractor or subcontractor may be liable for the sales or use tax on its purchases. Approvals are not required for municipal waste treatment facilities and, therefore, contractors may purchase without tax construction materials which become a component part of the exempt facility.

Note: 1) Contractors and others may determine whether an industrial waste treatment facility has been approved by the department as follows:

a. Public utility facilities, including railroads, airlines and pipelines: Write or call the Department of Revenue, Bureau of Utility and Special Taxes, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608)266-3565.

b. Other commercial or industrial facilities: Write or call the Department of Revenue, Bureau of Property Tax, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608)266-8606.

2) Refer to ss. Tax 6.40 and 12.40 for information on how to request approvals for property tax exemption.

3) The interpretations in s. Tax 11.11 are effective July 31, 1975, when ss. 70.11 (21) and 77.54 (26), Stats., were revised, except that the exemption for chemicals and supplies used or

consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (2), (4) (b) and (5) (d), r. and recr. (3), Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (b), (3) (a) and (b) and (5) (b), Register, September, 1984, No. 345, eff. 10-1-84; cr. (2) (c), r. (1) (b) and (3), renum. (1) (a) to be (1) and am., renum. (2) (a), (b) and (c) to be (4) (a), (c) and (b) and am., renum. (4) to be (2) and am. (2) (a) and (b), renum. (5) (a), (b), (c) and (d) to be (3) (b), (a), (c) and (d), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.12 Farming, agriculture, horticulture and floriculture. (ss. 77.52 (2) (a) 10 and 77.54 (3), (3m), (27), (30), (33) and (34), Stats.) (1) STATUTES. Section 77.54 (3) and (3m), Stats., provides exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture and floriculture as a business enterprise.

(2) DEFINITIONS. In this section and s. 77.54 (3), (3m) and (30), Stats.:

(a) "Animal bedding" used in farming means disposable loose materials, including straw, shavings, sawdust, leaves, sand and shredded paper, used where an animal may lie, to promote cleanliness and absorb urine or liquid manure. It does not include nonabsorbent items, including rubber floor mats.

(b) "Custom farming services" means the performance of an activity, defined as farming in this section, for a farmer for a fee. The fee may include a cash payment, a share of the harvest or other valuable consideration.

(c) "Dairy farming" means the business of feeding and raising cattle and other milk producing animals, but does not include operations such as pasteurizing, homogenizing or making butter, cheese or ice cream.

(d) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "farming" includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses and llamas for sale; and raising ginseng, mushrooms and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; raising earthworms; operating sporting or recreational facilities, such as riding stables or shooting preserves; operating stockyards, slaughterhouses or feed lots as described in par. (g); lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

(e) "Farm livestock medicine" means any substance or preparation intended for use by external or internal application to farm livestock in the cure or treatment of disease and which is commonly recognized by veterinarians as a substance or preparation intended for that use. This includes antibiotics, drugs, mastitis treatments and vaccines in the form of boluses, capsules, feed additives, fluids, pills, powders, ointments and salves. "Farm livestock medicine" does not include medicines for work stock, riding horses or small domestic animals, including dogs and cats. It also does not include vitamins, dewormers, teat dip, udder wash, disinfectants, shampoos, pet foods, flea powder and flea sprays, laboratory

equipment used by a veterinarian, bandages, or plaster of paris that is used to set an animal's broken bone.

(f) "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase does not include dogs, riding horses, racing horses or laboratory animals. The food for animals which are not farm work stock is taxable.

Example: Dog and cat food is taxable.

(g) "Feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for the livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

(h) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants or shrubs, including such operations as greenhouses.

(i) "Horticulture" means the business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial nurseries and orchards but not businesses which hold stock for purposes other than propagation or growth. "Horticulture" does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(j) "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals or animals which are a source of wool, such as llamas, including those purchased for breeding.

(k) "Milk house supplies" means items used exclusively in producing and handling milk on dairy farms, including milk filters, soaps, detergents, udder washes and balms, pipeline cleaners, manual cleaners, acid cleaners, disinfectants and sanitizers such as iodine and chlorine, teat dips, teat dilators, paper towels, insect strips, cloth udder towels, udder sponges, brushes and brooms, window cleaners and water softener salt. The exemption for milk house supplies does not include equipment such as dispensers, jug and barrel pumps, sinks, faucets, washup hoses and nozzles, buckets and pails, milk cans, strainers for milk cans or coolers, and electricity.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. The standard "farmer's exemption certificate," form S-206, provides for continuous use under certain conditions. The certificate shall be used only for categories of items listed on it. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4) STATUTORY EXEMPTIONS. (a) Section 77.54 (3) (a), Stats., exempts: "The gross receipts from the sales of and the storage, use or other consump-

tion of tractors and machines, including accessories, attachments and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property and excluding tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that that personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine.” For purposes of this section:

1. Directly. Items used “directly” in farming include a plow and a combine. Items of “indirect” or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, and lawn and garden tractors.

2. Exclusively. “Used exclusively” means used to the exclusion of all other uses except for other uses not exceeding 5% of total use.

3. Accessories, attachments and parts. Included within the exemption are accessories, attachments and parts for tractors and machines used directly in agriculture. “Accessories” and “attachments” include devices designed to be mounted on a machine or to be pushed or pulled by a machine such as farm wagons and pipes attached to irrigation pumps. A machine “part” means a durable unit of definite, fixed dimensions and includes tractor cabs, oil filters and slow-moving-vehicle signs. Canvas covers and paint for exempt machines are exempt. “Parts” does not include fluids such as antifreeze or lubricants. These are “supplies” rather than “parts” and are not exempt.

4. Machines. a. “Machine” means an assemblage of parts that transmit force, motion and energy from one part to another in a predetermined manner.

b. “Machines which qualify for exemption” include, if not realty improvements, all-terrain vehicles or trucks not licensed for highway use, balers, chain saws for orchard use but not for use in lumbering, pulping or cutting firewood, choppers, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, end loaders, electric clippers and hoof trimmers, electric dehorners, electric fence chargers not fencing or insulators, electric foggers, fork lifts, harrows, harvesting combines, hay wagons, manure spreaders, mowers, planters, plows, powered posthole diggers, pumps and associated piping for irrigation, rock pickers, rotary hoes, space heaters not for residential use, sprayers, stalk shredders and windrowers.

c. “Machines which do not qualify for exemption” include personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property. Also, tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that the personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine does not qualify for exemption. However, there is an exception for those items specifically mentioned in subpar. d.

d. The following items are deemed by statute to retain their character as tangible personal property and qualify for exemption, regardless of the extent to which they are fastened to, connected to or built into real property: auxiliary power generators, bale loaders, barn cleaners and elevators, conveyors, feed elevators and augers, grain dryers and grinders, irrigation implements, milk coolers, milking machines, including piping, pipeline washers and compressors, top and bottom silo unloaders and powered feeders, excluding platforms and troughs constructed from ordinary building materials.

5. Real property improvements. a. "Building" means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals or plants, for storing property or for working, office, parking, sales or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to the real property; that is covered by a roof or encloses space; that is not readily moved or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

b. Certain machines in addition to those in subd. 4 qualify for the exemption if purchased by farmers directly from retailers, even though they are used to make realty improvements. Machines included are automated livestock feeder bunks, but not ordinary building materials; automatic stock waterers powered by electricity or water pressure and built into a permanent plumbing system; automatic water softeners, such as for milkhouses; barn fans and blowers and other ventilating units; unit heaters and other heating units; water heaters serving production areas; and water pumps serving production areas.

c. A person, such as a plumbing contractor, who contracts with a farmer to provide and install a machine permanently into real estate is a consumer of the machine, not a seller. The contractor, not being a farmer, may not furnish a farmer's exemption certificate on the person's purchase of the machine. Being the consumer, the contractor shall pay the sales tax to the supplier or report the use tax on the purchase price directly to the department.

6. Motor vehicles. Specifically excluded from the statutory exemption are "motor vehicles for highway use," including motor trucks, automobiles, station wagons, buses and motorcycles. "For highway use" means licensed for that use. Sales of parts, supplies and repairs for vehicles for highway use, including nurse tanks and trailers, are also taxable.

7. Other non-exempt sales. The exemption does not apply to:

a. Tools used in construction or for making repairs to real estate or farm machinery, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

b. Building materials used to repair or improve real estate such as cement, drain tile, fencing, light fixtures, lumber, nails and stanchions.

c. Non-powered applicators for insecticides, cattle chutes, farrowing crates, feed carts, fire extinguishers, flood gates, non-powered gravity flow feeders, saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations, or "oil-ers," snowmobiles, stationary salt and mineral feeders.

8. Sales and use tax. A person who buys without tax by claiming the farming exemption owes the sales tax at the time the person uses the item purchased 5% or more of total use for a nonexempt purpose.

(b) Section 77.54 (3m), Stats., exempts: *“The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise.”* “Exclusively” as used in s. 77.54 (3m), Stats., and in this section means that the items mentioned in s. 77.54 (3m), Stats., are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for such items will not be invalidated by an infrequent and sporadic use other than in farming. For purposes of this section:

1. Seeds for planting. “Seeds for planting” includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and vegetable seeds; plant parts capable of propagation; and bulbs. “Seeds for planting” does not include sod.

2. Plants. “Plants” include herbs, shrubs or young trees, slips or saplings planted or ready to plant.

3. Feed. a. “Feed” includes processed vegetable and animal products and essential minerals required for the normal nutritional needs of livestock, poultry and domestic fur-bearing animals and other materials which are required for the normal nutritional needs of animals in some domestic environments, such as vitamins A, B-complex, D and E. Essential minerals include phosphorous, calcium, sodium, chlorine, iodine, iron, copper, sulfur, potassium, magnesium and zinc. Common feed additives containing these substances include cod liver oil, salt in granular or block form, ground limestone, fish oil, fish meal, oyster shells and bone meal.

b. “Feed” includes medicated feed or drug carriers purchased for use as an ingredient of medicated feed, the primary purpose of which is the prevention of diseases in livestock or poultry. “Feed” does not include a mixture labeled and sold for specific treatment or cure of a disease. Feed for farm livestock, poultry and work stock is exempt but feed for pets, such as dogs and cats, is taxable.

4. Fertilizers and soil conditioners. a. “Fertilizer” means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used primarily for its plant food content to improve the soil’s agricultural qualities. “Fertilizer” and “soil conditioners” include fertilizer and insecticide combinations, agricultural minerals, carbon dioxide for application to land, urea, sewage sludge, liquid spray mixtures of minerals and plant nutrients, lime, compost, manure, peat moss and soy bean straw.

b. “Fertilizer” and “soil conditioners” do not include fill dirt, top soil, wood chips, wood shavings, litter and hormone growth stimulants.

Note: The difference between fertilizers and hormone growth stimulants is that fertilizers nourish plants whereas hormone growth stimulants act upon the cellular structure.

5. Sprays, pesticides and fungicides. "Sprays," "pesticides" and "fungicides" include disinfectant sprays, fly sprays and preparations used to destroy insects, mites, nematodes, slugs or other invertebrate animals injurious to plants and animals; chemicals used for crop disease, pest and weed control, including insecticides, rodenticides and pesticides used to sanitize and clean dairy equipment. Products used to sanitize dairy equipment are exempt, if they are registered with the U.S. environmental protection agency, or "EPA," as pesticides, advertised and sold as pesticides, and each bottle, can or other container containing the pesticide has an EPA pesticide registration number on it.

6. Containers for fruits, vegetables, grain and animal wastes. a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains or animal wastes. The phrase does not include feed carts designed to hold various green and dry feeds.

b. A complete corn crib or grain bin may be purchased "knocked-down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install the bin permanently into real estate is a consumer of the bin, not its seller. The contractor, dealer or installer, not being a farmer, may not furnish a farmer's exemption certificate on the bin's purchase. Being the consumer, not a seller, the contractor shall pay the sales tax to the supplier or report the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) on the purchase price directly to the department. A farmer who utilizes the farmer's exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. Farmers may purchase animal waste containers or the component parts thereof without tax, by issuing their supplier a properly completed "single purchase" farmer's exemption certificate.

d. Silos are not included in the exemption. The purchaser of materials used in building a silo shall pay the sales tax to the purchaser's supplier. A silo unloader may be purchased by a farmer as an exempt machine.

e. Milk cans are not covered by the farmer's exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

7. Semen. Semen used for artificial insemination of livestock is exempt.

Note: Section 77.54 (30) (a) 3, Stats., exempts electricity sold for use in farming, including agriculture, dairy farming, floriculture and horticulture during the months of November through April. Section 77.54 (30) (a) 5, Stats., exempts fuel sold for use in farming, including agriculture, dairy farming, floriculture and horticulture.

(5) SERVICES FURNISHED TO FARMERS. (a) The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under s. 77.54 (3) and (3m), Stats., are also exempt from the sales and use tax under s. 77.52 (2) (a) 10, Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses shod, but not when having riding horses shod.

(b) Breeding fees, and charges for artificial insemination of animals and veterinarians' services are not taxable.

(c) The exemptions under s. 77.54 (3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52 (2) (a), Stats., including telephone, laundry, dry cleaning and photographic services.

(6) **SERVICES PROVIDED BY FARMERS.** (a) *Nontaxable services.* The following services performed by farmers are not subject to the sales tax:

1. Custom work. The performance of custom farm services by one farmer for another farmer, such as harvesting hay or grain.

2. Training animals. The training of horses, dogs or other animals.

(b) *Taxable services.* The following services performed by farmers are taxable:

1. Boarding animals. The boarding of dogs, cats, riding horses, ponies or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed resale certificate.

2. Grooming animals. The grooming of recreational animals.

(7) **TAXABLE SALES.** Sales of tangible personal property by farmers which are taxable include:

(a) Gamebirds sold to persons, regardless of whether the birds are used as food for human consumption, if the primary reason for the purchase of the gamebirds is for hunting.

(b) Horses for use in racing, riding or show.

(c) Llamas for use as pack animals, pets or to herd sheep.

(d) Flowers, Christmas trees and other decorative trees, plants or shrubs.

(e) Timber or gravel when the purchaser acquires this property for removal.

Note: 1) The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Semen became exempt effective July 22, 1971, pursuant to Chapter 64, Laws of 1971; (b) Baling wire and twine became exempt effective December 24, 1975, pursuant to Chapter 146, Laws of 1975; (c) The exemption for electricity for residential use and use in farming and for fuel oil, propane, coal, steam or wood for residential use became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (d) The definition of "feed lot" became effective December 1, 1981; (e) Farm livestock medicine, milk house supplies and animal bedding became exempt effective July 1, 1986, pursuant to 1985 Wis. Act 29; (f) The definition of "exclusively used" became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (g) The farm machinery exemption was revised effective October 1, 1989, pursuant to 1989 Wis. Act 31; and (h) The exemption for farm fuel for items other than machines became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

2) Prior to October 1, 1989, and on or after December 1, 1981, "exclusively" meant used solely in farming to the exclusion of all other uses, except for infrequent or sporadic use other than farming.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; am. (2) (intro.), (4) (a) 1., (4) (b) (intro.) and (5) (c), renum. (2) (a) to be (2) (a) 1. and am., cr. (2) (a) 2., Register, November, 1981, No. 311, eff. 12-1-81; am. (2) (a) 1., (4) (b) 5., 6. c. and 9., Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (a) 1., 3. and 5., and (5) (c), cr. (5) (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (4) (a) (intro.) and 7., (4) (b) 6. b., Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (a) 1. and (4) (b) 7., cr. (7), Register, November, 1988, No. 395, eff. 12-1-88; renum. Register, April, 1993, No. 448

(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.

Tax 11.13 Direct pay. (s. 77.52 (17m), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Continuous" use of a direct pay permit means that the purchase without tax applies to the purchase being made from the retailer and subsequent purchases from that retailer and is considered a part of each order given to the retailer. The continuous use of the direct pay permit remains in force until the continuous use is voided by the direct pay permit holder.

(b) "Single purchase" use of a direct pay permit means that the purchase without tax applies only to the purchase being made from a retailer for which the direct pay permit is given.

(2) **GENERAL.** (a) The holder of a direct pay permit may purchase tangible personal property and taxable services, except those in sub. (6) (a) and (b), from a retailer without paying Wisconsin sales or use tax to the retailer.

(b) The direct pay permit holder shall report Wisconsin use tax on the sales price of tangible personal property or taxable services purchased from a retailer without tax using a direct pay permit if the property or service is subject to Wisconsin sales or use tax. The tax shall be reported on the direct pay permit holder's Wisconsin sales tax return for the period in which the taxable storage, use or consumption first occurs in Wisconsin.

Note: Sales price, for purposes of this paragraph, has the meaning specified in s. 77.51 (15), Stats.

(3) **ISSUANCE.** (a) The department shall issue a direct pay permit to those applicants who meet the qualifications set forth in s. 77.52 (17m) (b), Stats.

Note: The issuance of direct pay permits is effective for taxable years beginning on or after January 1, 1995.

(b) Persons who wish to obtain a direct pay permit shall apply to the department using the form prescribed by the department. A \$5 fee is required upon application.

Note: Application for direct pay is made using form S-101, application for direct pay permit. Form S-101 is available by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

(c) A direct pay permit shall be effective for purchases made beginning on the first day of the applicant's taxable year, for Wisconsin franchise or income tax purposes, after the permit is issued.

Example: A person's taxable year begins July 1 for Wisconsin franchise or income tax purposes. The person files an application for a direct pay permit with the department on January 1, 1995. The person is issued a direct pay permit which is effective for purchases made on or after July 1, 1995.

(4) **REVOCACTION OR CANCELLATION.** (a) A direct pay permit issued by the department may be used indefinitely until it is revoked by the department or cancelled by the holder.

(b) A permit may be cancelled by the holder by mailing the permit to the department for cancellation. A letter shall be enclosed with the permit, indicating the holder's intention to cancel the permit.

Note: The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902.

(c) The cancellation of a direct pay permit shall become effective immediately following the last day of the holder's taxable year in which the permit is received by the department.

(5) **USING DIRECT PAY.** (a) *Documentation.* A direct pay permit holder shall provide one of the following to a retailer when purchasing without paying tax to the retailer using a direct pay permit:

1. A copy of its direct pay permit. The direct pay permit holder shall also provide to the retailer a written statement as to whether the direct pay permit is for a single purchase or is continuous.

2. A written document containing all of the following:

a. The name and address of the direct pay permit holder.

b. A statement that the direct pay permit holder is purchasing without Wisconsin sales or use tax using a direct pay permit.

c. The direct pay permit holder's direct pay permit number.

d. The effective date of the direct pay permit.

e. A statement as to whether the use of the direct pay permit is for a single purchase or is continuous.

f. The signature of the direct pay permit holder.

(b) *Continuous use.* 1. If a direct pay permit holder indicates in writing to a retailer that the use of the direct pay permit is continuous, that purchase and all subsequent purchases from the retailer, except those in sub. (6) (a) and (b), shall be made without paying Wisconsin sales or use tax to the retailer using the direct pay permit, unless the continuous use is voided by the direct pay permit holder. The direct pay permit holder may void the continuous use of its direct pay permit by furnishing the retailer a letter indicating that continuous use no longer applies.

2. If the use of a direct pay permit is continuous, it is necessary for the direct pay permit holder to provide the documentation in par. (a) to a retailer only at the time the direct pay permit holder begins making purchases without paying tax to that retailer using the direct pay permit, rather than at the time of each purchase.

3. While the use of a direct pay permit is continuous, all purchases from a retailer, except those in sub. (6) (a) and (b), shall be made using the direct pay permit even though a resale certificate, manufacturer's exemption certificate, certificate of exemption or other exemption requiring different documentation may apply.

Example: On July 1, 1995, Company A begins using its direct pay permit when purchasing tangible personal property from Company B. Company A provides a written statement to Register, June, 1995, No. 474

Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or taxable services, except those described in sub. (6) (a) and (b), by Company A from Company B on or after July 1, 1995, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, a resale certificate, manufacturer's exemption certificate, or certificate of exemption should not be used when purchasing without paying tax to a retailer.

(c) *Single purchase.* If a direct pay permit holder uses its direct pay permit for a single purchase, any subsequent purchase by the direct pay permit holder from that retailer is subject to Wisconsin sales or use tax unless the direct pay permit holder provides the information in par. (a) for that purchase or that purchase is otherwise exempt from tax.

(d) *Retailer records.* The retailer shall keep the information provided by the direct pay permit holder under par. (a) on file as authorization for the direct pay permit holder to make purchases without paying tax to the retailer.

(6) **SERVICES AND PROPERTY NOT ELIGIBLE FOR DIRECT PAY.** (a) *Services.* A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sales of services to the direct pay permit holder under the following Wisconsin statutes:

1. Section 77.52 (2) (a) 1, Stats., relating to furnishing rooms or lodging.
2. Section 77.52 (2) (a) 2, Stats., relating to admissions to amusement, athletic, entertainment or recreational events, devices or facilities.
3. Section 77.52 (2) (a) 5, Stats., relating to telecommunications services.
4. Section 77.52 (2) (a) 9, Stats., relating to parking.
5. Section 77.52 (2) (a) 12, Stats., relating to cable television system services.
6. Section 77.52 (2) (a) 20, Stats., relating to landscaping services.

(b) *Property.* A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sale, lease or rental to the direct pay permit holder of the following tangible personal property:

1. Tangible personal property transferred to a purchaser in connection with the sale of landscaping services subject to tax under s. 77.52 (2) (a) 20, Stats.
2. Motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles or aircraft.
3. Food, food products and beverages described in s. 77.54 (20) (b), Stats.
4. Meals, food, food products and beverages subject to tax under s. 77.54 (20) (c), Stats.

(c) *Exemptions.* Although not eligible to be purchased without paying Wisconsin sales or use tax to a retailer using a direct pay permit, the taxable services and tangible personal property described in pars. (a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farm-

ing, manufacturing or other exemption applies. Documentation is required to purchase without tax, as provided in s. Tax 11.14.

(7) **RETAILER'S LIABILITY - PERMIT REVOKED OR CANCELLED.** A retailer is not liable for sales or use tax on gross receipts from the sale of tangible personal property or taxable services, except those described in sub. (6) (a) and (b), to a person who has provided the retailer with the appropriate information under sub. (5) (a), until the earlier of the following:

(a) The date the retailer is notified by the direct pay permit holder or the department that the holder's direct pay permit has been revoked by the department. A direct pay permit is considered revoked on the date the holder receives the department's notice of revocation.

(b) The last day of the direct pay permit holder's taxable year in which the retailer is notified by the holder or the department that the holder's direct pay permit is being cancelled by the holder as provided in sub. (4) (b).

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

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 s. 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 make
Register, June, 1995, No. 474

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 shall 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 shall be properly executed and dated and shall 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 may 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.

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 use of direct pay permits in Wisconsin is authorized under s. 77.52 (17m), Stats. A person may apply to the department for a direct pay permit.

Note: For information on who qualifies for a direct pay permit and how to use direct pay, refer to s. Tax 11.13.

(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: (a) The exemption for railroad lubricants became effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; and (b) The use of direct pay permits in Wisconsin became effective for taxable years beginning on or after January 1, 1995, pursuant to 1993 Wis. Act 437.

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; am. (2) (c), (3) (b) and (c), (6) (b) 4., r. and recr. (12), Register, June, 1995, No. 474, eff. 7-1-95.

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.

Next page is numbered 177

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.

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

(k) 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 certifi-

Register, July, 1993, No. 451

cate when such supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer without 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. (a) If a 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. If the sale of the property shipped is not subject to or is exempt from tax, the charge for packaging materials is not subject to or is exempt from tax. If the sale of the property shipped is subject to tax, the charge for packaging materials is subject to tax. This paragraph is applicable to the taxation of packaging materials regardless of whether the charge for packaging materials is separately stated or not separately stated.

(b) Any credit given by a seller or lessor to a customer for packaging materials used in connection with the shipment of property which the customer returns to the seller or lessor shall reduce the seller's or lessor's gross receipts subject to tax in the reporting period during which the materials are returned, if the seller or lessor included the selling price of the packaging materials in the gross receipts subject to tax, and the seller or lessor returns the tax to the customer.

(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; renum. (2) (k) and (l) to be (2) (j) and (k), am. (7), cr. (7) (b), Register, July, 1993, No. 451, eff. 8-1-93; correction in (1) (c) 10. made under s. 13.93 (2m) (b) 5, Stats., Register, July, 1993, No. 451.

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, buses, 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, buses, 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, buses, 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 include 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.

Next page is numbered 181

Examples: 1) A truck purchased to transport pads and packing materials to and from moving jobs qualifies for the exemption in par. (a).

2) Cutting down trees, cutting them into logs and hauling them to a mill as a private business operation voids the exemption in par. (a), even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

3) Trucks purchased for hauling refuse, garbage or snow do not qualify for exemption under par. (a).

4) Vehicles of a milk or cheese factory that engage in hauling milk from farms to its plant for processing do not qualify for the exemption under par. (a).

5) Towing of vehicles to the repair facility of a garage-wrecker operator is part of a private repair business which is not exempt under par. (a).

(2) **RAILWAY ROLLING STOCK.** (a) Section 77.54(12), Stats., provides a sales and use tax exemption for: *"The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor."*

(b) The exemption for rolling stock includes:

1. The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt rolling stock.

2. Purchases of any equipment which is operated on railroad rails, including an industrial firm's switching locomotives used to switch freight cars on its own property, except vehicles which may also be used on a highway.

3. Fuel used to heat a caboose, or run a compressor which cools a railway car.

4. A utility's coal cars used to haul coal from mines to the utility.

(c) The exemption does not apply to:

1. Rails, crossties and other road building and maintenance materials. However, sales of crossties to a common or contract carrier are exempt if they are shipped wholly or in part by way of the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside Wisconsin if the property is transported outside Wisconsin for use by the carrier in the conduct of its business as a carrier. The exemption will not be invalidated because of interruption of the shipment for storage, drying, processing or creosoting of the crossties in Wisconsin.

2. Bracing materials, rough lumber and dunnage materials.

3. Ice to refrigerate a railway car.

(3) **COMMERCIAL VESSELS.** (a) Section 77.54 (13), Stats., provides a sales and use tax exemption for: *"The gross receipts from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor."*

(b) The exemption for commercial vessels applies to:

Tax 11

1. Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more.

2. Items that become a component part of the exempt commercial vessel.

3. The sale or furnishing of repair, alteration, cleaning, painting and maintenance of exempt commercial vessels.

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, nets, fishing tackle, lumber for dry docking, bracing, blocking and dunnage materials and other materials not incorporated into the vessel.

Note: The interpretations in s. Tax 11.16 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The sale of packing materials to a service provider became taxable effective September 1, 1983, pursuant to 1983 Wis. Act 27; and (b) The exemption for certain railroad cross-ties became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (1) (a) and (d), (3) (b) 1., Register, November, 1981, No. 311, eff. 12-1-81; am. (3) (b) 1., Register, January, 1983, No. 325, eff. 2-1-83; am. (1) (b), (d) and (2) (b) 2., r. and recr. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (f) and (3) (b) 1., Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (3) (b) 1., Register, April, 1990, No. 412, eff. 5-1-90; correction in (1) (a) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1990, No. 412; am. (1) (a) and (d) and (2) (c) 1., r. (1) (g), renum. (1) (h) to be (g) and (1) (i) to be (h), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.17 Hospitals, clinics and medical professions. (ss. 77.52 (2) (a) 1 and 9 and 77.54 (9a), (14), (14g), (14m), (14r), (14s), (20) (c) 4, (22) and (28), Stats.) (1) **GENERAL.** (a) Although professional personnel in hospitals and clinics and other members of medical professions including physicians, surgeons, oculists, optometrists and podiatrists regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of that property is an incident of a service rather than a retail sale of the property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for medicines furnished by a licensed physician, surgeon or podiatrist to that person's patient for medical treatment. Section 77.54 (22), Stats., provides an exemption for medical appliances and prosthetic devices. The scope of these exemptions is set forth in ss. Tax 11.08, 11.09 and 11.45.

(2) **PURCHASES BY HOSPITALS.** Purchases by hospitals, except hospital service insurance corporations under s. 613.80 (2), Stats., are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a certificate of exempt status, "CES", by the department. When purchasing goods and services, a hospital shall furnish its CES number to its supplier, and the supplier may then make sales of every type of tangi-

ble personal property or services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) **PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSION.** Purchases made by medical clinics and physicians are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list shall be furnished to patients at the direction of a physician, surgeon or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of the health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

| Taxable | Exempt |
|-----------------------------------|---|
| Adhesive tape | Antiembolism elastic hose and stockings, including parts and accessories |
| Alcoholic beverages | *Apparatus and equipment for treatment of diabetes |
| Bandages, gauze and cotton | *Artificial eyes and limbs, including parts and accessories |
| Bed pans | *Blood sugar level testing supplies |
| Beds and linens | Bone pins and plates, including parts and accessories |
| Compresses and dressings | *Crutches and wheel chairs, including motorized wheelchairs and scooters, including parts and accessories |
| Cosmetics | Diaphragms |
| Deodorants and disinfectants | *Dietary foods |
| Distilled water | *Disposable syringes containing insulin |
| Enema kits | Dye |
| Instruments | *Hearing aids and parts, including parts and accessories |
| Laboratory equipment and supplies | Medical oxygen and equipment to administer oxygen |
| Medical equipment | Medicines |
| Office equipment and supplies | *Needles and syringes used by diabetics |
| Paper products | Oral contraceptives |
| Printed material | Pacemakers, including parts and accessories |
| Rib belts and supports | Prescription drugs |
| Soda water beverages | Prophylactics |
| Soap | Rubbing alcohol |
| Splints and cast materials | Suppositories |
| Uniforms and gowns | Sutures |
| X-ray film and machines | Vaccines |
| | Vaginal creams and jellies |
| | Vitamins |

(4) **SALES BY HOSPITALS, HOSPITAL AUXILIARIES, CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS.** (a) The gross receipts from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for rooms, medical services and other items including charges for anesthesia and anesthesia supplies, bandages applied in the hospital, blood and blood plasma, dressings applied in the hospital, intravenous solutions, laboratory tests, oxygen, radiation and x-ray treatment.

2. Hospitals' sales of meals, food, food products and beverages to patients, staff or visitors served on the hospitals' premises.

(b) The gross receipts from the sales of the following are taxable:

1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.

3. Sales of tangible personal property or taxable service by a clinic, which sales are not directly related to the rendition of medical services.

4. Sales of meals and other tangible personal property or taxable services by an organization affiliated with a hospital.

Examples: 1) If a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, and holds or is required to hold a seller's permit, gross receipts from this business are taxable.

2) Sales by a hospital auxiliary, which holds or is required to hold a seller's permit, of an emergency response system that links an individual to medical attention by pushing a button which transmits to a communicator connected to a telephone and sends an automatic call for help are taxable telecommunications services.

5. Sales of meals, food, food products and beverages by hospitals off the hospitals' premises, except when sold to the elderly or handicapped by persons providing "mobile meals on wheels."

6. An optometrist's sales of nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses and other types of tangible personal property ordinarily taxable when sold at retail, unless the gross receipts from those sales are less than \$1,000 within a calendar year. Optometrists whose receipts from taxable items equal or exceed \$1,000 annually shall register with the department and obtain a seller's permit. Those whose receipts from taxable items are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable items.

(5) **HOSPITAL DEFINITION.** Section 50.33 (2), Stats., provides the definition of hospital which is to be used for sales tax purposes.

Note: 1) 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.

2) The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for needles and syringes used by diabetics became effective November 19, 1975, pursuant to Ch. 102, Laws of 1975; (b) The exemption for oxygen equipment became effective September 1, 1983, pursuant to 1983 Wis. Act 27; (c) The exemption for motorized scooters became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for diabetic apparatus and equipment and supplies for determining blood sugar levels became effective March 1, 1989, pursuant to 1987 Wis. Act 399; (e) The exemption for antiembolism elastic hose and stockings prescribed by a physician became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The purchases by a hospital service insurance corporation under s. 613.80 (2), Stats., became taxable effective September 1, 1985, pursuant to 1985 Wis. Act 29; (g) The exemption for parts and accessories for certain medical equipment became effective October 1, 1991, pursuant to 1991 Wis.

Act 39; and (h) The sales of meals by hospitals off the hospital's premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78; am. (4) (a) 1. and cr. (4) (b) 5., Register, January, 1983, No. 325, eff. 2-1-83; am. (3), Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (a), Register, August, 1985, No. 356, eff. 9-1-85; am. (1) (b), (2), (3), (4) (b) 4. and (5), Register, March, 1991, No. 423, eff. 4-1-91; am. (1) (a), (3), (4) (a) 2. and (b) 4., renum. (4) (b) 5. to be (4) (b) 6. and am., cr. (4) (b) 5., Register, May, 1993, No. 449, eff. 6-1-93.

Tax 11.18 Dentists and their suppliers. (ss. 77.51 (13) (e) and (f) and (14) (L), 77.52 (2m) and 77.54 (14) and (22), Stats.). (1) DENTISTS' CHARGES. Charges by dentists for dental services are not subject to the sales tax. In addition, charges for items specifically designed for a patient which are installed in the patient's mouth, including artificial teeth, fillings, bridges, crowns, or inlays, and parts and accessories for those items, are not subject to the tax.

(2) EXEMPT SALES TO DENTISTS. (a) The gross receipts from the following sales to dentists are exempt under s. 77.54 (14) or (22), Stats.:

1. Medicines, including nitrous oxide, oxygen, novocaine and bone regeneration materials.

2. Gold, silver, other alloys used to fill teeth and cement and bonding agents used in conjunction with fillings.

3. Crowns, bridges, bridgework, dentures, inlays, fillings and other items fabricated by a dental laboratory, including parts and accessories for those items, which the dentist installs in the patient's mouth.

(b) The items described in par. (a) include braces and other corrective and supporting devices individually designed or constructed for a particular patient, such as braces made by dental laboratories at the prescription of the orthodontist or dentist, and teeth, mouth and jaw braces and supports which are not fitted until the dentist puts them in a patient's mouth, but which are recognizable as fabricated supports at the time the dentist buys them.

(3) TAXABLE SALES TO DENTISTS. (a) The gross receipts from the following sales to dentists are taxable:

1. Metal, wire, plastic or other materials purchased by a dentist which the dentist uses to construct braces and other teeth, mouth and jaw supports.

2. Dental equipment, surgical instruments, office equipment, office supplies and consumable supplies used by dentists to conduct their business.

(b) Items included in par. (a) include tongue depressors, bandages, cleaning paste, tooth brushes, dental floss and cotton.

Note: The interpretations in s. Tax 11.18 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for parts and accessories for certain items became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (1), r. and recr. (2) and (3), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) and (2) (a) 3., Register, May, 1993, No. 449, eff. 6-1-93.

Tax 11.19 Printed material exemptions. (ss. 77.51 (8), (13h), (18) and (22), 77.52 (2) (a) 11, 77.54 (2m), (9a), (15) and (25) and 77.55 (1),

Register, April, 1994, No. 460

Stats.) (1) GENERAL. All retail sales of tangible personal property, including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This section describes exemptions which commonly apply to sales of printed material.

(2) STATUTES. (a) Section 77.52 (2) (a) 11, Stats., imposes the sales and use tax on certain services. However, an exemption is provided for the printing or imprinting of tangible personal property furnished by customers, which property will be subsequently transported outside Wisconsin by the consumer for advertising purposes.

(b) Section 77.54 (15), Stats., provides an exemption for the sale of newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, of controlled circulation publications sold to commercial publishers for distribution without charge or mainly without charge or regularly distributed by or on behalf of publishers without charge or mainly without charge to the recipient and of shoppers guides which distribute no less than 48 issues in a 12-month period.

(c) Section 77.54 (25), Stats., provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin.

(d) Section 77.54 (2m), Stats., provides an exemption for the "*gross receipts from the sales of and storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient.*" This exemption applies to newspapers, shoppers guides and periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (8), Stats.

(e) Section 77.51 (13h), Stats., provides that a foreign corporation that is a publisher of printed materials is not engaged in business in Wisconsin and is not required to register and collect Wisconsin sales or use tax if its only activities in Wisconsin are:

1. The storage of its raw materials in Wisconsin in or on property not owned by the foreign corporation and delivery of its raw materials to another person in Wisconsin if the storage and delivery are for printing by that other person. "Raw material" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

2. The purchase from a printer of printing services or tangible personal property printed in Wisconsin for the publisher.

3. The storage of the printed material or raw material for any length of time in Wisconsin in or on property owned by a person other than the publisher.

4. Maintaining, occupying and using, directly or by means of another person, a place that is in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed material.

(f) Section 77.51 (18) and (22), Stats., provides that storage and use for purposes of imposing Wisconsin use tax does not include the keeping, retaining or exercising any right or power over raw materials for processing, fabricating or manufacturing into, attachment to or incorporation into printed materials to be transported outside Wisconsin and thereafter used solely outside Wisconsin.

(3) NEWSPAPERS, SHOPPERS GUIDES, CONTROLLED CIRCULATION PUBLICATIONS AND PERIODICALS DEFINED. (a) Section 77.51 (8), Stats., defines a "newspaper" under ch. 77, Stats., as: ". . . those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1) is a newspaper. 'Newspaper' also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A 'newspaper' does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."

(b) Section 77.54 (15), Stats., defines a shoppers guide as: "a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals" and it defines a controlled circulation publication 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 printed advertising 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, golf balls, binders and playing cards also do not qualify for the exemption.

(5) **RAW MATERIALS INCORPORATED INTO PRINTED MATERIALS.** Wisconsin use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53 (1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

(a) The raw materials are processed, fabricated or manufactured into, attached to or incorporated into printed materials.

(b) The resulting printed materials will be shipped outside Wisconsin for use solely outside Wisconsin.

Examples: 1) Company A, a Wisconsin company, publishes catalogs to promote the sale of its products. Company A purchases paper from a company that does not have nexus in Wisconsin. The paper is delivered to a Wisconsin printer that prints the catalogs for Company A. The catalogs are shipped outside Wisconsin for use solely outside Wisconsin.

The paper purchased by Company A for the catalogs is not subject to Wisconsin use tax.

2) Assume the same facts as 1) above, except that the company selling the paper is located in Wisconsin.

The paper purchased by Company A for the catalogs is subject to Wisconsin sales tax.

(6) **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 August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (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; (h) The provision 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; and (i) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16.

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; am. (2) (e) and (4) (b), cr. (2) (f) and (5), renum. (5) to be (6), Register, April, 1994, No. 460, eff. 5-1-94.

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.

Next page is numbered 189

(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.

Tax 11

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

TIONS. (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

(b) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer's tax liability accrues at that time.

(c) *Gifts shipped out-of-state.* When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) Persons transferring tangible personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of the property.

(e) *Gifts originally purchased for resale.* When a person purchases property for resale or for other exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or other exempt purpose and does not donate the property to an entity described in s. 77.54 (9a), Stats., the purchaser shall be liable for use tax based on the purchaser's cost of the new merchandise or ingredients.

(3) COUPONS AND PREMIUMS. (a) *Coupons for free property issued and redeemable by manufacturer.* When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for tangible personal property without charge, the transfer of property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable tangible personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon, less any coupon handling fees paid by the manufacturer.

(b) *"Cents-off" coupons redeemable by manufacturers.* A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. The coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon, less any coupon handling fees paid by the manufacturer.

(c) *Coupons issued and redeemable by retailers.* When a retailer distributes coupons which its customers may use to obtain free premiums in the form of tangible personal property, there is no tax liability for the premiums if exempt property is given. However, if taxable property is given:

1. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows is to be given as a premium to customers without the customers being required to purchase other property to receive the premium. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer shall report the use tax based on the cost of the property.

2. A retailer may not use a resale certificate when purchasing taxable tangible personal property which the retailer knows will be given as a premium to a customer when that customer purchases other property

which is not subject to sales tax. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer is required to report the use tax based on the cost of the property.

Example: If a retailer knows key chains it purchases will be given as a premium to customers when those customers purchase gasoline, certain food items or other tangible personal property not subject to sales tax, the retailer may not purchase the key chains without sales tax by giving a resale certificate. If the retailer did not know it would give the key chains as a premium at the time of purchase and used a resale certificate to purchase the key chains without sales tax, the retailer is liable for use tax measured by the cost of the key chains.

3. A retailer may use a resale certificate when purchasing taxable property which will be given as a premium to the retailer's customer when that customer purchases other property which is also subject to the sales tax. Since this transaction is deemed a sale of both the premium and the other property, the retailer may purchase the premium without payment of the sales tax by claiming an exemption for resale.

4. The taxable gross receipts of retailers, who issue "cents-off" coupons which reduce the price of merchandise they sell and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

(4) **COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS.** (a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of the receipts to the participating retailers.

Example: Coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games.

(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon. Any additional receipts received from the person using the coupons also are taxable.

(c) Except for meals, retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

(5) **TRADING STAMPS.** (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of such material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts shall not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of such stamps.

(6) **MANUFACTURER REBATES.** A manufacturer's rebate to a person who purchases tangible personal property or taxable services from a retailer is not a reduction of the retailer's gross receipts or sales price for the item for sales or use tax purposes.

Examples: 1) An automobile manufacturer gives an automobile dealer's customer a cash rebate of \$1,500 for an automobile purchased by a customer for \$15,000. Taxable gross receipts of the dealer from the sale of the automobile are \$15,000.

2) An automobile manufacturer gives an automobile dealer's customer the option of receiving a \$1,500 cash rebate or allowing the \$1,500 rebate to be applied against the price of the automobile (\$15,000). The customer chooses to apply the rebate against the price paid for the automobile and pays the dealer \$13,500 (\$15,000 - \$1,500) for the automobile. The manufacturer subsequently reimburses the dealer \$1,500. Taxable gross receipts of the dealer from the sale of the automobile are \$15,000.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (intro.) and (a), Register, July, 1987, No. 379, eff. 8-1-87; r. and recr. (1) (a) and (b) and (2) (intro.), am. (2) (a) and (d), (3) (a), (b) and (c) 2., and (4) (a), cr. (2) (e) and (6), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.29 Leases and rentals of tangible personal property. (ss. 77.51 (4) (c) 5, (13) (k) and (14) (j), 77.52 (1), 77.54 (5) (b) and (d), (26m) and (36) and 77.58 (6), Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of tangible personal property shall be subject to the sales and use taxes to the same extent that gross receipts from the sale of the same property would be subject to the tax. Because a lease is a continuing sale for the duration of the lease while the leased property is situated in Wisconsin under s. 77.51 (14) (j), Stats., a lessor shall pay tax on rental receipts for any period of time leased property is in Wisconsin, even though the property may have been acquired, used or both previously by the lessee in another state.

(2) **PURCHASES FOR RENTAL.** (a) A lessor's purchase of tangible personal property to be used solely for lease or rental shall be exempt as a purchase for resale.

(b) A lessor's purchase of lubricants, repair parts and repair services on personal property used solely for leasing shall also be exempt as a purchase for resale. However, if the same items are purchased by a renter or lessee, the purchases shall be taxable.

(c) Charges by a lessor to a lessee under a maintenance contract on leased personal property shall be taxable.

(3) **PROPERTY BOTH RENTED AND USED PERSONALLY.** If tangible personal property is purchased by a person who uses it part of the time and rents it out part of the time, the sale of the property to the person shall be taxable. The lessor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(4) **SERVICE VS. RENTAL OF EQUIPMENT.** (a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.

(b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out the equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment,

the entire charge is subject to the tax. However, the operator's services shall not be taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.

(c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks and the public service commission and the department of transportation's division of motor vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable.

(d) Gross receipts from the lease or rental of tangible personal property incidental to the providing of a nontaxable service shall not be taxable. If tangible personal property is incidental to the providing of a nontaxable service, the tangible personal property is consumed by the service provider.

(5) CREDIT FOR SALES TAX PAID. If a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or claim a credit against the tax due on rental receipts from the property involved under s. 77.51 (4) (c) 5, Stats. If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the seller paid sales tax to Wisconsin.

(6) SPECIAL RENTAL SITUATIONS. (a) *Demurrage*. The charge a gas supplier makes to a customer-consumer, because a gas cylinder is retained beyond a 30-day or other period, shall be taxable. The "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softeners*. The gross receipts from rental of a cylinder type water softener which is periodically removed from a customer's premises for recharging and replaced by another unit shall be taxable.

(c) *Chemical toilets*. A lessor's entire charge for the use of chemical toilets used at fairs and other similar events shall be taxable, including cleaning services provided as part of the total charge.

(d) *Mobile homes*. Rental of a mobile home shall be taxable unless:

1. The mobile home is converted to real property by hooking it up to utilities and placing it on a foundation on land owned by the lessor. However, even if it is placed on a foundation and hooked up to utilities, a mobile home shall remain tangible personal property if the lessor does not own the realty on which it is located.

2. The mobile home as defined in s. 66.058 (1) (d), Stats., is rented or leased for a continuous period of one month or more and is used as a residence by the renter or lessee.

(e) *Lease cancellation charge*. A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property shall be taxable. The payment shall be deemed consideration arising from the original lease since it effectively decreases the term of the lease and thereby increases the rental payments for the actual period the property was used.

(f) *Delivery and erection*. Lessors of scaffolding or other tangible personal property who set forth separate charges for transportation, assembly and disassembly shall pay tax on their total gross receipts. A lessee

rents property when it is assembled and in place and the charges for transportation, assembly and disassembly shall be deemed part of a lessor's rental receipts.

(g) *Funeral coaches.* An owner of a hearse shall receive taxable gross receipts when the owner furnishes it, with or without a driver, to a funeral director who is responsible for conducting the funeral service. If it is customary or mandatory that the lessee, the funeral director, takes the operator with the leased vehicle, the entire charge shall be taxable.

(h) *Waste reduction and recycling equipment.* The lease or rental of waste reduction or recycling machinery and equipment shall not be taxable if used exclusively and directly for waste reduction or recycling activities described in s. 77.54 (26m), Stats.

Note: 1) For information regarding the lease or rental of highway vehicles and mobile mixing units, see s. Tax 11.79.

2) The interpretations in s. Tax 11.29 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for mobile homes used for lodging for a continuous period of 1 month or more became effective July 1, 1984, pursuant to 1983 Wis. Act 341; (b) The exemption for the lease or rental of incidental property transferred in providing a nontaxable service became effective as a result of *Dept. of Revenue vs. Dow Jones & Company, Inc.*, (COA-District IV, 1/26/89); and (c) The exemption for waste reduction and recycling equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; cr. (4) (d), (6) (d) 2. and (h), am. (1), (3), (4) (b), (5) and (6) (a), (d) and (g), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.30 Credit sales, bad debts and repossessions. (ss. 77.51 (4) (b), (c) 3 and (d), (14) (c) and (14r), 77.52 (6) and 77.53 (4), Stats.) (1) **CREDIT SALES.** (a) *Sales.* If taxable personal property is sold on credit, the entire amount of the retailer's gross receipts from the sale shall be taxable and shall be reported in the tax return for the period in which the sale is made. A sale involving the transfer of ownership of property is completed at the time and place where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The tax shall be reported on taxable gross receipts on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) *Repossessions.* No deduction from gross receipts shall be made if property sold on credit is repossessed unless the entire consideration paid by the purchaser is refunded or a deduction for worthless accounts is allowable under s. 77.51 (4) (b) 4, Stats.

(2) **BAD DEBTS.** (a) *Deduction from measure of tax.* A retailer is relieved from the liability for sales tax by ss. 77.51 (4) (b) 4 and 77.52 (6), Stats., or from liability to collect and report use tax by s. 77.53 (4), Stats., insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. However, only a retailer who has previously paid sales or use tax to this state on the accounts may claim the bad debt deduction. The deduction shall be taken from the measure of tax in the period in which the account is found to be worthless. That period is defined as any time within the retailer's fiscal or calendar year in which the account is written off. However, if the taxpayer is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes,

which later become worthless, received on the sale of tangible personal property shall be treated in the same manner as other worthless accounts.

(b) *Recovery of bad debts charged off.* If any accounts found worthless and charged off are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

(c) *Amount deductible.* 1. Nontaxable receipts. If an account found worthless and charged off is comprised in part of nontaxable receipts, such as interest, financing or insurance, and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied ratably against the various charges comprising the amount the purchaser contracted to pay.

2. Expenses of collection. No deduction is allowable for expenses incurred by the retailer in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(d) *Special situations.* 1. A purchaser of receivables is not entitled to a bad debt deduction for the receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

3. A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property used to fulfill the construction contract.

4. A retailer permitted to report gross receipts on the cash receipts basis may not claim a bad debt deduction.

(e) *Repossessions.* When property on which a receivable exists is repossessed, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, attributable to the cash sales price of the property, is less than the cash sales price upon which sales or use tax was paid.

Example: At the time when the tax rate is 5%, a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$750. A down payment of \$2,150 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totalling \$6,800, the motor home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession due to rather extensive damage to the motor home. The deductible bad debt loss upon repossession of the motor home is computed as follows:

DEPARTMENT OF REVENUE

197

Tax 11

| | Cash Sales Price | Sales Tax | Finance Charge | Total |
|---|---------------------|-----------------|-------------------|--------------------|
| 1. Sales price and tax | \$ 15,000.00 | \$ 750.00 | - | \$ 15,750.00 |
| 2. Down payment allocation (1) | <u>2,047.62</u> | <u>102.38</u> | - | <u>2,150.00</u> |
| 3. Balance to finance | \$ 12,952.38 | \$ 647.62 | - | \$ 13,600.00 |
| 4. Add: Finance charge | | | <u>1,360.00</u> | <u>1,360.00</u> |
| 5. Contract balance | \$ 12,952.38 | \$ 647.62 | \$ 1,360.00 | \$ 14,960.00 |
| 6. Payments on contract (2) | <u>5,887.45</u> | <u>294.37</u> | <u>618.18</u> | <u>6,800.00</u> |
| 7. Contract balance - date of re- possession | \$ 7,064.93 | \$ 353.25 | \$ 741.82 | \$ 8,160.00 |
| 8. Wholesale value of reposses- sion(2) | <u>5,194.81</u> | <u>259.74</u> | <u>545.45</u> | <u>6,000.00</u> |
| 9. Deductible loss | \$ <u>1,870.12</u> | | | \$ 1,870.12 |
| 10. Nondeductible loss | | \$ <u>93.51</u> | \$ <u>196.37</u> | <u>289.88</u> |
| 11. Total loss | | | | <u>\$ 2,160.00</u> |
| 12. Percentage of sales price and tax (Line 1) | 95.2381% | 4.7619% | | 100% |
| 13. Percentage of contract bal- ance (Line 5) | 86.5801% | 4.3290% | 9.0909% | 100% |

- (1) The down payment on line 2 is allocated between the total cash sales price of the motor home and the sales tax thereon on the basis of the percentage of each to their total. The percentages are shown on line 12.
- (2) The payments on the contract on line 6 and the wholesale value on the date of repossession of the property repossessed on line 8 are allocated on the basis of the contract balances on line 5. The percentages thereof are shown on line 13.

(3) **TAX RATE CHANGE.** If a deduction for bad debts is being claimed in a period when the tax rate is different from the tax rate in effect when the sale or sales were reported on tax returns, an adjustment to the deduction shall be made to compensate for the tax rate differential.

Example: If tax was reported on a \$1,000 sale when the tax rate was 4%, \$40 tax was reported. If a bad debt deduction is taken for the sale in a 5% tax rate period, only 80% of the \$1,000, or \$800, may be taken as a bad debt, resulting in a tax credit of \$40. Four percent divided by 5% equals 80%.

Note: The interpretations in s. Tax 11.30 are effective under the general sales and use tax law on and after September 1, 1969, except that the 4% tax rate was increased to 5% on May 1, 1982.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (a) and cr. (3), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c) 1. and (d) 1., Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.32 "Gross receipts" and "sales price". (ss. 77.51 (4) (a) (intro.) and 4, (b) 1 and 6 and (c) 2 and (15) (a) (intro.) and 4, (b) 1 and 5 and (c) 1 and 77.61 (3), Stats.) (1) **GENERAL.** The amount to which the sales and use tax rate is applied is "gross receipts" for sales tax and "sales price" for use tax. Both "gross receipts" and "sales price" mean the total amount of the sale, lease or rental from retail sales of tangible personal property or taxable services, valued in money, whether received in money or otherwise.

(2) **HANDLING AND SERVICE CHARGES.** A retailer's gross receipts from charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments and similar charges for services related to retail sales are included in gross receipts derived from the sale of taxable tangible personal property or taxable services. Cancelled order charges are not taxable if there is no transfer of merchandise to a customer.

(3) **CASH DISCOUNTS OR PRICE REBATES.** (a) Cash discounts allowed by a retailer directly to customers reduce the gross receipts subject to the

tax. The customer must receive the discount for the retailer to exclude it from gross receipts.

Example: A payment made to a nonprofit organization based on a percentage of the purchases made by the group's members is not a cash discount for sales and use tax purposes.

(b) A retail cooperative's rebates to members, which are made after the net profit is determined at the end of a year, are patronage dividends rather than cash discounts, and are not deductible from the cooperative's gross receipts.

(c) A manufacturer's cash rebate to a person who purchases tangible personal property or taxable services from a retailer is not a reduction in the retailer's gross receipts or sales price for the item, regardless of whether the rebate is paid in cash or is used to reduce the selling price.

Example: An automobile is sold for a sticker price of \$18,000. The manufacturer offers a \$1,500 rebate with the purchase. Regardless of whether the customer pays the retailer \$18,000 and later receives \$1,500 from the manufacturer or the customer pays the retailer \$16,500 (\$18,000 sticker price less \$1,500 rebate), the retailer shall report taxable gross receipts of \$18,000 from the sale.

(4) **SALES TAX COLLECTED FROM CUSTOMERS.** (a) Section 77.51 (4) (a) 4, Stats., provides in part that "*if a retailer establishes to the satisfaction of the department that the sales tax . . . has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed.*" Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies.

Example: If taxable property is sold for \$100 and \$5 of tax is collected for a total of \$105, the tax payable by the retailer is determined by multiplying the tax rate times \$100.

(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible under the bracket system, no part of the retailer's gross receipts shall be treated as tax collected from customers.

Example: A vending machine operator whose only receipts are from sales of 5¢ items is unable to collect any sales tax from customers, and the tax applies to the total gross receipts.

(c) If a vending machine operator sells taxable property at a price such that a sales tax is collectible under the bracket system, part of the gross receipts from these sales shall include sales tax if customers are advised that vending machine prices include sales tax.

(5) **BRACKET SYSTEM.** (a) The following bracket system is used by retailers in computing the amount of the state tax which may be collected from the retailer's customers.

| <u>Amount of Taxable Sale</u> | <u>5% Tax Collectible</u> |
|-------------------------------|---------------------------|
| \$.01 to \$.09 | \$.00 |
| .10 to .29 | .01 |
| .30 to .49 | .02 |
| .50 to .69 | .03 |
| .70 to .89 | .04 |
| .90 to 1.09 | .05 |

On sales exceeding \$1.00, the state tax equals 5% of each full dollar plus the tax shown above for the applicable fractional part of a dollar.

(am) In counties having a county tax, the following bracket system is used.

| <u>Amount of Taxable Sale</u> | <u>Combined State and County Tax of 5½%</u> |
|-------------------------------|---|
| \$.01 - \$.09 | 0¢ |
| .10 - .27 | 1¢ |
| .28 - .45 | 2¢ |
| .46 - .63 | 3¢ |
| .64 - .81 | 4¢ |
| .82 - .99 | 5¢ |
| 1.00 - 1.18 | 6¢ |
| 1.19 - 1.36 | 7¢ |
| 1.37 - 1.54 | 8¢ |
| 1.55 - 1.72 | 9¢ |
| 1.73 - 1.90 | 10¢ |
| 1.91 - 2.09 | 11¢ |

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2.

Example: For a sale of \$11.50, the 5½ % tax is 63¢, consisting of 55¢ for \$10 of sales plus 8¢ for \$1.50 of sales.

(b) The bracket system method is designed so that the total amount of tax paid by customers approximates the tax payable by the retailer on the retailer's taxable gross receipts, if the retailer's sales fall equally throughout all the brackets. When more than one taxable item is sold in a single transaction, the tax is computed on the aggregate sales price of the taxable items sold.

(c) The gross sales tax payable by a retailer is the tax rate under s. 77.52 (1) or (2), Stats., times the retailer's taxable gross receipts, regardless of the amount of tax collected from customers.

(d) A retailer shall conspicuously post bracket system cards showing the tax collectible on the dollar amount of a sales transaction, as set forth in par. (a) or (am), to establish to the satisfaction of the department that the sales tax has been added to the sales price, unless a receipt is issued separately itemizing the tax.

(6) **EXCHANGING TANGIBLE PERSONAL PROPERTY.** Taxable gross receipts include the exchange of tangible personal property for taxable or nontaxable services, realty or intangibles if the person providing the tangible personal property receives gross receipts or sales price valued in money, whether received in money or otherwise.

Example: A restaurant operator exchanges meals having retail price of \$100 for radio or television advertising which has an established price of \$100 for this type of advertising service. The restaurant operator and the radio or television station each have to report gross receipts of \$100 as a result of the transaction.

(7) **MOBILE HOMES.** Gross receipts and sales price do not include 35% of the amount from the sale of a new mobile home, not including leases and rentals, that is:

(a) A primary housing unit under s. 340.01 (29), Stats.

(b) Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

Note: The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; and (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (4) (a) and (b), (5) (b) and (c), r. and recr. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (c), Register, December, 1983, No. 336, eff. 1-1-84; emerg. am. (5) (a), eff. 3-24-86; am. (5) (a) and (am), Register, October, 1986, No. 370, eff. 11-1-86; cr. (6), Register, April, 1990, No. 412, eff. 5-1-90; cr. (7), am. (2), (3) (a) and (c) and (5) (d), Register, June, 1991, No. 426, eff. 7-1-91; am. (2), (4) (a) and (c), (5) (a), (am) and (b) and (7), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.33 Occasional sales. (ss. 77.51 (9), 77.52 (2) (a) 2 and 77.54 (7) and (7m), Stats.) (1) SCOPE. This section describes the general rules for exempt occasional sales.

(2) GENERAL. Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales." However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

(3) STATUTES. (a) "Occasional sale" is defined in s. 77.51 (9), Stats.

(b) Section 77.54 (7), Stats., exempts most occasional sales from the sales and use taxes.

(4) SALES WHICH ARE OCCASIONAL SALES. Sales which are exempt occasional sales include:

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

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

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

(c) The transfer of a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft to a spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law, of the transferor provided the property has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property.

(d) The transfer of a motor vehicle from the transferor's individual ownership to a corporation owned solely by the transferor provided the Register, April, 1993, No. 448

motor vehicle has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property. Transferor for purposes of this paragraph means a natural person.

(e) Sales by nonprofit organizations meeting the requirements in s. 77.54 (7m), Stats.

Note: Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

(f) The sale of a business or business assets, not including inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property or taxable services as provided in s. 77.51 (9) (a) and (am), Stats.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

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

Examples: 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (g). However, purchases by the seller of tangible personal property which are sold are taxable.

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

(5) SALES WHICH ARE NOT OCCASIONAL SALES. Sales which are not exempt occasional sales, except as provided in sub. (4), include:

(a) Sales by a person who holds or is required to hold a seller's permit.

Example: Sales of used equipment by a retail store or vending machine operator are not occasional sales and would be subject to sales or use tax.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(c) The sale of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers, semitrailers and all-terrain vehicles. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, mobile home not exceeding 45 feet in length, snowmobile, trailer, semitrailer or all-terrain vehicle is registered or titled within Wisconsin.

(d) A sale made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of this property.

(e) Sales of bingo supplies to players or the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(f) A sale by persons engaged primarily in the business of making non-taxable sales of personal property, such as manufacturers and wholesalers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

Note: The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3) (b) became effective March 1, 1979; (b) Non-retailer sales of all-terrain vehicles as described in sub. (4) (c) became taxable and the sale of an all-terrain vehicle as described in sub. (3) (c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for the sale of a business or business assets in sub. (3) (e) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of motor vehicles, boats, etc., to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; am. (2), (4) (c) and (g), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.34 Occasional sales exemption for sale of a business or business assets. (ss. 77.51 (9) (a) and (am) and (14g) (h), 77.52 (12) and 77.54 (7), Stats.) (1) **SCOPE.** This section describes the occasional sales exemption for the sale of a business or business assets as provided in s. 77.51 (9) (a) and (am), Stats.

(2) **GENERAL.** (a) The sale of business assets, consisting of tangible personal property, by a person who holds or is required to hold a seller's permit at the time of the sale is subject to sales tax, except as provided in sub. (3) (c).

(b) Except as provided in sub. (3) (c), the tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.
2. A single transaction or series of transactions prior to termination of a business.
3. Piecemeal sales, whether part of a continuing business or prior to termination.

(c) The tax does not apply to merchandise inventory sold to another retailer who purchases it for resale and sells it in the regular course of that retailer's business.

(3) **EFFECT OF HOLDING A SELLER'S PERMIT.** (a) Pursuant to s. 77.51 (9) (a) and (am), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sales exemption, except as provided in par. (b).

(b) A sale is exempt from sales and use tax as an occasional sale if all of the following conditions are met:

1. The sale is of personal property, other than inventory held for sale, previously used by a person to conduct a trade or business at a location.
- Register, April, 1994, No. 460

2. The sale occurs after the person ceased operating the business at that location.

(c) A sale meeting the conditions in par. (b) is exempt from sales or use tax even though the person holds a seller's permit for one or more other locations.

(d) The holder of a seller's permit shall wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

(4) **DELIVERY OF SELLER'S PERMIT.** A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

(a) Retailers may personally deliver their seller's permits to a representative of the department's income, sales, inheritance and excise tax division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(b) The seller's permit may be mailed to the department accompanied by a letter requesting that the permit be cancelled on or after the postmark date. Delivery is effective as of 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the permit, the retailer may use certified mail, return receipt requested.

Note: Persons mailing their permit to the department should send it to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708.

(c) If the retailer's seller's permit is not available to be delivered, for example, it has been lost or destroyed, the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual seller's permit.

(5) **CANCELLATION OF SELLER'S PERMIT.** (a) Although a seller's permit may be deemed to have been delivered and canceled on a postmark date under sub. (4), cancellation shall not be effective prior to the postmark date.

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sales exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption if the person contemplates resumption of those activities which would require that person to hold a seller's permit.

(c) The fact that a business ceases operating and no longer conducts its day-to-day sales of tangible personal property or taxable services may not result in the automatic cancellation of a seller's permit.

Note: 1) Refer to s. Tax 11.33 regarding the general occasional sales exemption. Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

2) The interpretations in s. Tax 11.34 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The procedure in sub. (3) became effective May 4, 1976, and reflects the Wisconsin supreme court's decision in *Three Lions Supper Club, Ltd. vs. Dept. of Revenue* (May 4, 1976), 72 Wis. 2d 546; (b) The exemption described in sub. (2) (b) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; and (c) The requirement that

a person surrender its seller's permit within 10 days after the last sale of tangible personal property for the sale of business assets to qualify as an occasional sale was repealed effective August 12, 1993, pursuant to 1993 Wis. Act 16.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (b) 2., 3. and (5) (c), r. (3) (b) 3., Register, April, 1994, No. 460, eff. 5-1-94.

Tax 11.35 Occasional sales by nonprofit organizations on or after January 1, 1989. (ss. 77.51 (9) and 77.54 (7m), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Admission event" means that access to the event involving entertainment is generally restricted to only those who pay a required fee, who make a required donation or who are required to make a purchase of some kind such as a meal or raffle ticket.

(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate \$300 or more per event by all persons for performing, for reimbursement of expenses or for prize money.

(c) "Gross receipts" means gross receipts as defined in s. 77.51 (4), Stats., from all sales in Wisconsin of otherwise taxable tangible personal property and services after subtracting allowable exemptions.

(d) "Nonprofit organization" includes a neighborhood association, church, civic group, garden club, social club or similar organization not operated or organized for profit where no part of the net income inures to the benefit of any private shareholder or individual. A governmental unit described in s. 77.54 (9a) (a) through (e), Stats., is considered a "similar organization" for purposes of this paragraph.

(2) **SCOPE.** This section describes the occasional sales exemption for nonprofit organizations as provided in s. 77.54 (7) and (7m), Stats.

(3) **GENERAL.** A nonprofit organization is required to charge Wisconsin sales tax on sales of tangible personal property and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to gross receipts from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(4) **STANDARDS.** Under s. 77.54 (7m), Stats., a nonprofit organization shall meet all of the following standards for its sales to qualify as exempt occasional sales:

(a) The organization is not engaged in a trade or business.

(b) Entertainment is not involved.

(c) The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

(5) **NOT ENGAGED IN A TRADE OR BUSINESS.** A nonprofit organization is not engaged in a trade or business for purposes of sub. (4) (a) if it meets at least one of the following:

(a) Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

DEPARTMENT OF REVENUE

204-1
Tax 11

Example: A boy scout troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the 20-day test, the troop should use the days of delivery rather than days orders are taken.

Next page is numbered 205

(b) Its taxable gross receipts for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur. Non-taxable gross receipts shall not be included for purposes of the \$15,000 gross receipts test.

Examples: 1) A church sells cookies and cakes at a bake sale. Since the sale of cookies and cakes for off-premises consumption is exempt from sales tax, the sale of these items is not counted as gross receipts for purposes of the \$15,000 receipts test.

2) A nonprofit organization, which sells hundreds of Christmas trees, sells 5 Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as gross receipts for purposes of the \$15,000 receipts test.

(6) **ENTERTAINMENT.** (a) To qualify as an exempt occasional sale, entertainment shall not be involved at an event for which charges constitute admissions.

Examples: 1) Four different bands are paid \$100 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (\$400) exceeds the \$300 limit in sub. (1) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

2) Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band \$200. Since the total payment for entertainment (\$400) exceeds the \$300 limit in sub. (1) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

3) A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of the \$300 limit in sub. (1) (b). There is no separate admission charge. However, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the nonprofit organization at this event are taxable.

4) A nonprofit organization holds a pig roast at the city park and hires a band to play at the park gazebo so that patrons, if they so wish, can be entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. Entertainment is deemed not to be involved. Therefore, the sales by the nonprofit organization may still qualify as exempt occasional sales.

(b) A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may obtain a temporary seller's permit from the department for the day or days involving entertainment, pay the sales tax on that event, and still have exempt occasional sales on days not covered by the temporary seller's permit. Days and receipts from events involving admissions to entertainment for which a temporary seller's permit was obtained are included with all other sales in determining the 20-day test and the \$15,000 taxable receipts test described in sub. (5).

Examples: 1) A nonprofit organization plans 5 events covering 3 days each for the year (total of 15 days). Entertainment will be involved at one event only. The sales by the nonprofit organization would qualify as exempt occasional sales, except for the involvement of entertainment at the one event. The nonprofit organization may obtain a temporary seller's permit for the one event involving entertainment; thus allowing the other 4 events to qualify as exempt occasional sales.

2) A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a temporary seller's permit because entertainment is involved and collects sales tax on its receipts of \$5,000 from that event. Taxable receipts from its other events must be combined with the \$5,000 of receipts from the event for which it held a temporary seller's permit for purposes of determining whether the \$15,000 taxable receipts tests is met.

(7) **HOLDING A SELLER'S PERMIT.** (a) A nonprofit organization is not required to hold a seller's permit if its sales are exempt from sales and use taxation by meeting the provisions of sub. (4) (a) and (b). However, an

organization required to hold a seller's permit solely for the purpose of conducting bingo games may still qualify for exempt occasional sales on nonbingo sales if it otherwise qualifies under the provisions of sub. (4) (a) and (b).

(b) If a nonprofit organization holds a seller's permit in the current year, but intends or believes in good faith that its activities in the following year would qualify as exempt occasional sales except for its holding of a seller's permit, it may deliver that seller's permit to the department for cancellation and have its sales in the following year qualify as exempt occasional sales provided it meets the standards in sub. (4) (a) and (b) in that following year.

Example: A nonprofit organization has held seven 3-day events for a total of 21 days each year for the past 5 years. Receipts were always over \$20,000, and there were no admissions to entertainment. One event has lost money for the past 2 years. The organization intends to discontinue that event for the following year; thus, it may anticipate coming under the 20-day standard. Its seller's permit may be delivered to the department for cancellation in good faith.

(c) If a nonprofit organization did not hold or was not required to hold a seller's permit or delivered its seller's permit to the department for cancellation in good faith but later, due to unforeseen circumstances, exceeds the standards, only the sales occurring after the standards are exceeded do not qualify as exempt occasional sales and are subject to tax.

Examples: 1) A church held 18 days of events or sales in the current year. Receipts for the events equaled \$30,000 and no entertainment was involved. The church expects to hold the same 18 days of events in the following year. It delivers its seller's permit to the department for cancellation. However, in the middle of the following year, the church garage is destroyed by fire. An additional 4-day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

2) A garden club is organized in the current year. The garden club is not required to hold a seller's permit and does not apply for one. In the following year, the garden club holds 22 days of events with taxable receipts from the events of \$30,000. Only receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

(d) If a nonprofit organization has sales in the current year and then delivers its seller's permit to the department for cancellation, sales made in the current year before turning in the seller's permit to the department do not qualify as exempt occasional sales, even if the standards for exempt occasional sales in sub. (4) (a) and (b) are met.

Example: A nonprofit organization holds 15 days of sales in the current year. The organization holds a seller's permit, files sales and use tax returns and pays sales tax on all its receipts in the current year. At the end of the current year, the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. The organization may not claim a refund of taxes paid while it held a seller's permit.

(8) **WHEN SALES DO NOT QUALIFY FOR OCCASIONAL SALES EXEMPTION.** If a nonprofit organization has sales of tangible personal property or taxable services, and the sales do not qualify as exempt occasional sales, it is required to obtain a seller's permit and collect and remit sales tax on its taxable sales.

Note: 1) To obtain a seller's permit, a nonprofit organization shall file Wisconsin form A-101, application for permit, with the department. Form A-101 may be obtained from any department of revenue office or by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

2) The interpretations contained in this s. Tax 11.35 became effective January 1, 1989, pursuant to 1989 Wis. Act 399.

3) The following information applied to nonprofit organizations on or after September 1, 1969, and prior to January 1, 1989, except that the \$7,000 per calendar year standard became Register, June, 1991, No. 426

effective on January 1, 1988. The amount for calendar years 1985, 1986 and 1987 was \$2,500. Prior to January 1, 1985, the standard was \$1,000 per year.

(1) Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

(2) No special statute exempts all sales by nonprofit organizations. However, the sales described in subs. (3), (4) and (5) shall be occasional sales under the standards given.

(3) **ADMISSIONS OR TICKETS.** Sales of admissions or tickets to an event conducted by a nonprofit organization shall be exempt occasional sales if:

(a) The event does not involve professional entertainment;

(b) The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

(c) The organization did not conduct more than 3 events involving sales of admissions or tickets in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less events in that year.

(4) **MEALS, FOOD AND BEVERAGES.** Sales of meals, food, food products, and beverages, including beer, for direct consumption at an event, including a church supper or refreshment stand at a fair, by a nonprofit organization shall be exempt if:

(a) The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

(b) The organization conducted no more than 3 events involving sales of meals, food, food products and beverages in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of the events in that year.

(5) **OTHER SALES OF TANGIBLE PERSONAL PROPERTY AND SERVICES.** Except for sales under subs. (3) and (4), sales of tangible personal property and taxable services, including light bulbs, Christmas trees, candy or parking, by a nonprofit organization shall be exempt occasional sales if:

(a) The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

(b) The gross receipts from sales of property and services otherwise subject to tax under s. 77.52 (1) and (2), 1985 Stats., do not exceed \$7,000 within a calendar year.

(6) **EXCEEDING THE \$7,000 STANDARD.** Nonprofit organizations with sales exceeding \$7,000 annually are taxable on all receipts unless the department of revenue determines that their sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or a partial vocation or occupation. Any organization may request a determination from the department as to whether it qualifies for the exemption. The request should be made in writing, listing items or services sold, unit costs and selling prices, anticipated total gross receipts from all sales activities for the calendar year, the number of days duration of sales throughout the year, and any other information that will assist the department in its determination.

(7) **SEPARATE TREATMENT OF SUBS. (4), (5) and (6).** Each category of sales listed in subs. (4), (5) and (6) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and collect and remit the tax on sales in all categories. If the \$7,000 standard described in sub. (6) is exceeded, all receipts from sales of property or services described in that subsection and all subsequent receipts from admissions and meals shall be taxable.

Example: If a nonprofit organization engages in separate activities described in subs. (4), (5) and (6) during a year and has a fourth "admissions" event, but only one "meal" event and \$500 receipts from sales of other tangible personal property at that time, it shall obtain a seller's permit and pay the tax on receipts from the fourth "admission" event and all subse-

quent receipts from "meal" events and from subsequent sales of other taxable tangible personal property or services.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.38 Fabricating and processing. (ss. 77.51 (14) (f) and (h), 77.52 (2) (a) 10 and 11, 77.54 and 77.55, Stats.) (1) SALES OF FABRICATING, PROCESSING AND PRINTING SERVICES. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting is subject to Wisconsin sales or use tax unless:

(a) The printing or imprinting is done on tangible personal property which will subsequently be shipped outside Wisconsin by the consumer for advertising purposes.

Example: Printer ABC prints an advertising flyer for Company DEF. Company DEF furnishes the paper and the ink. Company DEF will send the flyer to its customers outside Wisconsin. The charge by Printer ABC for printing the advertising flyer is not subject to Wisconsin sales tax provided Company DEF provides Printer ABC with a properly completed exemption certificate.

(b) An exemption under s. 77.54 or 77.55, Stats., applies.

Examples: 1) Company GHI is in the business of cleaning used oil. A Wisconsin municipality contracts with Company GHI to have all used oil it collects from residents cleaned by Company GHI. The charge by Company GHI to the municipality for cleaning the oil is not subject to Wisconsin sales or use tax because sales to Wisconsin municipalities are exempt from Wisconsin sales tax under s. 77.54 (9a), Stats.

2) The charge by a feed mill to grind corn a farmer will use as feed is not subject to Wisconsin sales or use tax because the sale of feed to a farmer is not subject to Wisconsin sales or use tax under s. 77.54 (3m), Stats. The farmer must provide the feed mill with a properly completed farmer's exemption certificate.

3) The charge by a cooperative to age tobacco for a cigar manufacturer is not subject to Wisconsin sales or use tax because the sale of the tobacco to the manufacturer is not subject to Wisconsin sales or use tax under s. 77.54 (2), Stats. The cigar manufacturer must provide the cooperative with a properly completed manufacturer's exemption certificate.

(c) The producing, fabricating or processing is for resale.

Example: Company JKL is in the business of custom making cabinets. A customer orders a cabinet from Company JKL. Due to time constraints, Company JKL is unable to make the cabinet. Therefore, Company JKL contracts with Company MNO to make the cabinet from materials provided by Company JKL. Company MNO is not subject to Wisconsin sales or use tax on the charge to Company JKL for making the cabinet if Company JKL provides Company MNO with a properly completed resale certificate.

(2) EXAMPLES OF FABRICATING AND PROCESSING SERVICES. Fabricating and processing services, where materials are furnished directly or indirectly by the customer, that are subject to Wisconsin sales or use tax include, except as provided in sub. (1) (a) through (c):

(a) Application of coating to pipe.

(b) Assembling kits to produce a completed product.

(c) Bending glass tubing into neon signs.

(d) Bookbinding.

(e) Caterer's preparation of food for consumption on or off the caterer's premises.

(f) Cleaning used oil.

(g) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers, often called "millending."

(h) Cutting or crushing stones, gravel or other construction materials.

(i) Drying, planing or ripping lumber.

(j) Dyeing or fireproofing fabric.

(k) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to specifications of a particular construction job.

(l) Firing of ceramics or china.

(m) Heat treating or plating.

(n) Laminating identification cards.

(o) Making a fur coat from pelts, gloves or a jacket from a hide.

(p) Making curtains, drapes, slip covers or other household furnishings.

(q) Production of a sound recording or motion picture.

(r) Retreading tires.

(s) Tailoring a suit.

(t) Threading pipe or welding pipe.

(3) **PURCHASES BY FABRICATORS OR PROCESSORS.** Persons providing fabricating, processing and printing services, including those services listed in sub. (2), may qualify as manufacturers. If the service provider qualifies as a manufacturer as provided in s. 77.54 (6m), Stats., the following items may be purchased by the service provider without Wisconsin sales or use tax:

(a) Machinery and equipment used exclusively and directly in manufacturing.

Example: Company PQR is in the business of heat treating metal for steel manufacturers. Company PQR uses its machinery and equipment only in providing this heat treating to steel manufacturers. Company PQR is performing a manufacturing process in acting as a submanufacturer. Since the machinery and equipment is used exclusively and directly in manufacturing, it may be purchased without Wisconsin sales or use tax provided Company PQR gives its supplier a properly completed manufacturer's exemption certificate.

(b) Tangible personal property consumed or destroyed or losing its identity in the manufacture of tangible personal property in any form destined for sale.

Example: Company VWX is an electroplater. Company STU is a manufacturer of car bumpers. Company STU hires Company VWX to electroplate the bumpers. Company VWX may purchase the caustic soda, boric acid, etc., that is consumed or destroyed in the electroplating without Wisconsin sales or use tax when acting as a submanufacturer. These items are consumed or destroyed in the manufacture of tangible personal property, bumpers, destined for sale.

Note: 1) For information regarding what is manufacturing and exemptions for machinery and equipment and other items used in manufacturing, refer to ss. Tax 11.39, 11.40 and 11.41.

Tax 11

2) The interpretations in s. Tax 11.38 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; r. and recr. Register, June, 1993, No. 450, eff. 7-1-93.

Tax 11.39 Manufacturing. (s. 77.54 (2), (6) (a) and (6m), Stats.) (1) **DEFINITION.** Manufacturing means an operation complete in itself, or one of a series of operations, whereby, through the application of machines to tangible personal property by a process popularly regarded as manufacturing, a new article of tangible personal property with a different form, use and name is produced.

(2) **SCOPE OF MANUFACTURING.** (a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

(b) Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities or research and development.

(3) **MANUFACTURERS.** Manufacturers ordinarily include the following:

- (a) Asphalt plants.
- (b) Bakeries.
- (c) Battery makers.
- (d) Breweries and soda water bottling plants.
- (e) Candy factories.
- (f) Cement and concrete plants.
- (g) Chemical processing plants.
- (h) Concrete block and tile producers.
- (i) Creameries and instant milk producers.
- (j) Dairies and cheeseplants.
- (k) Electric generating companies.
- (l) Flour and feed mills, including mobile units.
- (m) Food processing plants (canning and freezing).
- (n) Foundries.
- (o) Glass making plants.
- (om) Heat treaters and metal platers performing these services on semi-finished products furnished by manufacturers.
- (p) Limestone calcination plants.

- (q) Machine and equipment producers.
 - (r) Malting plants.
 - (s) Meat packing and processing plants.
 - (t) Motor vehicle and aircraft factories.
 - (u) Oil refineries.
 - (v) Paint factories.
 - (w) Paper making plants.
 - (x) Printers.
 - (y) Sawmills.
 - (z) Scrap processors.
 - (za) Shoe and clothing factories.
 - (zb) Smelting and steel mills.
 - (zc) Tanneries.
 - (zd) Tool and die making plants.
 - (ze) Crushing, washing, grading and blending sand, rock, gravel and other minerals.
 - (zf) Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.
 - (zg) Tire retreaders.
- (4) NONMANUFACTURERS. Examples of nonmanufacturers are:
- (a) Automobile and auto parts rebuilders.
 - (b) Contractors.
 - (c) Butcher shops.
 - (d) Dental labs.
 - (e) Farmers.
 - (f) Fish hatcheries.
 - (g) Freezer and locker plants.
 - (h) Highway truckers.

Next page is numbered 211

- (i) Hotels.
- (j) Junk and scrap dealers.
- (k) Key shops.
- (l) Laundries and dry cleaners.
- (m) Repairperson.
- (n) Restaurants.
- (o) Television and radio stations.
- (r) Persons engaged in:
 - 1. Corn shelling.
 - 2. Performing custom work to the individual order of household consumers.
 - 3. Experimental and development activities.
 - 4. Grain drying.
 - 5. Logging and forestry operations.
 - 6. Mining.
 - 7. Paper recycling.
 - 8. Photography.
 - 9. Popping corn.
 - 11. The business of raising and breeding animals.
 - 12. Real property construction activities.
 - 13. Custom slaughtering of animals.
 - 14. Vending machine operations.

Note: The interpretations in s. Tax 11.39 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (3) (j), (4) (c) and (r) 13., cr. (3) (om), Register, June, 1983, No. 330, eff. 7-1-83; am. (1), (3) (f), cr. (3) (ze), (zf) and (zg), r. (4) (p), (q) and (r) 10., Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (f), Register, July, 1987, No. 379, eff. 8-1-87; correction in (4) (m) made under s. 13.93 (2m) (b) 5, Register, April, 1994, No. 460.

Tax 11.40 Exemption of machines and processing equipment. (s. 77.54 (5) (c) and (d), (6) (a), (6m), (6r) and (26m), Stats.) (1) GENERAL. (a) Section 77.54 (6) (a), Stats., exempts the gross receipts from the sale of and the storage, use or other consumption of "*Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment.*" "Exclusively", as used in s. 77.54 (6) (a), Stats., and in this section, means that the machines and specific processing equipment and repair parts or replacement thereof are used solely by a manufacturer in manufacturing tangible personal property to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing tangible personal property. This exemption is to be strictly construed.

(b) Section 77.54 (6m), Stats., provides "*For purposes of s. 77.54 (6) (a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing.*"

(c) In determining whether a particular machine or piece of processing equipment is included in the exemption under par (a), s. 77.54 (6) (a) and (6m), Stats., must be considered together.

(d) Section 77.54 (5) (d), Stats., provides an exemption for mobile mixing and processing units and the motor vehicle or trailer on which they are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units.

(e) Section 77.54 (5) (c) and (26m), Stats., provide exemptions for certain motor vehicles, machinery and equipment used in waste reduction and recycling processes.

Note: See s. Tax 11.11 for more information on waste reduction and recycling exemptions.

(2) **CONDITIONS FOR EXEMPTION AND EXAMPLES.** The exemption under sub. (1) (a) shall apply if all the following conditions are met:

(a) Machines and processing equipment shall be used by a manufacturer in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities.

Example: Machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor producer of tangible personal property.

(b) Machines and processing equipment shall be used exclusively in manufacturing.

Example: A forklift truck used on a production line to move products from machine to machine and used regularly or frequently in a warehouse to move and stock finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used directly in manufacturing. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though the machine and equipment are indirectly related to the step-by-step processes. Machine foundations are real property improvements rather than personal property and do not qualify for exemption.

Example: Machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications; lighting, safety, fire protection or prevention; research; storage; or delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing.

(3) **OTHER EXAMPLES OF THE EXEMPTION.** Other examples of application of the exemption are as follows:

(a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment". Small tools include hand tools such as drills, saws, micrometers and hammers. However, if the items are also used for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by the manufacturer to produce tangible personal property.

Example: A lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of the machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed.

Example: Machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities or equipment, research, or crating or packaging of tangible personal property for shipment are not exempt.

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant.

Example: Sweeping compounds are factory supplies rather than processing equipment.

(4) **REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT.** The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt.

Example: Conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns used as replacement parts for exempt machines and processing equipment are exempt.

Note: The interpretations in s. Tax 11.40 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Mobile mixing units are exempt effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Vehicles and machines used in waste reduction and recycling are exempt effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) Motor vehicles or trailers upon which mobile mixing units are mounted are exempt effective July 20, 1985, pursuant to 1985 Wis. Act. 29; (d) Safety attachments became exempt effective June 1, 1986, pursuant to 1985 Wis. Act 149; and (e) The exemption in s. 77.54 (6), Stats., shall be strictly construed effective October 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (4) (e), Register, October, 1979, No. 286, eff. 11-1-79; am. (1) (a), (2) (b), (3) (a) to (c), Register, November, 1981, No. 311, eff. 12-1-81; am. (1) (a), Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (a) and (c), (2), (3) (a), (b), (d), and (4), cr. (1) (d) and (e), Register, March, 1991, No. 423, eff. 4-1-91; reprinted to restore dropped copy in (1) (a), Register, April, 1994, No. 460.

Tax 11.41 Exemption of property consumed or destroyed in manufacturing. (s. 77.54 (2), (6) (a) and (30) (a) 4, Stats.) (1) **GENERAL.** (a) Section 77.54, Stats., provides in part: *“There are exempted from the taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity.”*

(b) As used in s. 77.54 (2), Stats., “manufacture” shall conform to the definition of “manufacturing” in s. 77.54 (6m), Stats.

(2) **RELATIONSHIP OF S. 77.54 (2) AND (6) (a), STATS.** In construing the exemption provided in s. 77.54 (2), Stats., it is necessary to refer to another exemption provided in s. 77.54 (6) (a), Stats. The latter section

exempts gross receipts from the sale of certain machines, equipment and parts used in manufacturing. This exemption is interpreted in s. Tax 11.40. Machines, processing equipment and parts shall be within the exemption provided by s. 77.54 (6) (a), Stats., if they are exclusively and directly used in manufacturing tangible personal property. If they are not within the exemption in s. 77.54 (6) (a), Stats., they cannot be within the exemption provided by s. 77.54 (2), Stats.

(3) **PERSONAL PROPERTY WITHIN S. 77.54 (2), STATS., EXEMPTION.** (a) The following property is within the exemption provided by s. 77.54 (2), Stats., if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.

4. Cleaning compounds and solvents for maintaining manufacturing machinery whether used during the manufacturing process or while the machinery is idle. A food processor, who is required to maintain strict sanitation standards by a regulatory agency, may also purchase chemicals and cleaning agents used to clean the walls, ceilings, floors and drains of the rooms in which manufacturing takes place without tax.

Note: Refer to the Wisconsin Tax Appeals Commission decision of May 25, 1984, in *Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue*.

5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.
15. Gloves and other wearing apparel used by employes on the production line to prevent contamination of the manufactured product.

(b) The exemption is not allowed when property is used by a person other than a manufacturer. A purchaser also may not claim this exemption if the purchaser does not sell the item produced.

Examples: 1) Property sold to an automobile repair shop or other repair business does not qualify for exemption under s. 77.54 (2), Stats.

2) A modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in the construction.

(4) **PERSONAL PROPERTY NOT WITHIN S. 77.54 (2) EXEMPTION.** The following property is not within the exemption provided by s. 77.54 (2), Stats., although the property may be exempt under s. 77.54 (6) (a), Stats., if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing, as described in s. Tax 11.40:

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel for the comfort or welfare of the employe or for the protection of the employe's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur-lined boots and jackets.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by s. 77.54 (2), Stats., even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. However, s. 77.54 (30) (a) 4, Stats., exempts "*Any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edging, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.*" Since "fuel" is not defined in s. 77.54 (2), Stats., it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

(a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

(b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

(c) Gasoline, fuel oil, kerosene, natural gas, liquid propane gas, also called LPG, or other natural or synthetic liquids used as fuel.

Note: The interpretations in s. Tax 11.41 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for wood residue in sub. (5) was effective on September 1, 1987, pursuant to 1987 Wis. Act 27.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; cr. (3) (a) 15. and am. (4) (h), Register, October, 1979, No. 286, eff. 11-1-79; am. (3) (a) 4., Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (intro.), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (intro.), (3) (b) and (4) (intro.), cr. (5) (c), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.45 Sales by pharmacies and drug stores. (s. 77.54 (14), (14g), (14m), (14s), (22) and (28), Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store are taxable under the

general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines are exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in par. (a) which are exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.

12. Other articles permanently implanted in the human body which remain or dissolve in the body.

13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption does *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.
3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast materials.

(3) **EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES.** The exemption for medical appliances and prosthetic devices under s. 77.54 (14s), (22) and (28), Stats., applies to sales of the following:

(a) Artificial devices, including parts and accessories, individually designed, constructed or altered solely for the use of a particular physically disabled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

(b) Trusses, supports, shoes and braces, including parts and accessories, but only when specifically fitted or altered to fit a particular person.

“Altered” includes the bending of metal stays but does not include adjusting straps or seams.

(c) Antiembolism elastic hose and stockings, including parts and accessories, prescribed by a physician and sold to the ultimate consumer.

(d) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pace-makers, and other equipment, including parts and accessories, worn as a correction or substitute for any functioning part of the body. This exemption does not apply to wigs or hair pieces, to garments designed to restrict or enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not “worn” by a person.

(e) Crutches and wheelchairs including motorized wheelchairs and scooters for use by persons who are ill or disabled, open and closed end walkers with or without casters and canes which provide walking support by making contact with the ground at more than one point, including parts and accessories.

(f) Apparatus or equipment for the injection of insulin or treatment of diabetes and supplies used to determine blood sugar level.

(g) Equipment used to administer oxygen for medical purposes if the patient has a prescription for oxygen written by a person authorized to prescribe oxygen. The exemption for oxygen equipment applies to oxygen carts acquired for use by patients with a prescription for oxygen.

(h) The repair, service, alteration, fitting, cleaning and maintenance of items in this subsection.

(4) **MEDICARE CLAIMS.** The administrator of Medicare claims, such as surgical care-blue shield, is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills the administrator directly in full or in part, the portion paid by the administrator is a tax exempt sale to the United States. If the provider of a taxable item bills an individual in full or in part who then seeks reimbursement from Medicare, the portion paid by the administrator to the individual is not an exempt sale to the United States.

Note: The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; and (e) Sales of parts and accessories for certain medical items became exempt effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; r. (2) (c) 5., am. (3) (intro.) and (e), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (d), Register, July, 1987, No. 379, eff. 8-1-87; am. (3) (a) and (b) and (4), cr. (3) (c), renum. (3) (c) to (3) (d), renum. (3) (d) to (3) (e), renum. (3) (e) to (3) (f) and (g) and am., renum. (3) (f) to (3) (h), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), (2) (a), (b) (intro.), (c) (intro.), (3) (intro.) to (e) and (4), r. and recr. (3) (h), Register, May, 1993, No. 449, eff. 6-1-93.

Tax 11.46 Summer camps. (ss. 77.52 (1) and (2) (a) 1 and 77.54 (7m), Stats.) (1) **DEFINITIONS.** In this section:

(a) “Agency camps” means camps operated by corporations or associations organized and operated exclusively for religious, charitable or

educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual.

Example: The YMCA and Boy Scouts of America are agency camps.

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) **TAXABLE RECEIPTS.** Receipts from the following are taxable unless sub. (4) applies:

(a) Meals or other tangible personal property sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(3) **EXEMPT RECEIPTS.** Receipts from the following are exempt:

(a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Groceries sold to campers, such as for cookouts.

(4) **OCCASIONAL SALES.** (a) Gross receipts from the sale of tangible personal property or taxable services by agency camps not engaged in a trade or business and not otherwise required to hold a seller's permit are exempt from Wisconsin sales tax if entertainment as defined in s. 77.54 (7m) Stats., is not provided.

(b) An agency camp is not engaged in a trade or business if its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year or if its taxable receipts for the calendar year are \$15,000 or less.

Note: See Wisconsin publication 206, sales tax exemption for nonprofit organizations, for more detailed information about when one is engaged in a trade or business or required to hold a seller's permit.

(5) **COMBINED CHARGE.** An allocation between taxable and exempt receipts shall be made when a single, combined, charge is made for all the privileges extended by a camp. Adequate records shall be kept and maintained to enable the proper allocation; otherwise, the total charge shall be taxable.

(a) If there is no separate charge for meals, gross receipts from the sale of meals may be determined by adding 10% to the cost of the food and labor for food preparation to cover the overhead costs.

(b) If there is no separate charge for lodging, gross receipts from lodging furnished by private camps to any person residing for a continuous period of less than one month shall be presumed to be \$5 per person per night.

Note: The interpretations in s. Tax 11.46 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The provisions of sub. (4) became effective January 1, 1989, pursuant to 1987 Wis. Act 399; and (b) The amount shown in sub. (5) (b) became effective January 1, 1991. From September 15, 1970 to December 31, 1990, the rate was \$3 per person per night and prior to September 15, 1970, the rate was \$2 per person per night.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (1) (intro.) and (a) and (2) (intro), cr. (4), renum. (4) to be (5) and am., Register, June, 1991, No. 426, eff. 7-1-91. Register, May, 1993, No. 449

DEPARTMENT OF REVENUE

218-1
Tax 11

Tax 11.47 Commercial photographers and photographic services. (ss. 77.51 (13) (e) and (f) and (14) (L), 77.52 (2) (a) 7, (2m) (b) and (13), 77.53 (10) and 77.54 (2), Stats.) (1) **TAXABLE GROSS RECEIPTS.** Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services, including video taping, include gross receipts from:

- (a) Taking, reproducing and selling photographs and video tapes.

Next page is numbered 219

(b) Processing, developing, printing and enlarging film.

(c) Enlarging, retouching, tinting or coloring photographs.

(d) Processing exposed film into color transparencies, mounted or unmounted.

(e) Reproducing copies of documents, drawings, photographs, video tapes or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

(f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) AMOUNTS INCLUDED IN GROSS RECEIPTS. (a) Gross receipts subject to the tax include charges for photographic and video materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from gross receipts subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES. (a) Commercial photographers and others providing photographic services, including video taping, may purchase, without paying sales or use tax, any item which will be resold or which becomes a component part of an article destined for sale if a properly completed resale exemption certificate is given the seller. These items include:

1. Mounts, frames and sensitized paper used in the finished photograph and transferred to the customer.

2. Video tapes and film, including colored transparencies and movie film, in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

3. Containers, labels or other packaging and shipping materials used to transfer merchandise to customers.

(b) Photographers and others providing photographic services, including video taping, are required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. These items include:

1. Chemicals.

2. Trays.

3. Film, other than exempted in par. (a) 2.

4. Plates.

5. Proof paper.

6. Cameras.

7. Other photographic equipment.

8. Video tape, other than exempted in par. (a) 2.

(c) If a photographer or other person providing photographic services, including video taping, gives a resale certificate for property to a seller and then uses the property for a taxable purpose, the photographer or other person providing photographic services shall be liable for use tax at the time the property is first used in a taxable manner.

Tax 11

Note: The interpretations in s. Tax 11.47 are effective under the general sales and use tax law on and after September 1, 1969, except the exemption for property resold by a photographer is effective September 1, 1983, pursuant to 1983 Wis. Act 27.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (3) (a) (intro.), 2. and (b) 3., cr. (3) (c), Register, March, 1991, No. 423, eff. 4-1-91; am. (1) (intro.), (a) and (e), (2) (a), (3) (a) (intro.), 2., (b) (intro.) and 3. and (c), cr. (3) (b) 8., Register, January, 1992, No. 433, eff. 2-1-92.

Tax 11.48 Landlords, hotels and motels. (ss. 77.51 (4) (c) 6 and (13) (n), 77.52 (2) (a) 1, 2 and 9 and (2m) and 77.54 (36), Stats.) (1) **LANDLORDS.** (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales and use tax applies to a landlord's purchases of all these items. The gross receipts from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for the parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking or storage.

(c) 1. The furnishing of rooms or lodging through the sale of a time-share property, as defined in s. 707.02 (32), Stats., is taxable if the use of the rooms or lodging is not fixed at the time of the sale as to the starting day or the lodging unit, and is for a continuous period of less than one month.

2. The sale, furnishing or use of recreational facilities on a periodic basis and of other recreational rights, including membership rights, vacation services and club memberships, with respect to time-share property, is taxable.

Example: The charges for access to ski hills, golf courses, health clubs, swimming pools and similar recreational facilities with respect to time-share property are taxable.

(d) The rental of a mobile home, as defined in s. 66.058 (1) (d), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(2) **HOTELS AND MOTELS.** The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing at one location for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business, including a trucking company, railway or airline, to be used by its employees for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the type of use.

Example: The rental of a motel sleeping room by a salesperson from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Sales of lodging by hotels, motels and inns to governmental agencies and nonprofit organizations described in s. 77.54 (9a), Stats., and the federal government or to their employes are exempt from sales and use tax if the following 3 conditions are met, regardless of whether the agency or the employe pays for the lodging:

1. The hotel, motel, or inn issues the invoice or billing document for the lodging in the name of the governmental agency or nonprofit organization.

2. The hotel, motel or inn receives any of the following:

a. A purchase order or similar written document from the governmental agency.

b. The certificate of exempt status, CES, number of the nonprofit organization. The hotel, motel or inn shall enter the CES number on its copy of the invoice or billing document.

3. The hotel, motel or inn keeps a copy of the documents in subds. 1 and 2 to substantiate that the sale was exempt.

(d) Separately stated charges by hotels, motels and inns for the rental of tangible personal property, including televisions and refrigerators, are taxable.

(e) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all these items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department for reasonableness.

(b) In computing the ratio in par. (a), tangible personal property includes property subject to the sales tax. This includes furniture, furnishings, equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment.

Example: If an investment, valued at undepreciated cost, on the effective date of a lease is \$100,000 for tangible personal property and \$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ($\$100,000 \div \$500,000$) to the gross lease receipts for each sales tax reporting period.

Tax 11

Note: The interpretations in s. Tax 11.48 are effective under the general sales and use tax law on and after September 1, 1969, except the provisions of sub. (1) (c) 1 are effective on or after August 9, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (a) and (b), (2) (a) and (b) and (3) (b), cr. (1) (c) and (d), (2) (c) and (d), renum. (2) (c) to be (2) (e) and am., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.49 Service stations and fuel oil dealers. (ss. 77.52 (2) (a) 9 and 10 and (2m) (b) and 77.54 (3), (5), (9a), (11) and (30), Stats.) (1) **TAXABLE SALES.** Sales by service station operators and fuel oil dealers subject to the sales tax include the following:

(a) The sale of furnace or heating fuel to customers, other than for residential or farm use.

(b) The repair, service, cleaning, painting, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor and including motor vehicles and truck bodies owned by nonresidents except as provided in sub. (2).

(c) The towing of motor vehicles.

Examples: 1) The charge to a customer for towing a vehicle to a repair facility is taxable.

2) The charge to a customer for towing a vehicle from a no parking zone is taxable even though a governmental unit arranged for the towing.

3) The charge to a customer for towing a demolished vehicle to a junkyard is taxable.

4) The charge to a Wisconsin governmental unit for towing is exempt from tax.

5) The charge to a repair facility for towing a vehicle to the facility for repair which will be passed on to the customer is not taxable provided the repair facility gives the towing company a properly completed resale certificate. However, the charge for the towing service to the customer by the repair facility is taxable.

(d) Retail sales of tangible personal property, including motor oil, antifreeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(f) Providing parking for motor vehicles. Providing temporary storage of a motor vehicle is considered parking if the vehicle is ready and available for immediate use.

(2) **EXEMPT SALES.** Sales by service station operators and fuel oil dealers not subject to the sales tax include the following:

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate, form S-207, to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. If motor fuel or special fuel is purchased without tax under s. 77.54 (11), Stats., because it is subject to the excise tax imposed under ch. 78, Stats., and then the excise taxes are later refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle upon the public highways, the fuel is subject to the tax, unless otherwise exempt under s. 77.54 (1), (3), (5), (6) (c), (9a), (12), (13), (30) (a) or other exemptions in subch. III, ch. 77, Stats.

(b) Sales made directly to governmental units of this state, schools or any 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. Sales to employes of these entities are not exempt, even though the entity may reimburse the employe for the expenditure.

(c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.38, Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus or truck with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of parts and repairs for tractors or farm machines used directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales to farmers of fuel used in farming.

(f) Sales of general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54 (5) (a), Stats.

(g) Sales of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) (1) 7 and 8.

(h) Sales of repairs, alterations, cleaning, painting and maintenance services to common or contract carrier vehicles exempt under sub. (2) (c), mobile mixing and processing units and the vehicle or trailer on which they are mounted, and motor vehicles not required to be licensed for highway use which are used in waste reduction or recycling activities.

(i) Sales of accessories, attachments, parts, supplies and materials for mobile mixing and processing units and the vehicle or trailer on which they are mounted, including highway fuel for units operated on public highways.

(j) Sales of wood residue used for fuel and sold for use in a business activity. Wood residue includes slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or wood residue.

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase, without tax, "for resale", repair parts and materials used in the work which are physically transferred to their customers. This includes auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods.

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and

lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1, 1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985; (d) The repair of motor vehicles used in waste reduction or recycling processes is exempt pursuant to 1983 Wis. Act 426, effective July 1, 1984; (e) The repair of mobile mixing and processing units and the vehicle or trailer on which mounted, as well as parts, accessories, attachments, supplies and materials are exempt pursuant to 1985 Wis. Act 29, effective July 20, 1985; (f) Peat and solid waste fuel cubes sold for residential use are exempt pursuant to 1985 Wis. Act 149, effective April 2, 1986; (g) Wood residue sold for fuel use in a business activity is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (h) Repair to nonresident vehicles not otherwise exempt is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (i) The exemption for fuel used in farming, other than in machines, became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (j) All towing services became taxable effective May 1, 1993.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a), Register, July, 1987, No. 379, eff. 8-1-87; correction in (2) (c) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1990, No. 412; am. (1) (b) and (d), (2) (b), (c) and (f) and (3) (a), cr. (2) (g), (h) and (i), Register, March, 1991, No. 423, eff. 4-1-91; am. (1) (b) and (2) (d), renum. (1) (c) (intro.) and (2) (e) to (i) to be (1) (c) and (2) (f) to (j) and am. (1) (c), r. (1) (c) 1. to 3., cr. (1) (f) and (2) (e), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.50 Auctions. (s. 77.51 (9) (e), (13) (b) and (14) (intro.) and (a), Stats.) (1) **STATUTE.** Section 77.51 (13) (b), Stats., provides that every person engaged in the business of making sales at auction of tangible personal property owned by the person making the sale or others is a "retailer". The definition of "retail sale" contained in s. 77.51 (14) (a), Stats., includes any sale at an auction.

(2) **RETAILER.** If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are responsible for reporting the sales tax on auction receipts even if the owner of the property has a seller's permit.

(3) **TAXABLE AUCTION RECEIPTS.** Taxable receipts from auctions include gross receipts from:

(a) Auction sales held regularly at an established place of business, such as an auction house or auction barn. The household goods exemption does not apply to these sales.

(b) Auctions held regularly on radio, television or CATV. The household goods exemption does not apply to these auctions.

(c) Auctions sponsored on an annual or other regular basis by non-profit organizations or others, except as provided in sub. (4) (d). The household goods exemption does not apply to these auctions.

(d) Auction sales of heavy equipment and going-out-of-business auction sales of retail stores, motels, wholesalers, manufacturers, contractors and service enterprises. The household goods exemption does not apply to these sales.

(e) Auction sales of antiques and works of art except when sold with other household goods of which they were a part.

(f) Auction sales of professional or business inventories or equipment even though they may consist of household goods.

(g) Sheriffs' sales and other auction sales made pursuant to orders of a Wisconsin court.

(h) All other auction sales which are not specifically exempt under the law.

(i) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

Next page is numbered 225

(4) **EXEMPT AUCTION RECEIPTS.** Gross receipts from the following auction sales are exempt:

(a) Auction sales of household goods or personal farm property which are not held at regular intervals. The following auctions are generally held on the property owner's premises:

1. "Household goods" includes tangible personal property which is associated with maintaining a household and is for family use. Items which are not considered "household goods" include:

a. Highway motor vehicles or trailers, snowmobiles, all-terrain vehicles, mini bikes, aircraft and boats.

b. Professional or business inventory equipment.

Example: Household goods include furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus auction sales of goods removed from a family home, such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars, sporting goods or hobby equipment including bats, balls, tennis racquets, golf clubs, guns and ammunition and related hunting equipment, fishing equipment, camping equipment, photographic equipment, tools and bicycles are not taxable.

2. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property used by a farmer to till the soil and raise crops. "Personal farm property" does not include riding horses or other recreational animals, highway vehicles, boats, snowmobiles and mini bikes.

(b) Sales for resale or sales which are otherwise exempt. If such a sale is made at an auction, the person conducting the auction should obtain a properly completed resale or exemption certificate from the purchaser.

(d) Auction sales by religious, charitable, educational or civic organizations and other nonprofit organizations which conduct a fund raising event, if:

1. The auctioneer is not the retailer, because the auctioneer's services are donated; and

2. The organization is not engaged in a trade or business and not otherwise required to have a seller's permit. An organization is not engaged in a trade or business if:

a. Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, or

Example: A boy scout troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the 20-day test, the troop should use the days of delivery rather than days orders are taken.

b. Its taxable gross receipts for the calendar year are \$15,000 or less.

Examples: 1) A church sells cookies and cakes at a bake sale. Since the sale of cookies and cakes for off-premise consumption is exempt from sales tax, the sale of these items is not counted as gross receipts for purposes of the \$15,000 receipts test.

2) A nonprofit organization, which sells hundreds of Christmas trees, sells 5 Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property exempt from sales tax. This \$100 exempt sale to the school is not counted as gross receipts for purposes of the \$15,000 receipts test.

Note: The interpretations in s. Tax 11.50 are effective under the general sales and use tax law on and after September 1, 1969, except that the standard in sub. (4) (d) 2 became effective January 1, 1989, pursuant to 1987 Wis. Act 399.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (e), Register, December, 1983, No. 336, eff. 1-1-84; am. (4) (d) 3, Register, April, 1985, No. 352, eff. 5-1-85; am. (4) (d) 3., Register, December, 1987, No. 384, eff. 1-1-88; am. (2), (3) (a), (b), (c), (d) and (h) and (4) (a) (intro.), 1. (intro.), a. and 2. and (d) (intro.), 1. and 2., r. (4) (d) 3., renum. (4) (c) to be (3) (i), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.51 Grocers' guidelist. (ss. 77.52 (1) and 77.54 (15) and (20), Stats.) (1) **GENERAL.** All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption necessary for the home preparation of meals. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages, including bases or concentrates to produce soft drinks and fruit drinks, beer, intoxicating liquors, candy, paper products and detergents. The following lists shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

(2) **GUIDELISTS.** (a) *Taxable sales by grocers.* Taxable gross receipts include gross receipts from sales of the following items:

| | | |
|-----------------------------|-------------------------------------|--|
| Adhesive tape. | Cake decorations, non-edible. | Cough drops. |
| Air fresheners. | Calcium tablets. | Crayons. |
| Albums. | Cameras and supplies. | Deli items, see par. (c) 5. |
| Ammonia. | Candied fruits. | Dental aids. |
| Anti-acid products. | Candy. | Deodorants. |
| Anti-freeze. | Candy apples. | Deodorizers. |
| Appliances. | Canning and freezer supplies. | Detergents. |
| Ash trays. | Can openers. | Dinnerware. |
| Aspirin. | Carbonated beverages. | Disinfectants. |
| Auto supplies. | Cat food and supplies. | Distilled spirits. |
| Baby needs, except food. | Charcoal and starter. | Dog food and supplies. |
| Bags of all kinds. | Chewing gum. | Dolls. |
| Bakeware. | Cigarette lighter | Drain cleaners. |
| Barbecue supplies. | fluid, wicks, flints. | Drug sundries. |
| Baskets. | Cigarettes. | Dry cleaners. |
| Batteries. | Cigars. | Dye. |
| Beauty aids. | Cleaning equipment and supplies. | Electrical supplies. |
| Beer. | Cleansers. | Facial tissues. |
| Beer making supplies. | Clocks. | Farm and garden implements. |
| Binders. | Clothes lines. | Feminine hygiene needs including napkins and tampons. |
| Bird food and supplies. | Clothespins. | Fermented malt beverages. |
| Bleach. | Clothing. | Fertilizers. |
| Blueing. | Cocktail mixes. | Film. |
| Bobby pins and rollers. | Cod liver oil. | First aid products. |
| Books. | Cold remedies. | Flash bulbs. |
| Bottles. | Coloring extracts. | Flatware. |
| Bowl cleaner. | Combs and brushes. | |
| Breath mints. | Confections. | |
| Brooms. | | |
| Brushes. | | |
| Bubble bath. | | |

- Floor care products.
 Flowers and seeds.
 Foil, aluminum and similar products.
 Food coloring.
 Foot care products.
 Frames.
 Fruit drinks, liquid and powdered, see par. (c) 2.
 Fuel and lubricants.
 Furniture polish.
 Games.
 Garbage bags and cans.
 Garden needs.
 Gifts, non-food and nonexempt food.
 Ginseng.
 Glassware.
 Gloves.
 Glue.
 Granola bars, candy or yogurt coated.
 Greeting cards.
 Grooming aids.
 Gum.
 Hair care products.
 Hardware.
 Health and beauty aids.
 Heated foods and beverages, see par. (c) 1.
 Hosiery.
 Household equipment and supplies.
 Ice, cube and block.
 Ice cream bars and similar products.
 Ice cream in cones.
 Insect and pest control products.
 Insulated containers.
 Internal remedies.
 Intoxicating liquor.
 Iron tablets.
 Jewelry.
 Laundry products.
 Lawn furniture.
 Light bulbs and fuses.
 Lozenges.
 Lunch boxes.
 Lye.
 Magazines.
 Manicure needs.
 Mason jars.
 Matches.
 Medicinal preparations.
 Milk of magnesia.
 Mineral tablets.
 Nail polish and remover.
 Nails.
 Napkins.
 Notebooks.
 Nursery stock.
 Nuts, candy or yogurt coated.
 Pails.
 Paint and paint supplies.
 Paper products, including tissues, plates, cups, towels, napkins and writing paper.
 Peanuts, candy or yogurt coated.
 Pens and pencils.
 Periodicals.
 Pet food and supplies.
 Plastic utensils.
 Polishes.
 Popcorn, raw or popped.
 Pots and pans.
 Powder, face and body.
 Powdered fruit drinks, see par. (c) 2.
 Raisins, candy or yogurt coated.
 Razors and blades.
 Records.
 Root beer and extracts.
 Rotisseries.
 Rubber bands.
 Salt, water softener.
 Sandwiches, hot or cold.
 Sanitary goods.
 School supplies.
 Scissors.
 Sewing aids.
 Shampoo and rinse.
 Shaving supplies.
 Shelf coverings.
 Shoe laces and polishes.
 Soaps.
 Soda water beverages, see par. (c) 2.
 Soft drinks, see par. (c) 2.
 Sponges.
 Starch.
 Stationery.
 Steel wool.
 Stockings.
 Sun glasses.
 Sun tan lotion.
 Tableware.
 Taffy apples.
 Tape.
 Thread.
 Tobacco products.
 Toilet tissue.
 Tonics.
 Tools.
 Tooth brushes.
 Toothpaste and powders.
 Toothpicks.
 Toys.
 Utensils.
 Vitamins.
 Wash cloths.
 Waste baskets.
 Watches.
 Water, bottled, sparkling, spring and distilled.
 Water conditioners.
 Waxing.
 Wax paper.
 Wearing apparel.
 Wine making supplies.

Wrap, foil, plastic
and waxed paper.
Writing supplies.

Yogurt bars, cones
and sundaes.

Zippers.

(b) *Exempt sales by grocers.* Exempt gross receipts include gross receipts from sales of the following items:

Apple cider, sweet.

Baby food.

Bakery goods.

Baking chocolate.

Baking powder and
soda.

Barbecue sauces.

Berries.

Biscuit mix.

Bouillon cubes.

Bread and rolls.

Breakfast pastries.

Brownies.

Butter.

Cake mixes and
flour.

Cakes,
prepared, mixes
and snack type.

Canned foods.

Catsup.

Cereal and cereal
products.

Cheese.

Chicken.

Chip dip.

Chips, potato, corn
and similar items.

Chocolate, instant
and baking.

Citrus fruits.

Cocoa.

Coffee and coffee
substitutes.

Condiments.

Cones, ice cream
cups.

Cookies and
crackers.

Cooking oils.

Cream.

Desserts and
toppings.

Dietary foods,
see par. (c) 4.

Dinners, frozen.

Doughnuts.

Dressings.

Dried fruits.

Dried milk products.

Eggs.

Fish and fish
products.

Flavoring extracts.

Flour.

Frozen desserts.

Frozen fruit juices,
see par. (c) 3.

Frozen fruits and
vegetables.

Frozen pizza.

Frozen TV dinners.

Fruit.

Garlic.

Gelatin.

Granola bars,
see par. (a).

Gravy extracts and
mixes.

Grits.

Hash.

Honey.

Ice cream, pints or
larger.

Jams.

Jellies.

Juices, pure fruit,
see par. (c) 3.

Ketchup.

Lobster.

Luncheon meats.

Macaroni.

Malted milk
powder.

Maraschino cherries.

Margarine.

Marshmallows.

Mayonnaise.

Meal.

Meat and meat
products.

Meat extracts and

tenderizers.

Melons.

Milk and milk
products.

Mustard.

Newspapers.

Noodles.

Nuts, except candy
or yogurt coated.

Oil, cooking, salad.

Oleomargarine.

Olives.

Pancake mix.

Pasta.

Peanuts, in shell or
canned, salted or
not, see par. (a).

Peanut butter.

Pectins.

Pepper.

Pickles.

Pie and pie fillings.

Pie crust and mixes.

Potato chips.

Potato salad,
see par. (c) 5.

Poultry and
poultry products.

Preserves.

Pretzels.

Puddings.

Raisins,
see par. (a).

Ravioli.

Relishes.

Rice.

Rolls and biscuits.

Salad dressing.

Salt and salt
substitutes.

Salted nuts.

Sardines.

Seafood.

Seasonings.

Sherbet.

Shortening.

| | | |
|---------------------|------------------------------|------------------------------------|
| Soup. | Tea and ice tea. | Waffle mix. |
| Spaghetti products. | Turkey. | Yeast. |
| Spices. | Vanilla and vanilla extract. | Yogurt, other than par. (a) items. |
| Spreads. | Vegetable juices. | |
| Sugar. | Vegetables. | |
| Sweeteners. | Vinegar. | |
| Syrup. | | |

(c) *Explanations of some items noted above.* As indicated in pars. (a) and (b):

1. "Heated food" means those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

2. Sales of soda water beverages, bases, concentrates and powders which may be reconstituted into soft drinks, and fruit juice drinks, ades, cocktails, punches and nectars which have additives known as extenders are taxable. Extenders commonly used are citric acid, peel oil and artificial color.

3. Sales of pure fruit juices as defined in ch. 97, 1967 Stats., are not taxable. Fruit juices are the clean, unfermented liquid product obtained by the first pressing of fresh ripe fruits. The only permissible additives are sugar and one of the preservatives such as sodium benzoate, sorbic acid or sodium sorbate. Frozen concentrates conforming to the above description are also tax exempt. To be exempt, the title of the fruit juice on the label shall contain the word juice to the exclusion of all other words such as cocktail, drink, punch, ade or nectar in compliance with requirements set by the United States food and drug administration.

Examples: 1) A beverage with the title "ABC Orange Drink, contains 10% fruit juice" is not an exempt juice.

2) A beverage with the title "Cranberry Juice Cocktail" is not an exempt juice.

3) A beverage with the title "ABC Fruit Punch" is not an exempt juice.

4) A beverage with the title "ABC Orange Juice" is an exempt juice.

4. "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal, Slimfast Powder Drinks and Bars and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, and Ensure and Enrich nutrition supplements, and compressed or concentrated foods taken in wafer form which can be identified as food because of higher concentrated food values of carbohydrates and proteins. Dietary foods do not include patent medicines, tonics, vitamins and medical-type preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form used for medicinal or remedial purposes. The sales of these items are taxable.

Examples: 1) A protein concentrate used by persons engaged in athletic activities is an exempt food.

2) Items such as protein tablets, high fiber tablets, wheat germ tablets and raw glandular tablets sold by most health food stores do not qualify as dietary foods and are subject to tax.

5. Deli sales for off premise consumption sold by a weight or measure such as by the pound or the dozen, and not at a stated price for any

particular combination of the separate ingredients which can be designated as either a meal or sandwich, are exempt. Deli sales for off-premise consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable. Sales of sandwiches are taxable. A meal usually consists of a diversified selection of foods which are not susceptible of consumption in the absence of at least some articles of tableware and which are not conveniently consumed while one is standing or walking.

Examples: 1) A grocer's deli sells potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls at room temperature. These items are sold by the pound or dozen. The sale of these items is not taxable.

2) A grocer's deli sells a serving of each of the following for \$3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls. Because the sale is at a stated price for a particular combination of ingredients which can be considered a meal, the sale is taxable.

3) A grocer's deli sells party trays in an unheated condition. The price varies based on the size of the tray. The types of party trays include shrimp and sauce, meats, fresh vegetables, fresh fruits, cheeses or cookies. The trays do not include combinations of items which could constitute a meal or sandwich. The sale of these party trays is not subject to tax.

(3) **FEDERAL FOOD STAMPS.** A grocer's receipts from federal food stamps are not subject to sales tax even if the items purchased by the consumer are not exempt food, food products and beverages under s. 77.54 (20), Stats.

Note: The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975, when an exemption in s. 77.54 (23), Stats., was eliminated, and magazines and periodicals sold over-the-counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27, which amended s. 77.54 (15), Stats.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) (b), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (1), (2) (a), (b) and (c) (intro.), 2., 3., and 4., cr. (2) (c) 5. and (3), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (a) and (b), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.52 Coin-operated vending machines and amusement devices. (s. 77.52 (1), (1m), (2) (a) 2, 6, 7 and 10 and (2m), Stats.) (1) **DEFINITION.** In this section, "operator" means:

(a) A person who owns property sold through a coin-operated vending machine or device, has the right of access to the machine or device for stocking or restocking or for removing the gross receipts, or who, in general, has control over the machine or device and its contents; or

(b) A person who is responsible for providing laundry, dry cleaning, photographic, photocopy or other taxable services through vending machines.

(2) **SELLER'S PERMITS.** (a) Operators of coin-operated vending machines or devices dispensing taxable tangible personal property or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each operator.

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) A notice must be affixed to each coin-operated machine or device showing the operator's name, address and seller's permit number.

(3) **TAXABLE RECEIPTS.** Taxable receipts include gross receipts from: Register, December, 1992, No. 444

(a) Coin-operated machines dispensing tangible personal property such as:

1. Chewing gum, candy, cigarettes, peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, photocopies, tobacco products, handkerchiefs, combs and hygienic products; and

Next page is numbered 231

2. Fruit, milk, bakery goods, eggs, salads, cookies, crackers and all other foods and beverages for on-premise consumption. The total gross receipts from sales of food and beverages through vending machines shall be presumed derived from on-premise consumption and therefore taxable, unless the operator has records showing the portion of gross receipts from sales made for off-premise consumption involving exempt food.

(b) The license to use or the rental of coin-operated machines which are personal property or which provide a taxable service, such as hair drying machines, shoe shine machines and bowling ball cleaning machines.

(c) Coin-operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

(4) **NONTAXABLE RECEIPTS.** Receipts from the following are not taxable:

(a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin-operated, self-service machines.

(b) Coin-operated storage lockers, pay toilets and scales.

(5) **REPORTING AND RECORD KEEPING.** (a) The gross receipts of vending machine and amusement device operators are subject to the sales tax. Thus gross receipts include, for example, receipts from items selling for one, 5 and 10 cents and more. No deduction shall be permitted for the cost of the property sold, materials used, labor or service cost, or any other expense (including commissions paid to place machines in an establishment).

(b) Sales tax collected from customers may be deducted from gross receipts before computing the tax payable, if the tax is collected under the bracket system and customers are advised of the amount of sales tax they are paying by a sign posted on the machine. If no tax is collected under the bracket system, no deduction shall be allowed.

(c) Each operator shall maintain adequate and complete records including:

1. The location of each machine;
2. The serial number of each machine;
3. Purchases and inventories of all merchandise sold through machines;
4. Receipts from sales of exempt merchandise; and
5. Purchase records of all machines and the cost of all supplies of which the machine operator is deemed to be the user or consumer.

Example: Purchase records shall be maintained for a vending machine or juke box, including repairs and parts, and records used in the juke box.

(6) **SALE, LEASE OR RENTAL OF MACHINES.** (a) Receipts from the sale, lease, rental or license to use coin-operated machines and attachments, parts and supplies for the machines are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts or supplies are

purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

(b) Machines purchased exclusively for rental to others may be purchased by the lessor without tax if the lessor gives a resale certificate to the lessor's supplier. If the lessor intends making any use of the machines other than rental, a resale certificate shall not be given. In either event, the lessor's rental receipts are taxable.

Note: The interpretations in s. Tax 11.52 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (a)1. and r. (4) (c), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (intro.), (3) (a) 1., (5) (c) 5. and (6) (a), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.53 Temporary events. (ss. 73.03 (38), 77.52 (7), (8), (9), (10), (11), (12) and (19), 77.58 and 77.61 (2), Stats.) (1) **DEFINITIONS.** In this section:

(a) 1. "Concessionaire" includes any person conducting games at temporary events such as coin pitch, pop-in, ring toss, short range basketball, guess your weight, fish pond, and tip the bottle. Further examples include persons selling snack foods and other tangible personal property from stands at temporary events such as ice cream, cotton candy, candy apples, sno cones, popcorn, frozen delight, jewelry, photos, hats, signs or kitchenware.

2. "Concessionaire" does not include:

a. A person operating amusement rides, traveling vaudeville performances, menageries, or objects of curiosity shows.

b. A person selling meals or beverages including lunches, sandwiches or beer.

c. A person in subpar. a. or b. who also operates as a concessionaire.

(b) "Concessionaire permit" means a permit for a temporary event conducted by a concessionaire which is valid for only one temporary event for the duration of the event.

(c) "Mobile seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at any temporary event conducted by the permittee within Wisconsin but which is valid at only one event at a time. Except for its use at more than one place of operations, all provisions of s. 77.52 (7), (8), (9), (10), (11) and (12), Stats., apply to it.

(d) "Temporary event" means an activity at one place of operation for a brief duration where taxable sales are made. A place of operation includes a fair, carnival, circus, festival or portable roadside stand.

(e) "Temporary seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at only one temporary event for the duration of the event.

(2) **PERMITS FOR TEMPORARY EVENTS.** (a) Each person who conducts business as a retailer at a temporary event shall hold one of the following:

1. Mobile seller's permit.

2. Temporary seller's permit.

3. Concessionaire permit.

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) Any retailer, including a concessionaire, intending to conduct business at temporary events may apply for and hold a mobile seller's permit. Retailers who are not concessionaires may acquire either a mobile seller's permit or a temporary seller's permit for temporary events. Concessionaires who do not hold a mobile seller's permit shall acquire a concessionaire permit for a temporary event.

(c) A concessionaire who is not a resident of Wisconsin shall furnish the department with the name and address of his or her agent in this state upon whom may be served any process, notice or demand required or allowed by statutes to be served upon the applicant.

(3) EXCEPTION. Persons not otherwise required to hold a seller's permit who have total taxable gross receipts from sales of tangible personal property or taxable services of less than \$1,000 during the calendar year are not required to hold any of the permits listed in sub. (2).

(4) SECURITY. Application for permits referred to in this section shall be on forms as prescribed by the department. The applicant shall be subject to security requirements of s. 77.61 (2), Stats., except that for events of 7 consecutive days or less retailers holding concessionaire permits shall deposit security of \$25 per concession for each event and deposits for events which exceed 7 consecutive days shall be \$50 per concession for each event.

(5) RETURNS. (a) Sales and use tax returns due from persons holding permits referred to in this section shall be subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the return and shall be due as follows:

1. Mobile seller's permittee: Quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under ss. 77.52 (19) and 77.58 (1) and (2), Stats., and shall include on the return gross receipts from all temporary events and other taxable transactions of the permittee during the reporting period.

2. Temporary seller's permittee: Per event, within 10 days after the close of the event for which the permit was issued.

3. Concessionaire permittee: Annually, on or before January 31 of the next succeeding calendar year, and including on such return the gross receipts from all concessionaire events conducted by the permittee during the calendar year.

(b) Concessionaire and temporary seller permittees may claim the security deposited in cash for the event or events reported on as a credit against the tax due, unless the department notifies the permittee otherwise.

(6) VIOLATION. Under s. 77.52 (12), Stats., any person who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

(7) OPERATOR REPORTING REQUIREMENTS. An operator of a swap meet, flea market, craft fair or similar event shall report to the department the name, address, social security number and, if available, the seller's per-

mit number of each vendor selling merchandise at the swap meet, flea market, craft fair or similar event as provided in s. Tax 11.535.

Note: The interpretations in s. Tax 11.53 are effective under the general sales and use tax law effective on and after September 1, 1969, except: a) The security amounts given in sub. (4) became effective February 1, 1982; and b) The provisions of sub. (7) became effective May 17, 1988, pursuant to 1987 Wis. Act 399.

History: Cr. Register, 1965, No. 114, eff. 7-1-65; am. Register, May, 1966, No. 125, eff. 6-1-66; am. (1), Register, June, 1975, No. 234, eff. 7-1-75; renum. from Tax 11.01, Register, January, 1978, No. 265, eff. 2-1-78; r. and recr., Register, January, 1982, No. 313, eff. 2-1-82; am. (1) (c), cr. (3) and (7), renum. (3) to be (4) and am., renum. (4) and (5) to be (5) and (6) and am. (5) (a) 1., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.535 Operators of a swap meet, flea market, craft fair or similar event. (s. 73.03 (38), Stats.) (1) **PURPOSE.** This section clarifies requirements and establishes a time standard for the reports required under s. 73.03 (38), Stats., which authorizes the department to require operators of swap meets, flea markets, craft fairs and similar events to report to the department specific identifying information of each vendor selling merchandise at these events.

(2) **DEFINITIONS.** In this section:

(a) “Event” means an occurrence, occasion, activity, or function at which merchandise is sold or traded.

(b) “Operator” means a person who, or an entity such as an association, partnership, corporation, or nonprofit organization, which arranges, organizes, promotes or sponsors an event.

(c) “Selling merchandise” means the sale, rental, lease, exchange, trade or barter of, or taking orders for merchandise, goods, or products for money or other consideration, or both.

(d) “Similar events” means events which are similar to swap meets, flea markets and craft fairs and includes tradeshow, carnivals, fairs and fund-raising events.

(e) “Vendor” means a person or entity selling merchandise at retail at an event. An operator might also be a vendor at an event.

(3) **REPORT REQUIRED.** Each operator shall furnish to the department within 10 days following the close of an event, the name of the event; the date or dates and location of the event; and the real name, business name, address, social security number and, if available, the seller’s permit number of each vendor at the event.

(4) **FORMS.** Operators shall report the information required by sub. (3) on forms provided by the department or in a format similar to that form.

Note: Copies of the reporting form may be obtained at any Department of Revenue office, by calling (608) 266-2776, or by writing to: Wisconsin Department of Revenue, Post Office Box 8902, Madison, WI 53708.

(5) **ALTERNATIVE REPORTING METHOD.** Operators of continuing or successive events may report all vendors for each event or may report under an alternative method approved by the department. Any operator may request approval from the department of an alternative method of reporting which will provide the department with the required information on all vendors at each event. The request shall be made in writing to: Wisconsin Department of Revenue, Operator/Vendor Program, Post Office Box 8902, Madison, WI 53708. It shall list the dates and locations of

events to be held during the calendar year and the proposed method for reporting the information required.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.54 Temporary amusement, entertainment or recreational events or places. (ss. 77.51 (13) (c), 77.52 (2) (a) 2, (7) and (19), 77.54 (35) and 77.61 (2), Stats.) (1) DEFINITIONS. In this section:

(a) "Admission" means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment or recreation is provided.

(b) Pursuant to s. 77.51 (10), Stats., "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(c) "Places of amusement, entertainment or recreation" include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(2) GENERAL. The gross receipts from the sale of admissions are subject to sales tax.

(3) ENTREPRENEURS, PROMOTERS, SPONSORS OR MANAGERS. (a) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of s. 77.51 (13) (c), Stats., if the entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of the prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(b) As retailers, the entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52 (7), Stats., and may be required to post security as provided in s. 77.61 (2), Stats. The retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

(4) EXCEPTIONS. This section does not apply to:

(a) Traveling attractions which perform in stadiums, theaters or other places where the permanent management of the stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax.

(b) Churches or other nonprofit groups which operate within the occasional sale limitations of s. 77.54 (7m), Stats.

(c) Sales of admissions or tickets by any baseball team affiliated with Wisconsin department of American legion baseball.

Note: The interpretations in s. Tax 11.54 are effective under the general sales and use tax law on and after September 1, 1969, except the exemption for sales by a baseball team of the Wisconsin department of American legion pursuant to 1985 Wis. Act 29, is effective September 1, 1985.

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76; renum. from Tax 11.02; Register, January, 1978, No. 265, eff. 2-1-78; cr. (1) (intro.), (2) and (4) (c), renum. (1) to be (1) (a) and am., renum. (2) and (3) to be (1) (c) and (b) and am., renum. (4), (5) and (6) to be (3) (a), (b) and (4) and am., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.55 Agents, consignees, lienors and brokers. (s. 77.51 (1), (13) and (14g) (f), Stats.) (1) **UNDISCLOSED PRINCIPAL.** A person who has possession of personal property owned by an unknown or undisclosed principal and has the power to transfer title to that property to a third person, and who exercises that power, is a retailer whose gross receipts are subject to the tax.

(2) **DISCLOSED PRINCIPAL.** (a) Gross receipts from the sale of tangible personal property made by a person with possession of the property, who is acting for a known or disclosed principal, are taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property. If the principal fails to pay the tax, the agent may be liable for it.

(b) A principal shall be deemed disclosed to a purchaser only when the evidence shows that the identity of the principal is made known to the purchaser at the time of the sale, and when the name and address of the principal appear on the books and records of the agent.

(3) **ENFORCEMENT OF LIENS.** Pawnbrokers, storage persons and others selling tangible personal property to enforce a lien are retailers with respect to such sales, and tax applies to the gross receipts from such sales.

(4) **REPOSSESSIONS.** Repossessions of tangible personal property by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

Note: The interpretations in s. Tax 11.55 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

Tax 11.56 Printing industry. (ss. 77.51 (8), (11) and (14) (h), (18) and (22), 77.52 (1) and (2) (a) 11 and 77.54 (2), (2m) and (6) (a) and (b), Stats.) (1) **DEFINITIONS.** In this section:

(a) The process of manufacturing printed matter by a manufacturer includes initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate-ready film, and producing an image carrier which is installed on a printing press, or equivalent prepress technology employed to produce an image carrier, and the bindery/finishing stage.

(b) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes: fonts, video display terminals, Register, April, 1994, No. 460

tape and disc making equipment, computers and typesetters which are interconnected to operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

(c) "Manufacturer" includes a printer or other person who performs any one or more of the processes in manufacturing printed matter, provided that the printer or other person qualifies as being engaged in manufacturing under s. 77.54 (6m), Stats., whether or not the printed matter is sold.

(2) PRINTERS' TAXABLE SALES. Taxable receipts of printers include gross receipts from the following, unless otherwise exempt:

(a) Charges for printing, lithography, photolithography, rotogravure, gravure, letter press, silk screen printing, imprinting, multilithing, mimeographing, photostating, steel die engraving, and similar operations for consumers, whether or not the paper and other materials are furnished by the consumers. A printer's charge for printing on paper furnished by a customer to produce printed matter not to be sold is subject to the tax.

(b) Charges for services in connection with the sale of printed matter, such as overtime and set-up charges, die cutting, embossing, folding, and binding operations, and charges for painting signs, show cards and posters, whether the materials are furnished by the printer or by the customer.

(c) Charges for envelopes, but not for separately stated charges for postage in the sale of prestamped envelopes.

(3) TAXABLE SALES BY OTHERS. (a) Sales of tangible personal property by persons who are not printers, including so-called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binders or finishers are taxable unless the sales qualify for exemption under s. 77.54 (2) or (2m), Stats., or other statutes.

(b) 1. Section 77.54 (2) exempts the gross receipts from sales of ". . . tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale . . ."

2. Section 77.54 (2m), Stats., exempts the gross receipts from sales of "tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. The exemption . . . does not apply to advertising supplements that are not newspapers."

(c) Tangible personal property includes typed matter, whether or not combined with artwork, such as typeset output, a paste-up, mechanical, assembly, camera-ready copy, flat or a photoreproduction, including film plates.

(4) NONTAXABLE SALES. Tax does not apply to charges, if stated separately on invoices and in the accounting records, for mailing services such as:

(a) Addressing printed matter by hand or mechanically for the purpose of mailing.

(b) Enclosing, sealing and preparing for mailing.

(c) Mailing letters or other printed matter.

(5) EXEMPT PRINTING MACHINERY AND EQUIPMENT. Section 77.54 (6) (a), Stats., provides that "*Machinery and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property*" are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements thereof used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property.

Note: Interpretations of s. 77.54 (6) (a), Stats., are contained in s. Tax 11.40.

(6) PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER FOR SALE. (a) Persons engaged in manufacturing printed matter for sale may purchase the following items without tax under the statutes indicated:

1. Section 77.54 (2). Property becoming an ingredient or component part of an item destined for sale, such as paper stock or printing ink.

2. Section 77.54 (2). Property such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate-ready film, other positives and negatives, flats and similar items which are consumed, destroyed or lose their identity in the manufacture of tangible personal property to be sold. For example, a printer's purchases of positives and negatives which are used to produce catalogs and shoppers guides it sells to other persons.

3. Section 77.54 (6) (b). Containers and packaging and shipping materials for use in packing, packaging or shipping printed matter to their customers.

(b) The exemption under s. 77.54 (2), Stats., described in par. (a) 1 and 2, applies to property purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer in manufacturing tangible personal property to be sold. The exemption under s. 77.54 (2), Stats., does not apply if the manufactured tangible personal property is not to be sold by the manufacturer to its customer or by the customer. Examples of nontaxable purchases include:

1. A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives to produce printing which the printer sells to the paper manufacturer.

2. An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations to produce advertising material the printer sells to the advertising agency.

(c) Wisconsin use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53 (1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

1. The raw materials are processed, fabricated or manufactured into, attached to or incorporated into printed materials.

2. The resulting printed materials will be shipped outside Wisconsin for use solely outside Wisconsin.

Examples: 1) Company A, a Wisconsin company, publishes catalogs to promote the sale of its products. Company A purchases paper from a company that does not have nexus in Wisconsin. The paper is delivered to a Wisconsin printer that prints the catalogs for Company A. The catalogs are shipped outside Wisconsin for use solely outside Wisconsin.

The paper purchased by Company A for the catalogs is not subject to Wisconsin use tax.

2) Assume the same facts as 1) above, except that the company selling the paper is located in Wisconsin.

The paper purchased by Company A for the catalogs is subject to Wisconsin sales tax.

(7) PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER NOT FOR SALE. (a) An exemption applies for tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not they are transferred without charge to a recipient.

Examples: Examples of nontaxable purchases include: 1) A shoppers guide publisher, who distributes the publication without charge, purchases paper and furnishes it to a printer who charges for the printing of the shoppers guide.

2) A shoppers guide publisher purchases paper it uses to print a shoppers guide which it distributes without charge to recipients.

(b) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items if those purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under par. (a). A printer who does not supply paper used in printing tangible personal property is not selling tangible personal property but rather, is selling a service.

Examples: 1) A retailer purchases color separations which are used in its own printing plant to produce advertising material it distributes to its customers in Wisconsin. The sale of the color separations is subject to Wisconsin sales or use tax because the advertising materials manufactured are not destined for sale.

2) Company B purchases finished artwork from an advertising agency. The artwork and paper are provided to a printer who will print catalogs for Company B. The catalogs are provided without charge to customers. The charge by the advertising agency to Company B is subject to Wisconsin sales or use tax because the printer is not selling tangible personal property.

Note: The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983; (b) The exemption in sub. (3) (b) 2 for ingredients of publications became effective July 2, 1983, pursuant to 1983 Wis. Act 27; and (c) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16.

History: Cr. Register, March, 1983, No. 327, eff. 4-1-83; am. (3) (a), renum. (3) (b) to be (3) (b) 1., cr. (3) (b) 2., r. and recr. (7), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (a) and (c), (5) and (6) (a) 1., (b) (intro.) 1. and 2. and (7) (b), r. (6) (b) 3., cr. (6) (c), Register, April, 1994, No. 460, eff. 5-1-94.

Tax 11.57 Public utilities. (s. 77.54 (3), (6) (a) and (c), (17), (26m) and (30), Stats.) (1) **TAXABLE SALES.** The gross receipts from the sale of the following tangible personal property and services provided by utilities are taxable:

(a) Utility services billed to household, industrial or commercial customers, with any adjustments for discounts taken by customers in the utility's next reporting period.

Example: An early payment discount is adjusted for in the next reporting period.

Tax 11

- (b) Excess use charges and minimum or idle service charges.
- (c) The gross amounts received for contacts on poles and excess pole height contributions.
- (d) Parking space rentals.
- (e) Rentals of transformers located on a customer's property.
- (f) Labor and materials to install or repair conversion burners.
- (g) The rental of water heaters.
- (h) Sales of scrap, gravel or timber sold for removal.
- (i) Sales of tools, used equipment and other tangible personal property to employes or other purchasers.

(j) Pilot relights for furnaces, such as "no heat" calls, or replacing appliance fuses.

(k) Sale of a utility overhead transmission or distribution line in place, if installed under easement or license on land owned by others.

Note: See s. Tax 11.86 for more information.

(l) Charges to builders to put in "temporary services".

(2) NONTAXABLE SALES. Gross receipts from the following charges to customers are not subject to the tax:

(a) Connection or reconnection charges for natural gas, electricity and water.

(b) Utility services delivered to Indians living on an Indian reservation, or services delivered on the reservation to an Indian tribal governing board.

(c) Billings for repairs to persons who damaged utility property.

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

(f) Contributions in aid of construction, such as payments by a customer to have a line extended to the customer's property.

(g) The installation charge for a pole sold to a customer, which is installed on land owned by the customer.

(h) "Wheeling" energy for another utility.

(i) Sales of gas or other fuel, not including electricity, to farmers for use in farming.

(j) Labor charged a customer for the installation of a complete furnace or built-in appliance.

(k) Water delivered to customers through mains.

(l) 1. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use.

2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.

3. Electricity sold during the months of November, December, January, February, March and April for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

4. For purposes of the exemptions in subds. 2 and 3, s. 77.54 (30), Stats., provides that electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed. In any event, each qualifying customer shall receive only 6 months of service exempt from taxation during the November through April period.

5. If fuel or electricity is sold to a person partly for an exempt use and partly for a use which is not exempt, no tax shall be collected by the seller on the portion of the gross receipts which is used for an exempt purpose, as specified on an exemption certificate provided by the purchaser to the seller, as described in subd. 6.

6. Where a building, which contains residential quarters and commercial operations, is heated by one central heating plant, it is necessary to determine the portion of the fuel purchased which qualifies for the "residential use" exemption. The percentage of residential use may be computed by dividing the number of square feet used for residential purposes, excluding common areas, by the total area heated, excluding common areas. If this does not produce a reasonable result, any other reasonable method of estimating may be used. The resulting percentage should be rounded to the nearest 10%.

7. In this subsection, "residential use" means use in a structure or portion of a structure which is a person's permanent principal residence. Use in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting and other ordinary uses by the purchaser in a residence. Residential use includes use in single-family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, nursing homes and farm houses, if the structure is used as a person's permanent principal residence. Residential use includes use in apartment houses, nursing homes and farm houses even though they are on a commercial or rural meter.

8. "Non-residential use" is use other than "residential use" and includes any use in the conduct of a trade, business or profession, whether the trade, business or profession is carried on by the owner of the premises or some other person. It includes use in secondary residences, motor homes not used as a permanent principal residence, travel trailers, other recreational vehicles and transient accommodations. "Transient accommodations" include hotels, motels, inns, travel homes, tourist houses, summer cottages, apartment hotels or resort lodges or cabins, and any accommodation which is rented for a continuous period of less than one month.

Examples: 1) A person owns a home in Wisconsin where he resides for 7 months each year and a cottage, also in Wisconsin, where he resides for 5 months each year. The home is his principal residence and the cottage is his secondary residence.

2) A person is a resident of Florida and has a home in Florida. The person also retains a home in Wisconsin. The person's Florida home is her principal residence and her Wisconsin home is her secondary residence.

9. A "continuous" certification designation is provided on the exemption certificate, form S-016 or S-017, and, if claimed, the form remains in effect until replaced or revoked. A new certificate shall be filed if there is a change in the percentage of exempt use.

(3) **TAXABLE PURCHASES.** (a) Persons engaged in the business of providing electrical or gas public utility service are consumers of the tangible personal property or taxable services used to provide the services. The tax applies to the sales of the items to them, except where a specific exemption applies, such as the exemptions shown in sub. (4).

(b) Examples of gross receipts from the sale, lease or rental of items to a public utility which are subject to the tax are:

1. Transformers, substation equipment and other tangible personal property purchased by a utility and used to construct, improve or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others.

Note: See s. Tax 11.86 for more information.

3. Charges for coating pipe or creosoting poles.

4. Charges for X-ray testing of welding joints in the construction of overhead utility facilities.

5. Gas or electricity purchased for resale but used by a utility, but not gas used as a fuel in producing electricity or steam.

6. Charges for aerial photographs and maps.

(4) **NONTAXABLE PURCHASES.** The following sales to public utilities are not subject to the tax:

(a) Fuel converted to electrical energy, gas or steam by utilities, as provided under s. 77.54 (6) (c), Stats.

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufacturing process begins when the coal starts moving by conveyor directly to the boiler bunker, and it ends at the generator bus duct. An overhead crane used for the installation and repair of a turbine, and a fuel storage tank are not directly used in manufacturing.

(c) Section 77.54 (30) (a) 4, Stats., exempts sales of "*Any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.*"

(d) Charges for X-ray testing of welding joints in the construction of underground utility pipelines.

(5) **WASTE TREATMENT FACILITIES.** The gross receipts from the sales of and the storage, use or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt or that would be exempt under s. 70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., is exempt from sales and use tax.

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales of coal, fuel oil, propane, steam and wood became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) The six-month exemption for electricity and gas became effective November 1, 1979, pursuant to Chapter 1, Laws of 1979; (c) The exemption for fuel converted to electrical energy, gas or steam by utilities became effective October 1, 1981, pursuant to Chapter 20, Laws of 1981;

(d) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption for wood residue became effective September 1, 1987, pursuant to 1987 Wis. Act 27; (f) The exemption for component parts of an industrial waste treatment facility became effective July 1, 1989, pursuant to 1983 Wis. Act 426, later clarified effective May 17, 1988, pursuant to 1987 Wis. Act 399; (g) The sale of gas or other fuel used to heat farm buildings, including greenhouses, that are not exempt machinery under s. Tax 11.12 became taxable July 1, 1991; and (h) All fuel used in farming became exempt October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; cr. (2) (l), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (4) (a), Register, June, 1983, No. 330, eff. 7-1-83; cr. (4) (c), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (e) 1., Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (a), (i), (j) and (k), (2) (f), (g), (i) and (L) 7. and 8., (3) (a) and (b) 1., 2. and 4. and (4) (a), cr. (4) (d) and (5), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (i), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.61 Veterinarians and their suppliers. (ss. 77.51 (13) (m) and (o), 77.52 (2) (a) 10 and 77.54 (42), Stats.) (1) SALES BY VETERINARIANS. (a) Charges made by veterinarians which shall be exempt from the sales tax include charges for the following professional services for animals:

1. Medical services.
2. Hospitalization services.

(b) Charges made by veterinarians which shall be subject to the sales tax include charges for the following activities for animals:

1. Boarding.
2. Grooming.
3. Clipping.

(c) Sales of tangible personal property by veterinarians which shall be taxable include the following:

1. Leashes, collars and other pet equipment.
2. Pets.
3. Pet food.

(2) PURCHASES BY VETERINARIANS. (a) Sales to veterinarians of medicines for pets and sales of other tangible personal property to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax, except as provided in par. (b) 1.

(b) 1. Veterinarians' purchases of medicines used on farm livestock, not including workstock, are exempt from tax.

2. Veterinarians' purchases of animal identification tags from the Wisconsin department of agriculture, trade and consumer protection are exempt from tax. Purchases of animal identification tags from other suppliers which veterinarians provide to customers in performing professional services to animals are subject to tax.

(c) If the tax on sales to veterinarians is not collected by a supplier, the veterinarians shall be responsible for and shall report and pay a use tax on those purchases directly to the department.

Example: A veterinarian purchases medicines for pets from an out-of-state supplier not registered to collect Wisconsin sales or use tax. The veterinarian is subject to Wisconsin use tax on the purchase price of the medicines.

Note: The interpretations in s. Tax 11.61 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Chapter 333, Laws of 1973, effective June 24,

Tax 11

1974, provided that a veterinarian is the consumer of all the animal medicines purchased. Prior to June 24, 1974, those purchases were exempt purchases for resale if sold independent of the performance of veterinarian services; (b) The exemption for medicines used on farm livestock, but not workstock, became effective July 1, 1986, pursuant to 1985 Wis. Act 29; and (c) The exemption for animal identification tags purchased from the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (2) (a), Register, January, 1978, No. 265, eff. 2-1-78; am. (2) (a), Register, June, 1990, No. 414, eff. 7-1-90; am. (2) (a), renum. (2) (b) to be (2) (c), cr. (2) (b) 1. and 2., Register, April, 1994, No. 460, eff. 5-1-94.

Tax 11.62 Barber or beauty shop operator. (ss. 77.51 (13) (i), 77.52 (2) (a) 10 and 77.57, Stats.) (1) **NONTAXABLE SALES AND SERVICES.** Charges by a barber or beauty shop operator for services on human beings are not subject to sales tax.

(2) **TAXABLE SALES AND SERVICES.** (a) Over the counter sales by a barber or beauty shop operator of packaged cosmetics, hair tonics, lotions, shampoo, wigs, falls, toupees and other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property are subject to sales tax unless par. (b) applies. A barber or beauty shop operator who engages in sales subject to sales tax under this subsection shall register as a retailer and is responsible for collecting and remitting to the department the tax on taxable sales or charges.

(b) A barber or beauty shop operator is not required to register as a retailer and collect Wisconsin sales tax if the gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year.

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.

(3) **TAXABLE AND NONTAXABLE PURCHASES.** (a) Persons exempt as occasional sellers under sub. (2) (b) shall pay sales or use tax on all purchases of property used in the business, including items that may be resold to customers.

(b) Persons who register and collect sales tax under sub. (2) (a) may purchase tangible personal property, such as hair pieces, for resale without paying tax by issuing their supplier a properly completed resale certificate.

(c) Tangible personal property purchased by a barber or beauty shop operator and used in providing services is subject to sales or use tax.

(d) If a barber or beauty shop operator gives a resale certificate for tangible personal property to a supplier and then consumes the property in providing services, the barber or beauty shop operator is liable for use tax at the time the property is first used in a taxable manner.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (1) (b), Register, August, 1985, No. 356, eff. 9-1-85; r. and recr., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.63 Radio and television stations. (ss. 77.51 (14), 77.52 (2) (a) 11 and 77.54 (23m), Stats.) (1) **NONTAXABLE SERVICES.** Gross receipts from the sale of the following services are not subject to the sales and use tax:

(a) Air time.

(b) Advertising.

(2) **TAXABLE SALES.** (a) Gross receipts from charges imposed by a radio or television station for art work, slides, films, tapes or other tangible personal property which the station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. The gross receipts are taxable even though a station may retain possession of the tangible personal property because "sale" is defined to include the transfer of not only title to and possession of tangible personal property, but also the transfer of enjoyment of tangible personal property. If an advertiser maintains any control over the tangible personal property prepared or produced, such as the right to determine when the property will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property.

(b) Gross receipts from a radio or television auction are subject to the sales and use tax.

Example: A radio station has a program where the announcer places items of merchandise of local retailers or sponsors up for bid to the station's listeners. The successful bidder, chosen by the radio station, delivers the purchase price of the merchandise to the radio station and receives a purchase certificate that allows him to redeem the merchandise from the retailer or sponsor. The purchase money is retained by the radio station, although the retailer is compensated by the station for its participation in the form of radio advertising. The radio station is subject to sales tax on the gross receipts from the program.

(c) If a radio or television station advertises on behalf of out-of-state persons to sell merchandise, such as records or books, the station is the retailer of the merchandise and shall pay sales tax on the sales if:

1. The advertising message does not clearly identify the out-of-state source of the merchandise; or
2. The merchandise orders are sent directly to the station which accounts for the gross receipts.

(3) **NONTAXABLE PURCHASES.** Gross receipts from the sale, lease or rental of motion picture films or tape, and advertising materials related to the motion picture films or tape, to a motion picture theater or radio or television station are exempt from the sales and use tax under s. 77.54 (23m), Stats. Sales of blank or raw video or audio tapes to television or radio stations are included in this exemption.

(4) **TAXABLE PURCHASES.** Radio and television stations are consumers of equipment, materials and supplies used to conduct their businesses and shall pay sales or use tax on purchases of this tangible personal property except as provided in sub. (3).

(5) **BROADCASTING TOWERS.** Commercial broadcasting towers constituting the transmission antenna system of a radio or television station

Next page is numbered 245

are deemed, for sales and use tax purposes, either real estate improvements if installed on land owned by the station or tangible personal property if installed on land owned by others. Contractors engaged in construction of broadcasting towers that are real estate improvements are the consumers of building materials used by them in constructing, altering or repairing those towers and shall pay tax on the cost of the materials. Contractors engaged in construction of broadcasting towers that are tangible personal property may purchase materials used by them in constructing, altering or repairing those towers without tax for resale. The charge by the contractor to the purchaser is subject to tax.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) (a) and (c) (intro.), (3), (4) and (5), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.64 Background music. (s. 77.51 (14) (intro) and (j), Stats.) (1) **GENERAL.** Persons in the business of providing background music commonly utilize one or both of the methods set forth below. The sales and use tax consequences depend upon the method used.

(2) **MUSIC PLAYED AT CENTRAL STUDIO.** The gross receipts from the furnishing of background music to business, industry and others from a central studio over telephone circuits or by FM radio are not subject to the sales or use tax. The persons who provide such service are the consumers of the tapes, tape players, transmitters and other tangible personal property used to provide the service, and their purchases of these items, as well as telephone services from the telephone company, are taxable. However, the gross receipts from equipment leased or rented to the customer as part of providing this service are taxable, and an exemption for resale may be claimed on the purchase of such leased or rented equipment, if the equipment is used exclusively for lease or rental.

(3) **MUSIC PLAYED BY CUSTOMER.** The gross receipts from the lease, rental, hire or license to use all tangible personal property comprising a background music system are taxable when the system is located on a customer's (e.g., lessee's or licensee's) premises and is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment and other tangible personal property to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, since rental is the equivalent of a resale.

Note: The interpretations in s. Tax 11.64 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.

Tax 11.65 Admissions. (ss. 77.52 (2) (a) 2 and 77.54 (7m), (10) and (35), Stats.) (1) **TAXABLE SALES.** (a) The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses, carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs and flying clubs. Taxable sales include the sale, furnishing or use of recreational facilities on a periodic basis and other recreational rights, includ-

ing but not limited to membership rights, vacation services and club memberships sold in connection with the sale of time-share properties described in s. 707.02 (32), Stats. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment or recreational facilities to members are charges for the privilege of obtaining access to the clubs and are taxable receipts of the clubs.

(c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing, card playing, hayrides, hunting, fishing, and horseback or pony riding are taxable.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught. The charge for the privilege of hunting in shooting preserves, pheasant farms and fenced area bird and animal farms is also taxable, even if the charge is based in whole or in part on the number of game birds or animals taken.

(e) A person who provides boat, tackle, bait and guide service provides a combination of recreational items which are subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the gross receipts from conducting bingo games.

(g) The receipts from the sale or furnishing of access to campgrounds, other than Wisconsin state park campgrounds, are taxable, whether the fees are collected on a daily, weekly, annual or other basis.

(h) The sale of admissions to pleasure tours and cruises, including a cruise originating in Wisconsin by boat on a body of water on the border of Wisconsin, is taxable regardless of whether a portion of the cruise takes place on out-of-state waters.

(2) NONTAXABLE SALES. The following are nontaxable admissions:

(a) The dues of civic, fraternal, religious, patriotic and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment or recreational facilities to their members.

(b) Admissions to museums of history, art or science, and to auto or trade shows, if professional entertainment is not provided at the show. Also, all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society, such as the circus world museum.

(c) Admissions to antique shows unless the admission charge can be used as a credit against the price of merchandise purchased.

(d) Entry fees in contests if the primary motive of the majority of the persons entering the contest is "business" and not "recreation". Generally, entry fees are not taxable for:

1. Professional golfers entering a major tournament.
2. Professional riders entering a rodeo.
3. Professional stock car drivers entering an auto race.

4. Large snowmobile races where the entrants are primarily manufacturers' representatives.

(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 Telecommunications and CATV services. (ss. 77.51 (17m) and (21m), 77.52 (2) (a) 5 and 12 and (am) and 77.54 (24), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Private line" means a dedicated local or interexchange channel provided for communication between 2 points without use of the local or toll switching network, for the exclusive use of one or several customers.

(b) "Service address" has the same meaning as in s. 77.51 (17m), Stats.

Note: Service address as defined in s. 77.51 (17m), Stats., is "the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location ... 'service address' means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent."

(2) GENERAL. The sale of telecommunications services, not including services paid for by the insertion of coins in a coin-operated telephone, is subject to Wisconsin sales or use tax if both of the following occur:

(a) The service originates in Wisconsin.

(b) The service is charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid. These charges include:

1. Telephone calls or transmissions placed via dial 1 equal access systems in which 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 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. The Court, in part of the proceedings concerning the breakup of AT&T, ordered that other common carriers 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 Corporation A. In this circumstance, the call is charged to a service address 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. 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 service address in Wisconsin since the calls were identifiable as originating at 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 telecommunications service provider's facilities. The service provider's records and equipment identify the transmission as originating in Corporation D's office in Wisconsin. The service originated in and was charged to a service address in Wisconsin since the calls were identifiable as originating at 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 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 telecommunications service provider. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, 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.

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, 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 in Wisconsin that does not provide dial 1 equal access.

Example: Jill Green has chosen GHI Corporation as her inter-LATA long distance telecommunications 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, 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 service address in Wisconsin, regardless of whether the account number or her telephone number appear on the bill and regardless of where the bill is mailed.

(3) **TAXABLE TELECOMMUNICATIONS SERVICES.** Telecommunications services which are subject to Wisconsin sales or use tax include:

(a) Local and toll service and Wide-Area Telecommunications Service, or WATS, including intrastate private line service.

Example: Company JKL, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company JKL contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company for private line service between the Milwaukee and Madison offices and between the Milwaukee and Green Bay offices are subject to Wisconsin sales or use tax because the charges are for intrastate private line service. Also see sub. (4) (d).

(b) Channel services.

(c) Telegraph services.

(d) Cable television system services, including installation charges.

(e) Teletypewriter services.

(f) Computer exchange services.

(g) Cellular mobile telecommunications services.

(h) Specialized mobile radio services and any other form of mobile one-way or two-way communications service.

(i) Stationary two-way radio services.

(j) Paging services.

(k) Facsimile, or FAX, transmission services.

(L) Teleconferencing services.

(m) Any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.

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

(a) Interstate or international telecommunications service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a service address in another state or country.

(b) Basic or sophisticated emergency telephone system services provided by a telecommunications 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 Telecommunications Service, or WATS, services resellers purchase, repack, and resell to customers.

(d) Interstate private line service, including tie lines and foreign exchange service, charged on a flat rate periodic basis.

Example: Company MNO, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company MNO contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company for private line service between the Milwaukee and Chicago offices and between the Milwaukee and Minneapolis offices are not subject to Wisconsin sales or use tax, because the charges are for interstate private line services. Also see sub. (3) (a).

(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 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; (e) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; and (f) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 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.

Register, September, 1993, No. 453

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; r. and recr., Register, September, 1993, No. 453, eff. 10-1-93.

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) (2) (a) 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 shall determine whether the 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.

Example: A person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service even though this person may provide forms and binders without charge as part of the service. The person is the consumer, not the seller, of tangible personal property furnished 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 the sale, and the tax applies to the total gross receipts from the sale 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, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

(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 the services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property or taxable services are retailers which shall obtain a seller's permit and report the tax on these sales.

Examples: 1) Sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

2) Sales of parking by a hospital or clinic are taxable.

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. 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.

Example: A decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement.

2. A decorator's fee is not taxable if the fee is solely for services rendered and there is no sale of tangible personal property involved with the transaction.

Example: Designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands or sources of supply are nontaxable services.

(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 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 to the customer. The measure of the tax is the cost of the materials going into the production of 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. However, if the prototype is transferred to a customer for use in its business or for the purpose of reselling it, the researcher may purchase the materials used to construct the prototype without tax as property for resale.

Examples: 1) A prototype is developed by Company A for a manufacturer who will use it in its manufacturing activities. The materials used in producing the prototype may be purchased by Company A without tax as property for resale. The manufacturer may purchase the prototype from Company A without tax as property used exclusively and directly in manufacturing by providing Company A with a properly completed exemption certificate.

2) A prototype is developed by Company B for an organization who intends to sell it to one of its members. The materials used in producing the prototype may be purchased by Company B without tax as property for resale. The organization may purchase the prototype from company B without tax as property for resale by providing Company B with a properly completed exemption certificate.

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 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 be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(g) *Architects.* Fees paid to architects, except fees paid to architects for landscaping planning, to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by architects, engineers, or other business firms. These charges are taxable if the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing, which is tangible personal property, for use by the customer. When the person performing drafting services uses his or her own concepts and ideas in producing detailed drawings for a customer, the sale of the drawings is not a sale of tangible personal property.

(i) *Enuresis alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(l) *Taxidermists.* Gross receipts from services taxidermists perform on tangible personal property are subject to the tax.

(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. These persons are the consumers of the tangible personal property, such as soap, brushes, and towels, they purchase, except for the wax, air freshener and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax, air freshener and protectants sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to these operators.

(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of the service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin.

Example: Company B located in Wisconsin solicits advertising for telephone books yellow pages and compiles, publishes and delivers the directories to the subscribers of telephone com-

panies. Company B contracts with an out-of-state corporation to print the directories. The printer delivers a portion of the directories to the U.S. Postal Service for delivery directly to telephone subscribers in Wisconsin. The remaining directories are delivered to Company B who in turn distributes them to subscribers in Wisconsin. Company B is not subject to use tax on the directories delivered by the U.S. Postal Service. However, Company B is subject to use tax on the directories delivered to it which it distributes to subscribers.

Note: The interpretations in s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969, except that fees paid to architects performing landscaping planning became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (n), Register, June, 1983, No. 330, eff. 7-1-83; r. (3) (k) and am. (3) (n), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (h), Register, April 1990, No. 412, eff. 5-1-90; am. (1), (2) (b) and (c), (3) (a), (d) 1. and 2., (e) 1. and 2., (g), (l), (m) and (n), Register, November, 1993, No. 455, eff. 12-1-93.

Tax 11.68 Construction contractors. (ss. 77.51 (2), (4) (b) 6 and (c) 4, (14) (intro.), (g) and (i) and (15) (b) 5 and (c) 2, 77.52 (2) (a) 10, 11 and 20, 77.53 (1), 77.54 (5) (d), (6) (a), (26), (26m), (31) and (41), 77.71 (3) and 77.77 (3), Stats.) (1) **GENERAL.** (a) Construction contractors may be retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

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) Contractors are retailers of:

1. Property which retains its character as personal property after sale and installation.

Note: Refer to subs. (4) and (6) for the classification of property.

2. Labor or services furnished in installing tangible property which retains its character as personal property after installation.

Note: Refer to subs. (4) and (6) for the classification of property.

3. Labor and material furnished in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of items of real property which retain their character as tangible personal property for repair purposes.

Note: Refer to sub. (10) for a description of real property which retains its character as tangible personal property for repair purposes.

4. Tangible personal property sold.

(c) Contractors are consumers of tangible personal property they use when engaged in real property construction activities, such as altering, repairing or improving real property.

(2) **REAL PROPERTY CONSTRUCTION CONTRACTORS.** (a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in activities such as building, electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry and cement work, plastering and tile and terrazzo work.

(b) A retailer may also be a real property contractor, such as a department store which sells and installs tangible personal property which becomes a part of real property after installation.

Example: A hot water heater or water softener sold and installed in a purchaser's residence by a retailer becomes real property after installation. The retailer is considered to be a real property contractor.

(c) Real property construction activities include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modular units. The modular units must have a realty function and must become a permanent accession to realty.

(3) PURCHASES BY CONTRACTORS. (a) Under s. 77.51 (2), Stats., contractors who perform real property construction activities are the consumers of building materials which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax. This includes raw materials purchased outside Wisconsin that are used by a contractor in manufacturing tangible personal property outside Wisconsin, or that are fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and are subsequently stored, used or consumed in Wisconsin by that contractor.

Note: Prior to August 12, 1993, raw materials purchased outside Wisconsin that were used by a contractor in manufacturing tangible personal property outside Wisconsin or that were fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and were subsequently stored, used or consumed in Wisconsin by that contractor were not subject to tax pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(b) Property which a construction contractor will resell as personal property may be purchased without tax for resale. This property includes personal property furnished as part of a real property construction activity when the personal property retains its character as personal property after installation. This property also includes personal property furnished as part of a real property construction activity when provided as part of a taxable landscaping service.

Note: Refer to subs. (4) and (6) for the classification of property.

(c) Machinery and equipment, including road building equipment, tunnel shields, construction machines, and cement mixers, tools, including power saws and hand tools, and supplies, including machine lubricating and fuel oils, form lumber and industrial gases, purchased by a construction contractor for the contractor's use are generally either consumed in the process of construction or are removed when the project is completed. The contractor is the consumer of the personal property and shall pay the tax on its purchases of the property. However, an exemption is provided in s. 77.54 (5) (d), Stats., for mobile cement mixers used for mixing and processing and the motor vehicle or trailer on which a mobile mixing unit is mounted, including accessories, attachments, parts, supplies and materials for the vehicles, trailers and units.

(d) Under s. 77.54 (26), Stats., contractors may purchase without sales or use tax tangible personal property which becomes a component part of an industrial waste treatment facility that would be exempt under s.

70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., or a municipal waste treatment facility, even though they are the consumers of the property.

Note: Refer to s. Tax 11.11 regarding industrial and municipal waste treatment facilities.

(e) Under s. 77.54 (26m), Stats., contractors may purchase without sales or use tax waste reduction and recycling machinery and equipment, including parts, which are exclusively and directly used for waste reduction and recycling activities which reduce the amount of solid waste generated, reuse, recycle or compost solid waste or recover energy from solid waste, even though they are the consumers of the property.

Examples: 1) Equipment used in a foundry to clean sand so that the sand can be reused qualifies for exemption.

2) Equipment used to remove impurities from lubricating oil used in manufacturing machines so that the oil can continue to be used by the manufacturer qualifies for exemption.

3) Equipment used to produce fuel cubes qualifies for exemption. This equipment shreds waste paper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary and then compresses the materials into fuel cubes which are burned by homeowners or others to replace wood.

4) A roto-mill machine that mines old pavement and grinds up the mined materials to be reused in construction activities qualifies for exemption.

5) Large steel waste collection containers, including dumpsters, which may be picked up and dumped into waste collection trucks or hauled away on flatbed trucks, or which may mechanically compact the waste in the container do not qualify for exemption.

(f) Under s. 77.54 (41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11 (36), Stats. Section 70.11 (36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

(4) CLASSIFICATION OF PROPERTY AFTER INSTALLATION. (a) Contractors shall determine whether a particular contract or transaction results in an improvement to real property or in the sale and installation of personal property. In determining whether personal property becomes a part of real property, the following criteria shall be considered:

1. Actual physical annexation to the real property.
2. Application or adaptation to the use or purpose to which the real property is devoted; and
3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

Note: See *Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc.* (1976), 72 Wis. 2d 60, regarding determining whether personal property becomes a part of real property.

(b) Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others, including boilers, furnaces, stand-by generators, pumps, substations and transformers. When this property is installed primarily to pro-

vide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

(5) **PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY.** A construction contractor is the consumer of personal property, such as building materials, which is incorporated into or becomes a part of real property, and sales of this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

- (a) Boilers and furnaces for space heating.
- (b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems and incinerators.
- (c) Cemetery monuments.
- (d) Buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors, including computer room floors, partitions and movable walls attached in any way to realty, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door

Next page is numbered 257

controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, and heating, cooling and ventilation systems.

(e) Fixed or year-around wharves and docks.

(f) Improvements to land, including retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems except systems sold to and for use by farmers, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection.

(g) Planted nursery stock. However the sale of nursery stock to a landscape contractor, who uses the nursery stock in providing taxable landscaping services, is not subject to the tax.

(h) Residential water heaters, water softeners, intercoms, incinerators and garage door opening equipment, except portable equipment.

(i) Silos and grain elevators.

(j) Swimming pools, wholly or partially underground.

(k) Storage tanks constructed on the site.

(l) Traffic signals, and street and parking lot lighting.

(m) Truck platform scale foundations.

(n) Walk-in cold storage units becoming a component part of a building.

(6) PROPERTY PROVIDED UNDER A CONSTRUCTION CONTRACT WHICH REMAINS PERSONAL PROPERTY. (a) Contractors shall obtain a seller's permit and report for taxation gross receipts from the sale and installation of personal property, furnished under a construction contract, which retains its character as personal property after installation, such as:

1. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.

2. Communication equipment, including intercoms, pneumatic tube systems, satellite dishes, roof mounted antennas, CATV wiring and music and sound equipment in business, industrial or commercial buildings, schools and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

3. Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment, and related easily movable property attached to the structure in schools, laboratories and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

4. Machinery, including safety attachments, equipment, tools, appliances, process piping and wiring used exclusively by manufacturers, industrial processors and others performing a processing function with the items.

5. Office, bank and savings and loan association furniture and equipment, including office machines, safe deposit boxes, drive-up and walk-

up windows, night depository equipment, remote TV auto teller systems, camera security equipment and vault doors.

6. Personal property used to carry on a trade or business, including fixtures and equipment installed in stores, taverns, night clubs, restaurants, ice arenas, bowling alleys, hotels and motels, barber and beauty shops, figure salons, theaters and gasoline service stations. Underground storage tanks at gasoline service stations are real property.

7. Shades, curtains, drapes, venetian blinds and associated hardware.

8. Radio, television and cable television station equipment, but not broadcasting towers installed on their owner's land.

9. Except as provided in ss. 77.51 (4) (b) 6 and (15) (b) 5 and 77.54 (31), Stats., mobile homes located in a mobile home park on land owned by a person other than the mobile home owner. Exemptions are provided by ss. 77.51 (4) (b) 6 and (15) (b) 5 and 77.54 (31), Stats., for 35% of the total amount for which a new mobile home that is a primary housing unit, or that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation, is sold and the full amount for which a used mobile home that is a primary housing unit is sold or purchased. No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental.

10. Advertising signs, except their underground concrete foundations. A foundation is underground even though a portion of the foundation extends above the grade.

11. Buildings and standing timber sold for removal.

12. Utility transmission and distribution lines installed above ground on land owned by others as provided in s. Tax 11.86 (1), and oil and gas pipeline pumping station equipment.

13. Commercial and industrial incinerators which do not become an integral part of the building.

14. Seating in auditoriums and theaters, and theater stage lights and projection equipment.

(b) If a few items of tangible personal property, minor in cost in relation to the total amount of a contract, are sold as part of a contract which includes construction of a building or other structure and no separate charge is made for the personal property, the cost of the property to the construction contractor shall be used as the measure of gross receipts subject to sales tax. If a separate charge is made for any of the items, they are subject to the tax, but not less than on their cost.

Example: A refrigerator or drapes are included in the contract to construct a new house. The cost of the refrigerator and drapes to the construction contractor are included in the measure of gross receipts subject to sales tax.

(7) PROPERTY PURCHASED BY A PERSON WHO PERFORMS BOTH CONSTRUCTION CONTRACTING AND RETAIL SELLING, WHEN DESTINATION OF PROPERTY PURCHASED IS UNKNOWN AT TIME OF PURCHASE. Section 77.51 (2), Stats., provides in part that "A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which he has sound reason to believe he will sell to customers for whom he will not perform real property construction activities

involving the use of such property." However, some construction contractors who also sell construction supplies at retail do not know when they purchase these supplies whether they will be consumed in construction contracts or resold to others. In these instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give a resale certificate to suppliers and purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and collect and remit the tax on the sales price to customers. If the property is used in fulfillment of a construction contract, the contractor shall pay a use tax on its purchase price.

(b) Pay sales tax to suppliers on all property purchased. If the property is later consumed in fulfilling a construction contract, the tax obligation is taken care of. If the property is resold at retail, the contractor shall collect and remit sales tax on these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

(8) PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY. (a) The sales tax exemption provided to governmental units and other exempt entities, such as churches and nonprofit hospitals, does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair or improve real property for the exempt entity. Gross receipts from sales of these building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation.

Examples: 1) A contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or governmental building, since the property becomes a part of realty after installation.

2) A contractor shall pay tax on its purchases of pumps and other equipment for use at a municipal well or pumping station, since the property becomes a part of realty after installation.

(b) A contractor may purchase without tax as property for resale tangible personal property which retains its character as personal property after installation as described in sub. (6), even though the resale of the property by the contractor is exempt when the property is sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. This property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. This exemption does not apply to property which becomes a part of real property as described in sub. (5) and par. (a).

(9) USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN. (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made.

(b) If a construction contractor purchases property outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made or property was used prior to being stored in Wisconsin.

(c) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

Note: The use tax as provided for in sub. (9) does not apply prior to August 12, 1993, to raw materials purchased outside Wisconsin that are, prior to being stored, used or consumed in Wisconsin, manufactured into tangible personal property by that contractor outside Wisconsin, or that are fabricated or altered outside Wisconsin by that contractor so as to become different or distinct items of tangible personal property from the constituent materials pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(10) CONSTRUCTION AND REPAIR SERVICES. (a) A contractor who performs real property construction activities may not add tax to any charge for labor or material, since gross receipts from these activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of the materials and becomes a cost of doing business.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on this service, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of any items listed in par. (c) or other items of tangible personal property shall register as a retailer and pay the tax on gross receipts from the performance of these services.

(c) Section 77.52 (2) (a) 10, Stats., provides in part that “. . . the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration, but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.”

(d) Charges for tangible personal property, such as a repair part, incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible per-

sonal property incorporated into it is deemed purchased by the contractor for resale and, therefore, may be purchased without tax.

Example: If a contractor is engaged to repair a refrigerator, whether free-standing personal property or built-in so as to be a part of real property, in a home, the repair service and any charge for parts are taxable.

(11) **REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES.** Section 77.51 (4) (c) 4, Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52 (2) (a) 10, Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless of the extent to which fastened to, connected with or built into real property. Among these items are furnaces and boilers used for space heating. In view of these statutes, charges for services and repair parts for repair of tangible personal property covered by both statutes, such as a furnace boiler, are taxable, but charges for services in totally replacing the property are not taxable. In the nontaxable situation, the replacement personal property is taxable when sold to the contractor installing it, but the contractor's charge for the replacement service is not taxable.

(12) **COUNTY TAX ON BUILDING MATERIALS.** (a) Section 77.71 (3), Stats., imposes an excise tax upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county which has adopted the county tax. The tax is measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county, unless the contractor has paid the county tax of a county in this state or a similar local sales tax in another state on the purchase of that property.

(b) Building materials which become a component part of real property are used and consumed at the job site.

(c) In providing repair services to real property subject to taxation under s. 77.52 (2) (a) 10, Stats., a contractor may purchase without county tax for resale the building materials used in providing the taxable services, and the county excise tax imposed under s. 77.71 (3), Stats., does not apply to those purchases.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the excise tax under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The excise tax under s. 77.71 (3), Stats., on building materials used in real property construction activities is not imposed if the contractor purchased the building materials before the effective date of the county

tax of that county or has paid the sales tax of another county in this state in purchasing the building materials.

Note: The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) Thirty-five percent of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; and (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (d), (6) (a) 2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337; emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86; am. (9) (a), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (g) and (12) (a), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (b) 1., 2. and 3., (2) (a) and (b), (3) (b) and (c), (4) (a) (intro.) and (b), (5) (intro.), (b), (e), (f), (h) and (j), (6) (a) 2., 4., 5., 6., 9. and 10. and (b), (7), (8), (9) (a), (10) (a), (b) and (d) and (11), cr. (3) (d) and (e), Register, June, 1991, No. 426, eff. 7-1-91; renum. (9) (b) to be (c); cr. (2) (c), (3) (f) and (9) (b), am. (6) (a) (intro.), 9., 10., (10) (a), (c), and (12) (c), Register, December, 1992, No. 444, eff. 1-1-93; am. (3) (a), Register, April, 1994, No. 460, eff. 5-1-94.

Tax 11.69 Financial institutions. (s. 77.51 (14) (k), Stats.) (1) **EXEMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(2) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.

(h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

DEPARTMENT OF REVENUE

262-1
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.

(3) PURCHASES. (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up

Next page is numbered 263

and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) DEFINITION. In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) SPECIAL PROVISIONS. (a) Sales to state chartered credit unions, and to federal and state chartered banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.70 Advertising agencies. (ss. 77.51 (14) (intro.) and (h), 77.52 (1) and (2) and 77.54 (2), (2m), (6) (b) and (25), Stats.) (1) DEFINITIONS. In this section:

(a) "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes. Finished art includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs and illustrative material not reproduced.

(b) "Preliminary art" means art prepared solely for presenting an idea to a client or prospective client. Preliminary art includes roughs, visualizations, sketches, layouts and comprehensives.

(2) TAXABLE SALES. The following sales are subject to Wisconsin sales or use tax, unless an exemption in sub. (3) applies:

(a) Charges for finished art. Finished art is tangible personal property.

(b) Charges for preliminary art all or any part of which results in the production of finished art or other tangible personal property by the advertising agency. This preliminary art is tangible personal property.

Examples: 1) Company A contracts with an advertising agency to produce an advertising campaign for Company A's product. The advertising agency develops 10 ideas or suggestions, in the form of preliminary art, for an advertising flyer. Company A selects one of the ideas, and it is developed into finished art, which is used to produce flyers.

The charges by the advertising agency for the production of preliminary art for all 10 ideas are subject to tax, provided an exemption does not apply to the sale of the finished art, because one idea was selected and was used to produce finished art.

2) Company B contracts with an advertising agency to produce a radio commercial. The agency produces a demonstration tape (demo) which contains several different jingles which could be used in the commercial. Company B selects one of the jingles, and the commercial is produced.

The charge by the agency for the demo is subject to tax. The demo is preliminary art. Since finished art was produced from the preliminary art, the charge is subject to tax, unless an exemption applies to the sale of the finished art.

(c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

Examples: 1) Company C contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company C decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company C. Company C mails the flyers to its Wisconsin customers.

The entire charge to Company C by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is subject to tax.

2) Company D decides to have a radio advertising campaign and contracts with an advertising agency. The advertising agency produces several advertising jingles on a "demo" tape, and Company D selects one jingle. The advertising agency then produces a master tape at its Wisconsin sound production studio. The master tape remains at the studio, and 10 copies or "dubs" are produced. One dub is given to Company D, and the other 9 dubs are mailed by the advertising agency directly to various Wisconsin radio stations. The air time is arranged by Company D.

The entire charge by the advertising agency for the production of the master tape and dubs is subject to tax.

(d) Photographic services or photostats.

(e) Producing, fabricating, processing, printing or imprinting tangible personal property for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing or imprinting of the tangible personal property.

(3) **NONTAXABLE SALES.** Charges for the following are not subject to Wisconsin sales or use tax:

(a) Preliminary art that does not result in the production of finished art or other tangible personal property.

Example: Company E contracts with an advertising agency for an ongoing advertising campaign. The agency submits several suggestions, in the form of preliminary art, for a spring advertising campaign. These ideas are rejected by Company E. The charge by the advertising agency for preliminary art not chosen for further development is not subject to tax, because the preliminary art was not developed into finished art.

(b) Writing original manuscripts or news releases.

(c) Writing copy to be used in media advertising.

(d) Consultation, market research and compiling statistical or other information.

(e) Recommendations for advertising themes or merchandising plans.

(f) Obtaining media space and time.

(g) Printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which is purchased and stored for the purpose of subsequently

transporting it outside Wisconsin by the client for use thereafter solely outside Wisconsin.

Example: Company F contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company F decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company F. Company F mails the flyers to its customers located outside Wisconsin.

The entire charge to Company F by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is exempt from tax because the printed advertising material is transported outside Wisconsin by Company F for use by Company F outside Wisconsin.

(h) Printing or imprinting tangible personal property which will be subsequently transported outside Wisconsin for use outside Wisconsin by the client for advertising purposes.

Example: Company G contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company G decides on one theme, and the finished art is prepared. Company G provides the finished art, paper and ink to a Wisconsin printer who prints 10,000 copies of the flyer. The flyers are mailed by Company G to addresses outside Wisconsin.

The charge to Company G by the printer for the printing of the flyers is exempt from tax because the flyers are transported outside Wisconsin for use outside Wisconsin by Company G for advertising purposes.

(i) Tangible personal property that will be resold by the client.

Example: Company H has an advertising agency produce specification sheets for Company H's products. The specification sheets are included with the products when sold to Company H's customers. The advertising agency produces the finished art and has the printing done. Company H receives an itemized bill from the advertising agency which shows a charge for the finished art and the printing.

The entire charge by the advertising agency to Company H is exempt from tax because the specification sheets are included with Company H's products which will be sold to customers. Company H may claim a resale exemption for the specification sheets by providing the agency with a properly completed Wisconsin resale certificate, form S-205.

(j) Tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

Example: Company I contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company I decides on one theme and the finished art is prepared. Company I takes the finished art to a Wisconsin printer and has 10,000 flyers printed. The printer uses its own paper and ink to print the flyers. The flyers are mailed by the printer to addresses in Wisconsin.

The charge to Company I by the advertising agency for the preliminary art and finished art is exempt from Wisconsin sales tax because the finished art is consumed in the production of flyers which are sold by the printer to Company I.

(k) Tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. This exemption does not apply to advertising supplements that are not newspapers.

Example: Company J contracts with an advertising agency to produce a shoppers guide advertisement. The advertising agency produces layouts and roughs for approval by Company J. Company J approves, and the finished art for the shoppers guide advertisement is produced. The preliminary art and finished art charges are billed to Company J for the job. Company J deals directly with the shoppers guide publisher to run the advertisement in a

shoppers guide. The advertising agency bills Company J \$1,000 for preliminary art and \$3,000 for finished art.

The total \$4,000 charge is exempt from Wisconsin sales or use tax because the preliminary art results in finished art and the finished art becomes an ingredient or component part of a shoppers guide, or is consumed or loses its identity in the manufacture of shoppers guides.

(L) Containers, labels, sacks, cans, boxes, drums, bags or other packing and shipping materials for use in packing, packaging or shipping tangible personal property, if the items are used by the purchaser to transfer merchandise to customers. Also exempt are meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other 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.

Example: An advertising agency produces finished art to be used on Company K's shipping boxes. The boxes are used by Company K to ship its products to its customers. The advertising agency delivers the finished art to a printer who uses the finished art to print and produce the boxes which the advertising agency resells to Company K.

The entire charge for the finished art and boxes is exempt from Wisconsin sales or use tax because the boxes are used by Company K in packing, packaging or shipping merchandise to customers. Company K should provide the agency with a properly completed certificate of exemption, form S-207.

(4) MEASURE OF TAX. (a) Tax applies to an advertising agency's total gross receipts from the sale of tangible personal property or taxable services without any deduction for any cost element which becomes a part of the sales price. These elements include consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though the costs are separately itemized in a billing to the client.

(b) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(5) WHEN AND WHERE SALE OCCURS. (a) The tax applies to an agency's gross receipts from the sale of or the storage, use or consumption of tangible personal property in Wisconsin regardless of whether:

1. The transfer is to the advertiser or to a third party at the direction of or on behalf of the client.

2. The client is located in or outside Wisconsin.

Example: An agency's billing to a client in Minnesota for finished art transferred to a business in Wisconsin is taxable.

(b) The sale of tangible personal property or taxable services occurs when the advertising agency transfers possession of the tangible personal property to the client or the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client.

(6) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee," "retainer," "service charge" or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal

property, it is not taxable. A fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales.

(7) **PURCHASES BY AGENCIES.** (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that:

1. Is resold before use by the advertising agency.

Example: Company L is an advertising agency. Company L purchases various art equipment such as paint brushes, easels, etc., that it uses in its operations. A portion of the art equipment is sold to the general public for use. The art equipment Company L sells to the general public may be purchased by Company L without Wisconsin sales or use tax as property for resale, provided Company L gives its supplier a properly completed Wisconsin resale certificate, form S-205.

2. Becomes physically an ingredient or component part of tangible personal property the advertising agency produces and sells.

Example: Company M is an advertising agency that produces displays for customers. The displays are usually framed or matted photographs or prints. Company M may purchase the frames, matting, and paper for photographs and prints without Wisconsin sales or use tax as property for resale, provided it gives its supplier a properly completed Wisconsin resale certificate, form S-205.

(b) An advertising agency is the consumer of all tangible personal property other than tangible personal property purchased for immediate sale to customers or that becomes physically an ingredient or component part of tangible personal property sold by the agency. As the consumer, the advertising agency is subject to Wisconsin sales or use tax on the tangible personal property purchased.

Example: Company N purchases various office equipment, such as typewriters, computers, tables and cabinets which it uses in its advertising agency office. Company N purchases the equipment from an out-of-state supplier that is not required to collect Wisconsin sales or use tax. Company N is subject to Wisconsin use tax on its purchase of the office equipment.

Note: 1) Forms S-205 and S-207 and their instructions may be obtained free of charge, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, or by calling (608) 266-2776.

2) The interpretations in s. Tax 11.70 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 for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; and (c) The exemption for ingredients or components of shop-press guides, newspapers, and periodicals became effective July 7, 1983.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.71 Computer industry. (ss. 77.51 (14) (h) and (j) and (20) and 77.52 (1) and (2) (a) 10, Stats.) (1) **DEFINITION OF TERMS.** In this section:

(a) "Application" means the specific job performance by an automatic data processing installation.

(b) "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment as well as punched card tabulating machines. It does not include tape-controlled automatic drilling, milling or other manufacturing machinery or equipment.

(c) "Basic operational programs", commonly referred to as "systems software", means the programs that perform overall control and direction of the computer system and permit it to do the functions basic to the

operation of a computer, and permit it to execute the instructions contained in utility software and applications software programs. Basic operational programs are considered an integral part of the computer hardware when these internal codes are not accessible to or modifiable by the user.

(d) "Coding" means the list, in computer code, of the successive computer instructions for successive computer operations for solving a specific problem.

(e) "Custom programs" mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon all the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system.

2. Whether the program is loaded into the customer's computer by the vendor and the extent to which the installed program must be tested against the program's specifications.

3. The extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation.

4. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.

5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.

6. Custom programs do not include basic operational programs or prewritten programs.

7. If an existing program is selected for modification, there must be a significant modification of that program by the vendor so that it may be used in the customer's specific hardware and software environment.

(f) "Data processing" means the recording and handling of information by means of mechanical or electronic equipment, commonly referred to as automatic data processing.

(g) "Enhancement" means modifications, upgrades, improvements or changes to existing programs by persons other than the purchaser of the program.

(h) "Input" means the information or data transferred, or to be transferred, from external storage media including punched cards, punched paper tape and magnetic media into the internal storage of the computer.

(i) "Keypunching" means recording information in cards, paper tapes, or magnetic tapes, disc or drum by punching holes or otherwise entering information in the cards, tapes, discs or drums, or recording data on any media to represent letters, digits and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

(j) "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to en-

Register, April, 1993, No. 448

sure that information has been punched in a card or transcribed on a tape during the keypunching operation has been punched properly.

(k) "Prewritten programs", often referred to as "canned programs", means programs prepared, held or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease.

(l) "Processing a client's data" means the developing of original information from raw data furnished by a client. Automatic data processing operations which develop original information include summarizing, computing, extracting, sorting, sequencing, or the updating of a continuous file of information maintained for a client by a service bureau.

(m) "Program" means the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a specific problem. It includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs. For purposes of this section a program is either a prewritten or custom program.

(n) "Program maintenance", in addition to other maintenance services, includes telephone support services to discuss and solve problems.

(o) "Reformatting of data" means the rearranging of data by mechanical or electronic equipment.

(p) "Service bureau" means a business rendering automatic data processing services.

(q) "Source document" means a document from which basic data are extracted, such as sales invoice.

(2) **TAXABLE RECEIPTS.** The following transactions involving automatic data processing equipment, programs, output and services are taxable:

(a) The retail sale, lease or rental of new or used automatic data processing equipment and charges for the installation, service and maintenance of this equipment. In this subsection, the following applies to leases:

1. Lease includes a contract by which a lessee, for a consideration, obtains the full or partial use of equipment if the lessee's employees are located on the premises where the equipment is located or operate the equipment. A lease does not include obtaining remote access to equipment by telephone or other means when that person's employees are not located on the premises where the equipment is located and they do not operate the equipment or control its operations.

2. Subleasing receipts are taxable without any deduction or credit for sales or use tax paid by the original lessee to the lessor if the original lessee uses the equipment in addition to subleasing it. If the original lessee uses the equipment solely for lease or rental to others, the lessor's charge to the original lessee is exempt as a purchase for resale.

(b) The retail sale, lease, rental or license to use computer programs, except custom programs, including the maintenance and enhancement of those programs, whether transferred in a machine readable form such as

cards, tapes or discs, or transferred in any other manner to the lessee or purchaser such as by telecommunications, or written instructions on coding sheets. The tax applies to the total charge for these programs, including:

1. The consideration received for the temporary transfer of possession of a prewritten or basic operational program for the purpose of direct use or to be recorded by the customer.

2. The consideration received for a program in the form of license fees or royalty payments, present or future, whether for a minimum use or for extended periods.

3. The consideration received for designing, producing, implementing, testing or installing the program.

(c) The sale of training materials, such as books and manuals furnished to trainees for a specific charge. However, training services are not taxable.

(d) The charge for additional copies of records, reports or tabulations, including copies produced by means of photocopying, multi-lithing or by other means. "Additional copies" means all the copies in excess of copies produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program so that a program is run continuously, by using different programs to produce the same output product, or by other means.

(e) The sale of mailing lists as set forth in s. Tax 11.82, including listings in the form of mailing labels produced as result of a computer run. However, the tax does not apply to the charge for addressing material to be mailed with names and addresses furnished by a customer, or maintained by a service bureau for the customer, by the use of automatic data processing equipment.

(3) **NONTAXABLE COMPUTER AND DATA PROCESSING SERVICES.** The gross receipts from the following computer or data processing services are not taxable:

(a) Processing a client's data.

Note: 1) A contract to process a client's data by the use of a computer program or through an electrical accounting machine programmed by a wired plugboard will usually include receiving the client's source documents, recording data in machine readable form such as in punch cards or on magnetic media, making corrections, rearranging or creating new information as the result of the processing and then providing tabulated listings or recording output on other media. This service is not taxable, even though the total charge is broken down into specific charges for each step.

2) If a client furnishes data and computer programs for processing the data and the processing is under the direction and control of the person providing the service, the processing service is not taxable, even though charges for the service may be based on computer time. The true object of this arrangement is considered to be a service, even though some tangible personal property may be incidentally transferred to the client.

(b) Providing custom programs.

(c) Providing program technical support, error correction services and maintenance and enhancement to custom programs.

(d) Providing time-sharing services which permit persons at different locations to access the same computer through remote access by telephone lines, microwave or other means. Nontaxable time-sharing exists when a person or that person's employes, who have access to the equipment, are not located on the premises where the equipment is located and do not operate the equipment or control its operation.

(e) Miscellaneous services which are not part of the sale of a taxable program including:

1. Designing and implementing computer systems including determining equipment and personnel required and how they will be utilized.
2. Designing storage and data retrieval systems including determining what data communications and high-speed input-output terminals are required.
3. Consulting services including study of all or part of a data processing system.
4. Feasibility studies including studies to determine what benefits would be derived if procedures were automated.
5. Evaluation of bids including studies to determine which proposal for computer equipment would be most beneficial.

(f) Key punching and keystroke verifying services, including:

1. Key punching only, key punching and keystroke verification, or key punching and providing a proof list or verification data or both. Charges for these services are not taxable, whether the cards or tapes are furnished by the customer or by a service bureau.
2. Recording data from source documents directly on magnetic tape, off-line. This operation may include keystroke verifying or proof listing of data or both and is comparable to the punch card operation.
3. Imprinting characters on a document to be used as the input medium in an optical character recognition system, whether paper tape or other media are used in the operation.
4. Reformatting of data.

Note: 1) The interpretations in s. Tax 11.71 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted. However, computer and data processing services were taxable under s. 77.52 (2) (a) 13, Stats., Laws of 1977, from August 1, 1977, through June 30, 1978.

2) In *Janesville Data Center, Inc. v. Department of Revenue* (1978), 84 Wis. 2d 341, the Wisconsin Supreme Court held that the transfer of customer data onto tangible personal property and the verification of customer data is not subject to the sales and use tax as a transfer of tangible personal property or a taxable service.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (e) 6., (2) (a) (intro.), 1. and (b) (intro.), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers. (ss. 77.51 (1m), (3m), (13) (e) and (f) and (14) (L), 77.52 (2) (a) 6 and (2m) (a) and 77.54 (40), Stats.) (1) LAUNDRIES AND DRY CLEANERS. (a) The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are taxable, except as provided in par. (b).

(b) The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are exempt from tax when:

1. The services are performed on raw materials or goods in process destined for sale.

2. The services are performed by the customer through the use of coin-operated, self-service machines. Coin-operated, self-service machines do not include machines activated by tokens or magnetic cards.

3. The services are performed on cloth diapers by a diaper service. "Cloth diaper" means a cloth diaper used for sanitary purposes. "Diaper service" means a business primarily engaged in the lease or rental, delivery or laundering of cloth diapers.

(2) **LINEN AND CLOTHING SUPPLIERS.** The gross receipts of lessors from leasing or renting clothing, including uniforms, towels, linens or similar items, not including cloth diapers, to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled are subject to the tax. However, the items furnished to customers under these agreements may be purchased by the lessor without paying sales or use tax.

(3) **PURCHASES.** (a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and shall pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. They also shall pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. The tax applies to the gross receipts on the sale of these items to laundries, dry cleaners and linen and clothing suppliers.

(b) The tax applies to gross receipts from sales, leases or rentals of machinery and equipment to persons engaged in performing or furnishing laundry, dry cleaning, pressing and dyeing services, and to persons leasing or renting linens, towels and clothing to industrial, commercial or household users.

Note: The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; and (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wis. Act 335.

History: Cr. Register, December, 1979, No. 288, eff. 1-1-80; am. (3) (a) and r. (3) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) and (3) (a), cr. (1) (b), renun. (1) to be (1) (a) and am., Register, June, 1991, No. 426, eff. 7-1-91.

Next page is numbered 269

Tax 11.78 Stamps, coins and bullion. (s. 77.51 (20), Stats.) (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

- (a) Cancelled United States and foreign postage stamps.
- (b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.
- (c) Uncancelled foreign postage stamps.
- (d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.
- (e) Foreign coins and paper currency when sold or traded as collectors' items.
- (f) United States coins and paper currency when sold or traded as collectors' items above their face value.
- (g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

(h) Commemorative medals.

(2) **NONTAXABLE SALES.** Retail sales of the following tangible personal property are not subject to the sales and use tax:

- (a) United States coins and paper currency sold at face value.
- (b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.
- (c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.
- (d) Foreign coins and paper currency in current circulation, when sold at face value and when acquired as a medium of exchange.

(e) Uncancelled United States postage stamps intended for use as postage even if sold for an amount above face value.

Note: The interpretations in s. Tax 11.78 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77; am. (2) (a), cr. (2) (e), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.79 Leases of highway vehicles and equipment. (ss. 77.51 (13) (k) and (14) (intro.) and (j), 77.54 (5) (c) and (d) and (26m) and 77.58 (6), Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under sub. (1), the cost of the following items may be deducted if they meet the conditions in sub. (3):

- (a) Motor fuel.

- (b) Vehicle license fees.
- (c) Federal highway use taxes.

(d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in sub. (2) may be deducted if:

- (a) The charge is reasonable.
- (b) The charge is separately stated in the lease agreement, billing or invoice.
- (c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in sub. (2).
- (d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under sub. (1), the cost of the following may not be deducted:

- (a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.
- (b) Maintenance or repair charges incurred by the lessor.
- (c) Interest and other financing costs incurred by the lessor.
- (d) Dispatch service.

(5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

(6) **EXEMPT LEASES.** Gross receipts from the rental or lease of the following property shall be exempt from sales and use tax provided the lessor receives a properly completed exemption certificate as described in s. Tax 11.14:

(a) Highway vehicles, except automobiles, leased to common or contract carriers who use the vehicles exclusively in common or contract carriage, including urban mass transportation of passengers as defined in s. 71.38, Stats.

(b) Motor vehicles not licensed for highway use which are used exclusively and directly in conjunction with waste reduction or recycling activities described in s. 77.54 (5) (c), Stats.

(c) Mobile units used for mixing and processing, including the motor vehicle or trailer on which the unit is mounted. Accessories, attachments, parts, supplies and materials for the mobile unit, vehicle and trailer are also exempt.

(d) Leases of highway vehicles and equipment for resale.

Note: The interpretations in s. Tax 11.79 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for vehicles and equipment used in waste reduction or recycling activities became effective July 1, 1984, pursuant to 1983 Wis. Act 426; and (b) The exemption for mobile mixing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77; cr. (4) (d), Register, September, 1984, No. 345, eff. 10-1-84; cr. (6), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.80 Sales of ice. (ss. 77.52 (1) and 77.53 (1), Stats.) (1) Ice, including dry ice, is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale.

Example: Ice used for refrigeration purposes is consumed in the process of refrigeration. Ice used in drinks is purchased for resale by the seller of the drink.

(2) Taxable sales of ice include:

(a) Sales through vending machines.

(b) Sales to restaurants, taverns, grocery stores and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(3) Nontaxable sales of ice include:

(a) Sales to restaurants, taverns and soda fountains to be used exclusively in drinks. The sales are exempt as sales for resale.

(b) Sales to manufacturers, producers or food processors for use inside the shipping cases of merchandise being transferred to a customer. The sales are exempt as "shipping material" under s. 77.54 (6) (b), Stats.

(c) Ice sold to manufacturers which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

(4) (a) If ice is sold to a person who will use it both for a taxable purpose and nontaxable purpose, such as for refrigeration and for resale, the total charge shall be divided between taxable and nontaxable use. The tax is then payable on the ice to be used in a taxable manner. If no division is made, the tax applies to the total sale.

(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c).

Note: The interpretations in s. Tax 11.80 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. (4) (b), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (intro.), (3) (intro.), (a) and (b) and (4) (a), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.81 Industrial gases, welding rods and fluxing materials. (s. 77.54 (2), Stats.) (1) GENERAL STATEMENT. The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54 (2), Stats., exempts from the sales tax "The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or

electricity.” Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

(a) Exempt if they become ingredients or components of tangible personal property destined for sale; or

(b) Exempt if they are consumed, destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or

(c) Taxable if they are sold to a person who consumes them in a non-manufacturing activity.

(2) **INDUSTRIAL GASES.** Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen.

(a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

1. Carbon dioxide used to produce dry ice or carbonated soft drinks.
2. Gases such as neon, helium or argon used as a filler in the production of light bulbs and tubes.
3. Hydrogen used in hydrogenating vegetable oils.
4. Acetylene used as a base in the manufacture of synthetic materials.
5. Oxygen used in the chemical industry for oxidation processes, when not used as a fuel to produce heat.

(b) Taxable sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces.
2. Acetylene or other gases used in torches in the manufacture of tangible personal property.

(c) Taxable sales of gases to nonmanufacturers, whether or not used by the purchaser as fuel, include:

1. Acetylene or other gases used by automobile body shops or by other repair establishments.
2. Gases used in mining or quarrying.
3. Nitrogen used by telephone companies in underground cables.

(3) **WELDING RODS.** Since welding rods, such as stick electrode and filler rods, are physically transferred and become a part of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property destined for sale or in repairing tangible personal property for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of these rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) **FLUXING MATERIALS.** Fluxing materials sold to a manufacturer for use in manufacturing tangible personal property destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own

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

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

(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of such interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

(4) PURCHASES BY NONRESIDENTS. (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than in their removal from Wisconsin are exempt. Truck bodies include semi-trailers. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body is subject to the tax.

(c) A motor vehicle, trailer, semi-trailer, all-terrain vehicle or mobile home purchased by a nonresident of Wisconsin 90 days or more before bringing the unit into Wisconsin, in connection with a change of residence to Wisconsin by the individual, is not subject to the Wisconsin use tax.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (6).

(5) TEMPORARY USE IN WISCONSIN. Motor vehicles purchased outside Wisconsin which are not required to be registered or titled in Wisconsin brought into Wisconsin by a nondomiciliary for that person's own storage, use or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used or otherwise consumed in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(6) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside this state and registered in this state generally is subject to the Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made, sales or use tax paid the other state or the District of Columbia shall be applied as a credit against and deducted from the Wisconsin use tax. This credit shall not apply to taxes paid to another country, to municipalities in other states or to motor vehicle registration fees.

(7) **TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir or heirs of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser is required to pay the tax to the department of transportation at the time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable, unless the donor is an organization described in s. 77.54 (9a), Stats.

(c) A motor vehicle donated to an organization described in s. 77.54 (9a), Stats., is not subject to Wisconsin use tax.

(8) **VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS.** (a) If salespersons or other employes use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson or other employe a reasonable amount for the use, and the charge is subject to the tax. In lieu of making the charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis:

1. In the case of motor vehicles licensed in the name of the retail dealer, the measure of the tax reported on the dealer's sales and use tax return shall be \$45.00 per vehicle per month until December 31, 1985, \$57.00 per vehicle per month from January 1, 1986 through December 31, 1986, \$69.00 per vehicle per month from January 1, 1987 through December 31, 1987 and \$83.00 per vehicle per month from January 1, 1988 and thereafter.

2. In the case of motor vehicles being operated with retail dealer plates, the measure of the tax reported on the dealer's sales and use tax return shall be \$12.00 per plate per month until December 31, 1985, \$15.00 per plate per month from January 1, 1986 through December 31, 1986, \$18.00 per plate per month from January 1, 1987 through December 31, 1987 and \$22.00 per plate per month from January 1, 1988 and thereafter.

(b) Retail dealers may not report on the basis prescribed in par. (a) for service vehicles such as wreckers or pick-up trucks, autos used by customers when their car is being repaired or any vehicle properly capitalized and depreciated for Wisconsin franchise or income tax purposes. Wholesalers, distributors, brokers or manufacturers may not report on this basis.

(9) **SALES BY DEALERS TO THEIR SALESPERSONS OR OTHER EMPLOYES.** When a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons or other employes, the transaction is subject to the sales tax.

(10) **HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration may not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with Wisconsin. The heavy equipment dealers may purchase motor vehicles for resale without tax.

(11) **MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. The property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle is subject to tax. The property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Taxable supplies include sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, ~~wax~~ and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle even though a separate charge may be made to the customer for these supplies.

(c) A supplier cannot accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, *except* when the purchaser:

1. Inventories the property;
2. Certifies that the purchaser sells significant amounts of the property over-the-counter to walk-in trade; and
3. The purchaser specifies on the resale certificate each type of item the purchaser sells over-the-counter.

(12) **EXEMPTION FOR MIXING AND PROCESSING UNITS.** Sales, leases and rentals of mobile units used for mixing and processing and the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units are exempt from the sales and use tax.

(13) **EXEMPTION FOR VEHICLES USED IN WASTE REDUCTION OR RECYCLING.** Gross receipts from the sale, lease or rental of vehicles which are not required to be licensed for highway use and which are used exclusively and directly in waste reduction or recycling activities are exempt from sales and use tax.

(14) **REFUNDS UNDER "LEMON LAW."** Sales tax refunds made under s. 218.015 (2) (f), Stats., the "lemon law," are normally made in the same manner as the other sales tax refunds. However, when a defective motor vehicle is returned to the manufacturer for a refund of the purchase price, the purchaser is permitted to collect a sales tax refund directly from the department if the manufacturer fails to refund the tax.

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except that: (a) The 5% use tax payable by motor vehicle dealers using regular plates in sub. (8) (a) 1 was \$1.00 per month through December 31, 1972, \$1.35 per month until June 30, 1981, \$2.25 per month until December 31, 1985, and thereafter as shown in this section; (b) The 5% use tax payable in sub. (8) (a) 2 by motor vehicle dealers using dealer plates was 25¢ per month through December 31, 1972, 35¢ per month until June 30, 1981, 60¢ per month until December 31, 1985, and thereafter as shown in this section; (c) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (d) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (e) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (f) The exemption for adaptive

equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (g) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (h) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; and (i) The exemption for parts and accessories of adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7) (a) and (8), Register, May, 1981, No. 307, eff. 6-1-81; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (7) (a) 1. and 2., Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (7) (a) 1. and 2., eff. 3-24-86; am. (7) (a) 1. and 2., Register, October, 1986, No. 370, eff. 11-1-86; cr. (11), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (a), (c) and (d), (3) (a) and (4) (a) and (c), cr. (5), (13) and (14), renum. (5) to be (6), renum. (6) to (11) to be (7) to (12) and am. (8) (a), (9), (10), and (11) (a), (b) and (c) 1., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (a), (c), (d), (3) (a), (4) (a), (b), (6), (7) (a), (b), (8) (b), (10) and (14), cr. (7) (c), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.84 Aircraft. (ss. 77.52 (2) (a) 9, 77.53 (17r) and (18), 77.54 (5) (a) and (7) and 77.61, Stats.) (1) **GENERAL.** (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. 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;

2. The aircraft was previously registered in Wisconsin in the transferor's name; and

3. The transferor is not engaged in the business of selling aircraft.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of aeronautics. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state.

(d) The use tax does not apply to aircraft for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the aircraft into Wisconsin in connection with a change of domicile to this state.

(e) The use tax does not apply to aircraft registered in Wisconsin when all of the following requirements are fulfilled:

1. The aircraft is purchased in another state.

2. The aircraft's owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.

3. The owner or lessee is one of the following:

a. A corporation, and that corporation and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or tangible personal property, except aircraft and property

such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

b. A partnership, and all the corporate partners fulfill the requirements in subpar. a., none of the general partners or limited partners who have management or control responsibilities is domiciled in Wisconsin and the partnership has no other real property of tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

c. An individual not domiciled in Wisconsin.

d. An estate, trust or cooperative, and that estate, that trust and its grantor or that cooperative does not have real property or tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

4. The department has not determined that the owner, if the owner is a corporation, trust or partnership, was formed to qualify for the exemption from Wisconsin use tax.

(2) **TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.

2. The sale and delivery in Wisconsin of oil, equipment, parts and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.

3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52 (2) (a) 9, Stats., imposes the tax on "Parking or providing parking space for motor vehicles and aircraft for a consideration . . ." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational.

Examples: 1) A ready-to-fly aircraft occupying space in a hangar and available for immediate use is parked.

2) An aircraft occupying space in a hangar with its wings off is not parked, since it would require a substantial expenditure of time or effort to make it operational.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor, or "tie-down," parking are taxable.

(c) *Other taxable receipts.* The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

(3) **EXEMPT SALES OF AIRCRAFT.** (a) Section 77.54 (5) (a), Stats., provides that the tax does not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United

States or any foreign government, or to aircraft sold to a nonresident of this state who will not use the aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(b) The tax does not apply to charges for repair, service and maintenance of aircraft used by a certified or licensed carrier of persons or property in interstate or foreign commerce under the laws of the United States or any foreign government.

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

(a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for the instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in the business of crop dusting, spraying, fertilizing and seeding for farmers may purchase weed killers, fertilizer and seed without tax for resale, if these items are used in conjunction with but not incidental to providing the service.

(f) Landing fees.

Note: The interpretations in s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the exemption for federal aviation fuel is effective January 1, 1982, pursuant to Chapter 20, Laws of 1981; (b) The exemption for aircraft brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for certain nonresidents' aircraft became effective May 15, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of aircraft to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (b) 1. and 2., Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) 2. and (3), Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (e), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (b) 3., cr. (1) (d), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (c), cr. (1) (e) and (3) (b), renum. (3) (intro.) to be (3) (a), Register, June 1991, No. 426, eff. 7-1-91; am. (1) (b) 1., (c), (2) (b), (3), (4) (intro.) and (b), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.85 Boats, vessels and barges. (ss. 77.51 (13) (am), 77.52 (2) (a) 9 and 10, 77.53 (17), (17m) and (18), 77.54 (7) and (13) and 77.61 (1), Stats.) (1) **TAXABLE SALES.** Taxable gross receipts involving boats include the following:

(a) Gross receipts from the sale, lease or rental of boats and boat accessories, and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

Register, April, 1993, No. 448

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats. The tax applies to boat storage in public storage warehouses.

(2) EXEMPT SALES. (a) The sale of a boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may qualify as an exempt occasional sale if the transferor does not hold or is not required to hold a seller's permit.

(b) Sales of boats to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor shall be exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor is not engaged in the business of selling boats.

(c) Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more are exempt from the tax. Accessories, attachments and parts attached to the vessel or barge and fuel for the vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees. The use tax does not apply to a boat for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the boat into Wisconsin in connection with a change of domicile to this state.

(e) A boat purchased by a Wisconsin or federal governmental unit or by certain nonprofit organizations is exempt from the tax, regardless of the boat's size or kind, pursuant to s. 77.54 (9a) or 77.55 (1), Stats.

(f) Section 77.53 (17m), Stats., exempts: "*...a boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made.*"

(3) PAYMENT OF TAX. (a) No boat may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax with the boat registration, mailed to Wisconsin Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, WI 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin, unless exempt under sub. (2) (d).

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

(d) The "boat" subject to the use tax at the time the boat is registered in this state includes all accessories affixed or attached to the boat when in use. Anchors, boat cushions, marine radios, radar equipment and other similar accessories are included in the measure of the tax.

Note: In a decision dated July 25, 1983, in the case of *Alan G. Dwyer vs. Wisconsin Department of Revenue*, the Wisconsin Tax Appeals Commission held that the tax applies to boat accessories, including the anchor, boat cushions and marine radio, in addition to the bare hull of the boat.

(4) **TAXABLE SUPPLIES.** Sales of consumable supplies or furnishings not attached to the vessel or barge are not exempt from sales or use tax under s. 77.54 (13), Stats.

Example: Sales of bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, paper towels, etc., used on commercial barges or barges of 50 ton burden or over engaged primarily in interstate or foreign commerce or commercial fishing are subject to sales and use tax.

(5) **SALES TO SHIPS.** Sales of tangible personal property or taxable services delivered to operators of foreign flag ships or ships under the U.S. flag in a Wisconsin harbor are subject to tax, unless the retailer receives a properly completed resale or other exemption certificate from the purchaser.

Example: The operator of the ship may purchase without tax fuel and repair parts for a ship which exceeds 50-ton burden under s. 77.54 (13), Stats.

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Boats documented under laws of the United States do not qualify for the occasional sale exemption effective February 28, 1979, pursuant to Chapter 1, Laws of 1979; (b) Charges by governmental units for docking and storing boats became taxable effective June 1, 1980, pursuant to Chapter 221, Laws of 1979; (c) The exemption for boats of nonresidents kept in waters contiguous to the nonresident's state of domicile became effective September 1, 1985, pursuant to 1985 Wis. Act 29, later amended effective June 1, 1988, pursuant to 1987 Wis. Act 268; (d) The exemption for boats brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; and (e) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (d), (2) (a) and (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a), Register, September, 1984, No. 345, eff. 10-1-84; cr. (2) (f), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b) to (e), cr. (3) (d) and (4), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (a), (c) and (f) and (3) (b), cr. (4), renum. (4) to be (5), r. (1) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (b) and (3) (a), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.86 Utility transmission and distribution lines. (ss. 77.51 (20), 77.52 (2) (a) 10, 11 and 20, 86.16 and 182.017, Stats.) (1) **DEFINITIONS.** In this section:

(a) "Utility facilities" include telephone, telegraph and television lines; electrical, water and gas transmission and distribution lines; and poles, transformers and towers, including pipes, conduits, sleeves, risers for cable television lines, or other property by which lines are supported or in which they are contained or connected.

(b) "Real property" includes underground utility facilities; lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land; and concrete foundations, anchors, crushed rock and backfill whether or not on land owned by the utility.

Register, April, 1993, No. 448

(c) "Tangible personal property" includes overhead utility facilities and circuit breakers and other equipment, but not their foundations, installed to control the flow of electricity. It also includes other overhead property by which lines are supported or in which they are contained or connected if erected or installed under an easement or license, including authorizations under ss. 86.16 and 182.017, Stats., on land owned by a person other than the utility.

(2) **GENERAL.** (a) Gross receipts from the installation, lease, rental, repair, service or maintenance of tangible personal property are subject to sales tax.

(b) Materials used in construction or forming of real property are taxable when purchased by the contractor.

Examples: 1) The gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion of an overhead utility facility, and from a sale "in place" of the facility, if installed under an easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of the property may be purchased without tax for resale.

2) The gross receipts of a utility from the repair, service or maintenance of an overhead utility facility, or a portion of an overhead facility of another utility are taxable. Materials used in the repair, service or installation may be purchased without tax for resale.

3) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to sales or use tax. However, the materials used in the construction or installation of the underground utility facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

4) X-ray testing of weld joints in the pipe as part of the construction of an underground utility pipeline is part of the construction process and the gross receipts are not subject to sales or use tax. However, materials used in the X-ray testing of the underground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) **RELATED EXPENSES.** The gross receipts from the performance of a lump sum contract for the construction of an overhead utility facility, which is tangible personal property, may not be reduced by expenses in performing the contract, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and unloading and hauling materials.

Next page is numbered 283

Note: The related expenses described in sub. (3) are costs of performing the contract and do not affect the amount of taxable gross receipts.

(4) **EQUIPMENT CHARGES.** (a) The gross receipts from a contract to construct or repair an overhead utility facility which is tangible personal property may not be reduced by the amount of hourly charges for the use of equipment.

(b) The gross receipts from the rental of equipment, including any charge for an operator of the equipment, for the construction or repair of a utility line to a utility are taxable, unless the utility employs all of the crew to construct or repair the utility line, in which case only the charge for the equipment is taxable.

Note: See s. Tax 11.29 (4) for more information.

(5) **NONTAXABLE SERVICES.** (a) Gross receipts from tree and shrub trimming services for a utility for the purpose of keeping the overhead transmission and distribution lines free from interference from nearby trees and shrubs or inaccessible to children are not services which are taxable under s. 77.52 (2) (a) 20, Stats.

(b) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line are not taxable.

(c) Gross receipts from a separate charge for removing an existing utility line are not taxable.

(6) **LANDSCAPING SERVICES.** Gross receipts from landscaping services are taxable when performed in lawn and garden areas. This includes lawn, shrub and tree services, except for services described in sub. (5) (a), performed in developed areas found in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other developed areas.

Example: Restoration work performed when a utility extends its service or repairs or replaces existing lines is subject to sales tax.

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except: (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; and (c) The Wisconsin Tax Appeals Commission decision in *Capital City Tree Experts, Inc.*, dated June 19, 1987, later modified by stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (4) (a) and cr. (5), Register, September, 1984, No. 345, eff. 10-1-84; r. and recr., Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.87 Meals, food, food products and beverages. (ss. 77.51 (4) (c) 2, (14) (b) and (f) and (15) (c) 1 and 77.54 (20), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

(b) "Hospital" has the meaning in s. 50.33 (2), Stats.

(c) "Nursing home" has the meaning in s. 50.01 (3), Stats.

(d) "Retirement home" means a nonprofit residential facility, which as its primary function provides personal care above the level of room and board to retired persons, where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(e) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing and ambulation.

(f) "Sanatorium" means an institution for the recuperation and treatment of the victims of physical or mental disorders.

(g) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) TAXABLE SALES. (a) *General*. Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs, young men's christian associations, young women's christian associations and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller*. Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

Example: When a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food or beverages are taxable.

(c) *Food components of meals*. Food items which comprise or are components of a meal shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

Example: A basket of chicken with coleslaw and french fries sold "to go" is taxable food.

(d) *Caterers*. Meals, food, food products and beverages sold by caterers shall be taxable. For purposes of this paragraph:

1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute taxable gross receipts.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers, including dishes, silverware, linen napkins, tablecloths, punch fountains, coffee silver service and glassware, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering ser-

vice. However, items such as tents, public address systems, portable dance floors, portable bars, chairs and tables may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for their use. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placements and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator has a "premise" as defined in s. 77.54 (20) (c) 6, Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for the service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe shall be exempt from the sales tax, if the amount of the tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of the meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Meals to employes.* Sales of meals to employes by an employer for a consideration shall be taxable. For purposes of this paragraph:

1. A consideration shall be deemed made for meals if any one of the following conditions is met:

a. The employe pays cash for meals consumed.

b. An actual, specific charge for meals is deducted from an employe's wages.

c. An employe receives meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.

d. An employe has the option to receive cash for meals not consumed.

2. In the absence of any of the conditions in subd. 1 a consideration is not deemed made when:

a. A value is assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA, social security, or union contract purposes.

b. An employe who does not consume available meals has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies, such as airlines or railways, to a customer while operating in Wisconsin for a specific charge shall be taxable. These meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage is not separately stated to the customer, the tax shall apply to purchases of these meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for the items, the place of business shall be considered selling directly to the members and not to the organization except as provided in subs. 2 and 3. The sales shall, therefore, be subject to the tax, even if the organization collects from the members, pays the seller, and retains a portion of the collections for its own purposes. In these situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. When an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for food and beverages out of its own funds and provides the items to members or others without charge, the sale of the items by a retailer to the organization is not subject to the tax. If the exempt organization holds a certificate of exempt status issued by the department, it shall give the retailer the certificate number to claim the exemption.

3. Sales of food and beverages are not subject to tax even though the employe of an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for the sale of the food or beverages provided all of the following are met:

a. The retailer issues the billing or invoice for the food and beverages in the name of the exempt organization.

b. The certificate of exempt status number of the exempt organization is entered on the retailer's copy of the invoice or billing document.

c. The retailer keeps a copy of the documents described in subpars. a. and b.

(3) **EXEMPT SALES.** The following meals shall be exempt:

(a) *Health care facilities.* Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption does not apply.

Example: If a ladies' auxiliary of a hospital, separate from the hospital, operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at the coffee shop are taxable.

(b) *"Meals on wheels."* Meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels."

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of prepackaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental social security, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

(4) **SPECIALTY SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food.

Example: A restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chapter 250, Laws of 1977; and (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (d), Register, September, 1984, No. 345, eff. 10-1-84; correction in (1) (b) made under s. 13.93 (2m) (b) 7, Stats; am. (1) (intro.) and (f), (2) (a), (b), (c), (d) 1., (g), (j) and (k), (3) (a) and (4) (a), cr. (2) (k) 3., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d) (intro.), 3., (f), (i) (intro.), 1. intro. and 2. intro., (k) 2., (3) (a), (b) and (d), cr. (3) (e), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.88 Mobile homes. (ss. 77.51 (2), (4) (b) 6, (13) (am) and (15) (b) 5, 77.52 (2) (a) 1, 77.53 (17) and (18), 77.54 (7), (31) and (36), 77.61 (1) (a) and (c), 218.10 (3), (7) and (9) and 340.01 (29), Stats.) (1) **MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT.** A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) **SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS.** (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and

which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to the contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) SALES AND RENTALS OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) Under s. 77.54 (31), Stats., the total gross receipts from the sale of a used mobile home, which is a primary housing unit, are exempt from the sales and use tax.

(b) Under s. 77.51 (4) (b) 6 and (15) (b) 5, Stats., 35% of the total gross receipts from the sale of certain new mobile homes is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of these new mobile homes. The 35% exemption applies to a new mobile home that is:

1. A primary housing unit under s. 340.01 (29), Stats., or

2. Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

(c) Under s. 77.54 (36), Stats., the rental of a mobile home, as defined in s. 66.058 (1) (e), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(d) Under s. 77.54 (7), Stats., mobile homes transferred to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor are exempt occasional sales if the mobile home has been previously registered or titled in Wisconsin in the name of the transferor and the transferor is not engaged in the business of selling homes.

(e) Under s. 77.53 (18), Stats., the use tax does not apply to a mobile home purchased by a nonresident outside Wisconsin 90 days or more before bringing the mobile home into Wisconsin in connection with a change of domicile to Wisconsin.

(4) PAYMENT OF TAX. (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) If a mobile home purchased outside Wisconsin is subject to the Wisconsin use tax, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) CONSIGNMENT SALES. When a mobile home dealer has possession of a mobile home owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer Register, April, 1993, No. 448

makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

Note: For information regarding principals, see s. Tax 11.55.

(6) DEFINITION. In this section:

(a) "Mobile home dealer" has the meaning defined in s. 218.10 (3), Stats.

(b) "New mobile home" has the meaning defined in s. 218.10 (7), Stats.

(c) "Primary housing unit" has the meaning defined in s. 340.01 (29), Stats.

(d) "Retailer" is a person who has a seller's permit issued under s. 77.52 (9), Stats.

(e) "Used mobile home" has the meaning defined in s. 218.10 (9), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (g) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; and (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. (3) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b), (3) (d), (4) (b) and (5), cr. (3) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (b) and (d), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.91 Successor's liability. (s. 77.52 (18), Stats.) (1) DESCRIPTION OF SUCCESSOR. (a) A purchaser or assignee of the business or stock of goods, including furniture, fixtures, equipment and inventory, of any retailer liable for sales or use tax shall be personally liable for the payment of the sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation is created and acquires the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for any sales or use tax liability of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a creditor, including a financial institution, actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered, if it never operates the business and if its sole purpose is to sell the business in its entirety, as a whole or piecemeal, at whatever price it can obtain to recover its investment.

(2) EXTENT OF LIABILITY. (a) If there is no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) PROCEDURES FOR PURCHASER. (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. An oral request for a clearance certificate shall not be accepted. The letter requesting the certificate shall include the real name, business name and seller's permit number, if known, of the prior operator. All sales tax returns for all periods during which the predecessor operated shall be filed with the department before it may issue the certificate.

(c) Under s. 77.52 (18) (a), Stats., the department has 60 days from the date it receives the request for a clearance certificate or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

DEPARTMENT OF REVENUE

290-1
Tax 11

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

Next page is numbered 291

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

Note: The interpretations in s. Tax 11.91 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (a), (b) and (g), (2) (a) and (3) (b) and (c) (intro.), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.92 Records and record keeping. (ss. 77.51 (4) (d), 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9) and 77.75, Stats.) (1) GENERAL. All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in Wisconsin tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices which shall contain a posting reference, cash register tapes, credit memoranda which shall carry a reference to the document evidencing the original transaction or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. These records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property, including any services that are a part of the sale or lease, made within Wisconsin even if the seller or lessor regards the receipts as taxable or nontaxable. Taxable gross receipts shall be reported on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order and the supplier's invoice or billing document. Sales to organizations holding a certificate of exempt status, CES, including religious or charitable organizations, can be shown to be exempt by recording the CES number on the seller's copy of the bill of sale. All other exempt sales shall be supported by an exemption certificate signed by the purchaser and retained by the seller, unless the merchandise sold is specifically exempted by statute regardless of use, such as groceries. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in Wisconsin.

(d) Every person subject to the county sales and use tax shall keep a record of sales the person completes in each county enacting an ordinance under s. 77.70, Stats., imposing a county tax, separately from sales made elsewhere in the state. Every person shall also keep a record of the sales price of items on which the person is subject to county use or excise tax in each enacting county.

(2) **MICROFILM RECORDS.** Microfilm, including microfiche, reproductions of general books of account, such as cash books, journals, voucher registers and ledgers, and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing, ADP, tax accounting system shall have the capability of producing visible and legible records which will provide the following necessary information for verification of the taxpayer's tax liability:

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents, such as sales invoices, purchase invoices, exemption certificates and credit memoranda, shall be readily available.

(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.
2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until the tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

(7) **PENALTIES.** If the department has given notice to a person to keep certain sales and use tax records, and thereafter additional sales or use taxes are assessed on the basis of information not contained in the records, the department shall impose a penalty equal to 25% of the amount of sales or use tax assessed. This is in addition to all other penalties provided by law.

Note: The interpretations in this s. Tax 11.92 are effective under the general sales and use tax law on and after September 1, 1969, except that the 25% penalty in sub. (7) became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; emerg. cr. (1) (d), eff. 3-24-86; cr. (1) (d), Register, October, 1986, No. 370, eff. 11-1-86; am. (1) (intro.), (a), (b) and (c), (2) (intro.), (3) (intro.) and (c) and (4), cr. (7), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.925 Sales and use tax security deposits. (s. 77.61 (2), Stats.) (1) **GENERAL.** Under s. 77.61 (2), Stats., the department may require a person liable for sales and use taxes to make a security deposit before or after a seller's permit is issued. The amount of the security deposit determined by the department may not exceed \$15,000. If a person fails or refuses to make a security deposit as requested, the department may refuse to issue a permit or revoke the permit.

(2) **FACTORS FOR DEPARTMENT'S CONSIDERATION.** (a) In determining whether or not security will be required and the amount of security to be required, the department may consider all relevant factors including the person's:

1. Evidence of adequate financial responsibility. Evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.
2. Prior record of filing tax returns and paying taxes of any kind with the department.
3. Type of business.

Example: A temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location.

4. Type of entity.

Example: A sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets.

(b) Although the individual factors listed in par. (a) may be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department. Protection of the sales and use tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines that a security deposit in excess of \$50.00 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) TYPES OF SECURITY. Acceptable types of security include, but are not limited to:

(a) *Non interest-bearing.* 1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

(b) *Interest-bearing.* 1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on those certificates shall be paid to the depositor.

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A security assignment, form S-127, shall be completed if this type of security is selected.

Note: Form S-127 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, (608) 266-2278.

3. Bearer bonds issued by the U.S. government, any unit of Wisconsin municipal government or by Wisconsin schools. The depositor should clip 2 full years' coupons before depositing this type of security.

(4) DETERMINATION OF AMOUNT. (a) If a security deposit is required, the amount generally shall be equal to the depositor's average quarterly Wisconsin sales and use tax liability increased to the next highest even \$100 amount. The average quarterly sales and use tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous sales and use tax liability at the location specified on the permit.

2. The predecessor's sales and use tax liability at the location specified on the permit,

3. The estimated tax liability shown on the application for permit.

4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.

(b) If at the time of the security review the retailer has an outstanding sales and use tax delinquency, the delinquent amount shall be added to the average quarterly sales and use tax liability.

(5) **RETURN OF DEPOSIT.** (a) Section 77.61 (2), Stats., provides: “. . . Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter.”

(b) The 24 month compliance requirement described in par. (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24-month period described in par. (a), the department shall review the taxpayer's compliance record. If the taxpayer has complied with subch. III, ch. 77, Stats., the department shall within 60 days after the expiration of the 24-month period certify the deposit for refund.

(d) Compliance with subch. III, ch. 77, Stats., means that:

1. Sales and use tax returns were timely filed.
2. All payments were made when due.
3. No delinquencies of sales or use tax, interest or other charges existed.
4. No penalties due to negligence or fraud were assessed for filing periods within the 24-month compliance period.
5. No assessment of additional tax, interest or other charges for filing periods within the 24-month compliance period is unpaid at the end of the 24-month compliance period.

(e) If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

Note: The interpretations in s. Tax 11.925 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The return of deposit provisions in sub. (5) became effective March 13, 1980, pursuant to Chapter 125, Laws of 1979; and (b) The \$15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. (1), (2) (a) 1., 3., and 4., (3) (b) 2., and (5) (c), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), (2) (b), (3) (b) 1., (5) (c), (d) 4. and 5., r. (3) (a) 3., Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.93 Annual filing of sales tax returns. (s. 77.58 (5), Stats.) (1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

(2) Returns and payments of retailers reporting on an annual basis shall be due and payable on the last day of the month following the close of their calendar or fiscal year.

Note: The interpretations in s. Tax 11.93 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to that date, a \$100 standard applied; and (b)

The "annual information return" was eliminated for 1981 and subsequent years, pursuant to Chapter 221, Laws of 1979.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; cr. (4), Register, January, 1983, No. 325, eff. 2-1-83; r. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.94 Wisconsin sales and taxable transportation charges. (ss. 77.51 (14) (intro.) and (d) and (14r) and 77.52 (1), Stats.) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (14r), Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is *not* a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employees or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (14) (d), Stats., applies to a situation where tangible personal property is delivered to a purchaser in Wisconsin by an owner or former owner of the property holding or required to hold a Wisconsin seller's permit or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a manufacturer ships or turns over the property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller, who had received the original order from the Wisconsin purchaser, the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) **TAXABLE TRANSPORTATION CHARGES.** (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

Example: When the seller charges the purchaser for delivery of the taxable tangible personal property in a Wisconsin county that has not adopted the $\frac{1}{2}$ % county tax, the correct computation of tax is as follows:

DEPARTMENT OF REVENUE

296-1

Tax 11

| | |
|----------------------------------|--------------|
| Selling price of merchandise | \$100.00 |
| Delivery charge | <u>10.00</u> |
| Subtotal | \$110.00 |
| Tax at 5% ($\$110 \times 5\%$) | <u>5.50</u> |
| Total | \$115.50 |

(b) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no allocation is made, the total delivery charge shall be taxable.

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(d) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller.

Example: If the "delivered price" of a carload of lumber is \$6,000, including transportation, and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

Next page is numbered 297

Note: The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (e), r. (2) (b), renum. (2) (c), (d) and (e) to be (2) (b), (c) and (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (2) (b) and (d), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.95 Retailer's discount. (ss. 77.61 (4) (c) and 77.76 (3), Stats.) (1) For timely reporting state and county sales or use tax collected on their retail sales, retailers may deduct .5% of the sales and use tax payable on retail sales during the retailer's tax year.

(2) The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted. The discount is not allowed if the payment is delinquent. It is also not allowed on deficiency determinations, amended returns filed after the due date or consumer's use tax imposed pursuant to s. 77.53 (2), Stats.

Note: The interpretations in s. Tax 11.95 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The amount of retailer's discount on or after January 1, 1983, until December 31, 1992, was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use tax payable and .5% of the sales and use tax payable in excess of \$20,000 each year; (b) The amount of retailer's discount in sub. (1) became effective January 1, 1993, pursuant to 1991 Wis. Act 269; and (c) The requirement that county tax be remitted to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wis. Act 287.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and rec., Register, September, 1984, No. 345, eff. 10-1-84; emerg. am. (1), eff. 3-24-86; am. (1) Register, October, 1986, No. 370, eff. 11-1-86; am. (1), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.97 "Engaged in business" in Wisconsin. (ss. 77.51 (13) (c) and (k), (13g), (13h) and (14)(j), 77.53 (3), (5), (7), (9) and (9m) and 77.73, Stats.) (1) **GENERAL.** (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the Fourteenth Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established, the out-of-state seller is required to register and collect the state's use tax.

Note: Retailers having nexus in Wisconsin for use tax purposes do not necessarily have nexus in Wisconsin for franchise or income tax purposes. Refer to s. Tax 2.82 for nexus standards with respect to franchise and income taxes.

(b) Some United States supreme court decisions concerning nexus include:

1. *Nelson vs. Sears Roebuck & Co.*, 312 U.S. 359 (1941)
2. *Nelson vs. Montgomery Ward & Co.*, 312 U.S. 373 (1941)
3. *General Trading Co. vs. State Tax Commission of the State of Iowa*, 322 U.S. 335 (1944)
4. *Miller Bros. Co. vs. Maryland*, 347 U.S. 340 (1954)
5. *Scripto, Inc. vs. Carson*, 362 U.S. 207 (1960)

6. *National Bellas Hess, Inc. vs. Illinois Department of Revenue*, 386 U.S. 753 (1967)

7. *National Geographic Society vs. California Board of Equalization*, 430 U.S. 551 (1977)

(2) **STATUTES.** (a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and s. 77.51 (14) (j), Stats., defines a lease as a continuing sale.

(b) Section 77.51 (13g), Stats., defines the term "retailer engaged in business in this state" and s. 77.51 (13h), Stats., provides an exception for foreign publishers.

(c) Under s. 77.53 (5), Stats., the tax required to be collected by a use tax registrant is a debt owed by the registrant to this state, and s. 77.53 (7), Stats., provides the tax is to be stated separately from the list price of the goods sold.

(3) **ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS".** Unless otherwise limited by federal statute, a retailer engaged in business in Wisconsin who shall register includes the following:

(a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property located in this state.

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.

(e) Any person servicing, repairing or installing equipment or other tangible personal property in Wisconsin.

(f) Any person delivering goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

(4) **ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS".** Activities which, in themselves, do not create nexus in this state, include:

(a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or

common carrier by the retailer into this state, or when possession of the goods is taken at the out-of-state location by the consumer.

(e) A foreign corporation obtaining a certificate of authority from the Wisconsin secretary of state to transact business in Wisconsin.

(5) **EXCEPTION FOR FOREIGN PUBLISHERS.** (a) Under s. 77.51 (13g) and (13h), Stats., a foreign corporation that is a publisher of printed materials does not have nexus in Wisconsin if its only activities in Wisconsin are:

1. Storage of its raw materials for any length of time in Wisconsin in or on property owned by a person, other than the foreign corporation, if the materials are for printing by that person.

2. Delivery of its raw materials to another person in Wisconsin, if the delivery is for printing by that other person.

3. Purchase from a printer of a printing service or of printed materials in Wisconsin for the foreign corporation and the storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation.

4. Maintaining, occupying and using, directly or by means of another person, a place in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

(b) In this subsection, "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

(6) **REGISTRATION.** (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Permit", Form A-101. There is no fee for registration.

Note: Form A-101 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b) Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate, and the 15-day time period within which the department is required to act on certificate applications.

(7) **OUT-OF-STATE RETAILERS NOT ENGAGED IN BUSINESS IN THIS STATE.** Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may apply for a use tax registration certificate with the department in the manner described in sub. (6). Holders of the use tax registration certificates shall collect the use tax from Wisconsin customers, give receipts therefor and report and pay the use tax to the Wisconsin department of revenue in the same manner as retailers engaged in business in this state.

(8) **ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES.** The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a county which has adopted the tax. The activities in sub. (4) which do not

create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

Note: The interpretations in s. Tax 11.97 are effective under the general sales tax law on and after September 1, 1969, except that the provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wis. Act 336.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; cr. (5) (c), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (6), eff. 3-24-86; cr. (6), Register, October, 1986, No. 370, eff. 11-1-86; cr. (4) (e) and (5), r. and recr. (2) (b), am. (1) and (3) (d) and (e), renum. (5) (a) to (c) and (6) to be (6) (a), (7), (6) (b) and (8) and am. (6) (a), (b) and (7), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats. (ss. 71.82 (2) (b), 77.60 (2) and 77.62 (1), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year effective for all determinations, assessments or other actions for additional tax made by the department on or after August 1, 1981, when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, WI 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the sales and use taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) **FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) **DETERMINATION NOT APPEALABLE.** The secretary's determination under this rule is not appealable.

Note: The interpretations in s. Tax 11.98 are effective under the general sales and use tax law on and after September 1, 1969, except that the secretary could reduce the delinquent interest rate from 18% to 9% for determinations made prior to August 1, 1981.

History: Cr. Register, February, 1979, No. 278, eff. 8-1-79; am. (1) (intro.), Register, June, 1983, No. 330, eff. 7-1-83.