

**1999 DRAFTING REQUEST**

**Bill**

Received: 10/15/1999

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Jim Villa

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - sales

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

sales tax exemption for materials bought for a local government construction project

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/26/1999	csicilia 10/27/1999		_____			S&L Tax
/1			mclark 10/27/1999	_____	lrb_docadmin 10/27/1999	lrb_docadmin 03/09/2000	

FE Sent For:

3/14/00

<END>

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1?	jkreye	1 cjs 10/26/99	10/27 MRC	MRC/JF	10/27		
		1 10/27 jlg					

FE Sent For:

<END>

**Kreye, Joseph**

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**From:** Villa, Jim  
**Sent:** Thursday, October 14, 1999 12:49 PM  
**To:** Kreye, Joseph  
**Subject:** RE:

Thanks Joe, at your convenience, may we please have it drafted

exemption to the sales tax for local governmental construction projects

Jim Villa  
Office of Senator Alberta Darling  
Room 22 South - State Capitol  
Madison, Wisconsin 53707  
(608) 266-5830 (608) 267-0588 fax  
jim.villa@legis.state.wi.us

*spoke to Jim on Friday 11/14 9:55AM =  
a request from a county board  
supervisor.*

*Jim will send over the letter - I  
can then call with any questions.*

-----Original Message-----

**From:** Kreye, Joseph  
**Sent:** Wednesday, October 13, 1999 4:52 PM  
**To:** Villa, Jim  
**Subject:** RE:

Yes. My area includes the sales tax. I will be leaving for the day shortly. But I'll be back in around 8:30 a.m. tomorrow.

Joseph T. Kreye, Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263  
joseph.kreye@legis.state.wi.us

-----Original Message-----

**From:** Villa, Jim  
**Sent:** Wednesday, October 13, 1999 4:06 PM  
**To:** Kreye, Joseph  
**Subject:**

Joseph,

Senator Darling asked me to email you to see if you would be the drafter to speak to about an exemption to the sales tax for local governmental construction projects? Thank you

Jim Villa  
Office of Senator Alberta Darling  
Room 22 South - State Capitol  
Madison, Wisconsin 53707  
(608) 266-5830 (608) 267-0588 fax  
jim.villa@legis.state.wi.us

10/14/99



# Washington County Board of Supervisors

**Kenneth F. Miller, Chairman**

**John G. German, Vice-Chairman David N. Radermacher, Second Vice-Chairman**

432 E. Washington Street, P.O. Box 1986, West Bend, WI 53095-7986  
(414)335-4304 FAX (414)335-4490

October 7, 1999

Senator Alberta Darling  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

RE: Sales Tax Exemption - Public Construction

Dear Senator Darling: *Alberta*

Thank you for considering sponsorship to a bill that would allow for the exemption of sales tax charges for local government construction projects. In the past as is now, contractors cannot get the exemption for materials purchased for construction projects contracted for by the local government. In order to save the 5% -5.6% sales tax, the local government must purchase the items and then turn them over to the contractor. In many cases, this negates the warranty, adds additional accounting and is cumbersome to work with. This all could be avoided if some type of waiver were granted or exemption allowed to the contractor to make the purchase, install the material and provide a warranty, without having to purchase through the local government or pay the tax and pass the cost on to the local government.

I am sending the resolution adopted by the county, which should have been sent your office. Also, State Statute references 77.52, 77.54 and 77.55 are included. If you need any additional information, please contact County Attorney Pat Faragher or me at 262-335-4374 and thank you for your continued support of counties.

Sincerely,

Kenneth F. Miller, Chairperson  
Washington County Board of Supervisors

KFM:Imd  
Enclosures

C: Doug Johnson, Administrative Coordinator  
Pat Faragher, County Attorney  
Mark Rogacki, Wisconsin Counties Association

# Washington County

Marilyn H. Merten, County Clerk  
432 E. Washington Street, P.O. Box 1986  
West Bend, WI 53095-7986

Phone: (414) 335-4301 Metro: (414) 342-2929  
FAX: (414) 335 4490

September 23, 1999

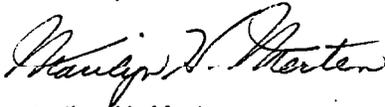
*Jim -  
let's do this -  
I could write.*

To: Governor Tommy Thompson  
Washington County Legislators  
Wisconsin Counties Association

Re: 1999 Resolution 46 - Sales Tax Exemption - Public Construction

Enclosed please find a copy of the resolution adopted by the Washington County Board of Supervisors on September 21, 1999, which requests legislature to enact a clear exemption to the sales tax for local governmental construction projects. Your support of Washington County's position would be greatly appreciated.

Sincerely,



Marilyn H. Merten  
Washington County Clerk

MHM:Imd  
Enclosure



*6-22-03*

*10/13 emailed Kreye (LRB)*

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# WASHINGTON COUNTY, WISCONSIN

Date of enactment: \_\_\_\_\_  
Date of publication: \_\_\_\_\_

## 1999 RESOLUTION 46

### Sales Tax Exemption - Public Construction

**WHEREAS**, public construction projects by counties, cities, villages, towns and other municipalities are exempt from sales tax only if the county or municipality uses owner direct purchasing; and

**WHEREAS**, owner direct purchasing adds administrative costs, jeopardizes warranty claims, confuses bidders, affects performance bond coverage and places the county or local municipality at financial risk; and

**WHEREAS**, responsible governments must nevertheless use owner direct purchasing in order to protect local tax payers from higher construction costs; and

**WHEREAS**, there is a large variance in owner direct purchasing procedures among local governments which further confuse bidders and contractors; and

**WHEREAS**, a straight-forward sales tax exemption for local government construction projects would result in a savings to the tax payer and no lost state revenues where it replaces owner direct purchasing;

**NOW, THEREFORE, BE IT RESOLVED** by the Washington County Board of Supervisors that the board requests the legislature to enact a clear exemption to the sales tax for local governmental construction projects;

**BE IT FURTHER RESOLVED** that the County Clerk send a copy of this resolution to Governor Tommy Thompson, Washington County's Representatives in the Legislature, and the Wisconsin Counties Association.

*Let's do this.*

1 APPROVED:

2 \_\_\_\_\_

3 County Attorney

4 Dated \_\_\_\_\_

5 \_\_\_\_\_

6 Considered SEP 21 1999

7 Adopted SEP 21 1999

8 Ayes \_\_\_\_\_ Noes \_\_\_\_\_ Absent \_\_\_\_\_

9 Voice Vote ✓

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11 (No Fiscal Effect)

Introduced by members of the  
ADMINISTRATIVE COMMITTEE as  
filed with the County Clerk.

\_\_\_\_\_  
Kenneth F. Miller, Chairperson

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# WASHINGTON COUNTY, WISCONSIN

Date of enactment: \_\_\_\_\_  
Date of publication: \_\_\_\_\_

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WHEREAS, owner direct purchasing adds administrative costs, jeopardizes warranty claims, confuses bidders, affects performance bond coverage and places the county or local municipality at financial risk; and

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WHEREAS, there is a large variance in owner direct purchasing procedures among local governments which further confuse bidders and contractors; and

WHEREAS, a straight-forward sales tax exemption for local government construction projects would result in a savings to the tax payer and no lost state revenues where it replaces owner direct purchasing;

NOW, THEREFORE, BE IT RESOLVED by the Washington County Board of Supervisors that the board requests the legislature to enact a clear exemption to the sales tax for local governmental construction projects;

BE IT FURTHER RESOLVED that the County Clerk send a copy of this resolution to Governor Tommy Thompson, Washington County's Representatives in the Legislature, and the Wisconsin Counties Association.

---

1 APPROVED:

Introduced by members of the  
ADMINISTRATIVE COMMITTEE as  
filed with the County Clerk.

2 \_\_\_\_\_

3 County Attorney

4 Dated \_\_\_\_\_

5  
6 Considered SEP 21 1999

\_\_\_\_\_  
Kenneth F. Miller, Chairperson

7 Adopted SEP 21 1999

8 Ayes \_\_\_\_\_ Noes \_\_\_\_\_ Absent \_\_\_\_\_

9 Voice Vote ✓

10

11 (No Fiscal Effect)

1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291.

A taxpayer in the business of processing scrap metal is engaged in manufacturing as defined by s. 77.51 (27), 1983 stats. [now s. 77.54 (6m)]. *H. Samuels Co. v. Dept. of Revenue*, 70 W (2d) 1076, 236 NW (2d) 250.

A carrier's contract status is established under the "primary business test" if his primary occupation is the supplying of transportation for compensation even though the operator owns the goods at time of transport and carries them for the purpose of sale; if, however, the operator's primary business is manufacturing or another noncarrier commercial enterprise, a determination must be made as to whether the motor operations are in furtherance of the primary business or are conducted as a related enterprise with the purpose of profiting from the transportation. *Gensler v. Dept. of Revenue*, 70 W (2d) 1108, 236 NW (2d) 648.

Sale of furnishings and equipment of supper club was an "occasional sale" under s. 77.54 (7) as defined under s. 77.51 (10), 1983 stats. [now s. 77.51 (9)]. *Three Lions Supper Club v. Dept. of Revenue*, 72 W (2d) 546, 241 NW (2d) 190.

Consumption of gas at interstate pipeline compressor stations in Wisconsin is protected from state use tax by commerce clause. *Midwestern Gas Transmission Co. v. Revenue Dept.* 84 W (2d) 261, 267 NW (2d) 253 (1978).

To satisfy s. 77.51 (27), 1983 stats. [now s. 77.54 (6m)], change in name must be attributable to change in nature, purpose, and function of article. *Dept. of Revenue v. Bailey-Bohrman Steel Corp.* 93 W (2d) 602, 287 NW (2d) 715 (1980).

Semitrailers are "truck bodies" under (5) (a). *Dept. of Revenue v. Trudell Trailer Sales*, 104 W (2d) 39, 310 NW (2d) 612 (1981).

Vending machine company, which placed machines in schools and hospitals, was "seller" of products dispensed by machine. *Servomation Corp. v. Dept. of Revenue*, 106 W (2d) 616, 317 NW (2d) 464 (1982).

Under "use or function" test, greenhouse was "machine" used in floriculture under (3). *Revenue Dept. v. Greiling*, 112 W (2d) 602, 334 NW (2d) 118 (1983).

Exemption under (9a) (f) is limited to services used by tax-exempt organizations and doesn't extend to services by such foundations. *Rev. Dept. v. EAA Aviation Foundation*, 143 W (2d) 681, 422 NW (2d) 458 (Ct. App. 1988).

Calf hutches are not "machines" exempt from sales taxes under (3). *L. T. Hampel Corp. v. DOR*, 157 W (2d) 422, 459 NW (2d) 598 (Ct. App. 1990).

Motor vehicles and machinery used with motor vehicles are not used "directly" in recycling activities and are not exempt under sub. (26m). *Dept. of Revenue v. Parks-Pioneer*, 170 W (2d) 44, 487 NW (2d) 63 (Ct. App. 1992).

The exemption for occasional sales under sub. (7) cannot apply to a seller who continues to make sales in a business after the business was sold and surrender of the sales tax permit attempted. *Carion Corp. v. DOR*, 179 W (2d) 254, 507 NW (2d) 356 (Ct. App. 1993).

"Merchandise" as used in sub. (6) (b) denotes commodities that are bought and sold. *Luetzow Industries v. DOR*, 197 W (2d) 917, 541 NW (2d) 810 (Ct. App. 1995).

A Mississippi River excursion boat which embarked and disembarked from a Wisconsin port crossing into out-of-state water, but did not land in that state, was not engaged in "interstate commerce" under sub. (13). *LaCrosse Queen, Inc. v. DOR*, 208 W (2d) 439, 561 NW (2d) 686 (1997).

**77.55 Exemptions from sales tax.** (1) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property or services to:

(a) The United States, its unincorporated agencies and instrumentalities;

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property to a common or contract carrier, shipped by the seller via 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 this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier.

(2m) There are exempted from the computation of the amount of sales tax the gross receipts from sales of railroad crossties to a common or contract carrier, 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 this state if the property is transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier. Interruption of the shipment for storage, drying, processing or creosoting of the railroad crossties in this state does not invalidate the exemption under this subsection.

(3) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal

property purchased for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

History: 1985 a. 29.

**77.56 Exemptions from use tax.** (1) The storage, use or other consumption in this state of property, the gross receipts from the sale of which are reported to the department in the measure of the sales tax, is exempted from the use tax.

(2) The loan by an automobile dealer of a motor vehicle to any school or school district for a driver training educational program conducted by the school or school district is exempt from the use tax.

(3) The donation to an entity specified under s. 77.54 (9a) of property that has been purchased tax-free for resale or upon the presentation of a valid exemption certificate is exempt from the use tax.

History: 1989 a. 31; 1995 a. 27.

**77.57 Liability of purchaser.** If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this subchapter from the computation of the amount of the sales tax and uses the property in some other manner or for some other purpose, the purchaser is liable for payment of the sales tax. The tax shall be measured by the sales price of the property to the purchaser, but if the taxable use first occurs more than 6 months after the sale to the purchaser, the purchaser may use as the measure of the tax either that sales price or the fair market value of the property at the time the taxable use first occurs.

History: 1983 a. 405.

Seller is not relieved of liability if purchaser's certificate on its face fails to state a legal basis for exempting the sale. *Department of Revenue v. Moebius Printing Co.* 89 W (2d) 610, 279 NW (2d) 213 (1979).

**77.58 Returns and payments.** (1) The taxes imposed by this subchapter for each calendar quarter are due and payable on the last day of the month next succeeding the calendar quarter for which imposed except that:

(a) If the amount of tax for any calendar quarter exceeds \$600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the last day of the month next succeeding the calendar month for which imposed.

(b) If the amount of tax for any calendar quarter exceeds \$3,600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the 20th day of the month next succeeding the calendar month for which imposed. The payment is timely if it fulfills the requirements under s. 77.61 (14).

(1m) Persons who owe amounts under this subchapter shall pay them by mailing or delivering them to the department or, if the department prescribes another method of submitting or another destination, those persons shall pay those amounts in that other method or to that other destination.

(2) A return shall be filed by the last day of the month next succeeding each calendar quarter for taxes imposed for the preceding calendar quarter except that:

(a) If payments are required to be made monthly and are due and payable on the last day of the month next succeeding the calendar month for which imposed under sub. (1) (a), a return shall be filed by the last day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

(b) If payments are required to be made monthly and are due and payable on the 20th day of the month next succeeding the calendar month for which imposed under sub. (1) (b), a return shall

optics, laser, microwave, radio, satellite or similar facilities. "Telecommunications services" does not include sending collect telecommunications that are received outside of the state.

(22) (a) "Use" includes the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession or enjoyment of the property or services, or the results produced by the services, including installation or affixation to real property and including the possession of, or the exercise of any right or power over tangible personal property by a lessee under a lease, except that "use" does not include the activities under sub. (18).

(b) In this subsection "enjoyment" includes a purchaser's right to direct the disposition of property, whether or not the purchaser has possession of the property. "Enjoyment" also includes, but is not limited to, having shipped into this state by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.

(23) "Use tax" means the tax imposed by s. 77.53.

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237.

Tax on personal property assets upheld since seller had permit under sub. (10) (a), 1983 stats. [now sub. (9) (a)]. *Ramrod, Inc. v. Dept. of Revenue*, 64 W (2d) 499, 219 NW (2d) 604.

Under sub. (18), 1983 stats. [now sub. (2)], building materials includes sale of assembly kit to dealers for construction of Harvestore silo and such dealers are contractors. Where Harvestore was erected on owned land, it is real property for purposes of this section. *Dept. of Revenue v. Smith Harvestore Products*, 72 W (2d) 60, 240 NW (2d) 357.

Retail sale within meaning of sub. (4), 1983 stats. [now sub. (14)] is the final and ultimate employment of the property which results in its withdrawal from the marketplace. See note to s. 77.52, citing *Dept. of Revenue v. Milw. Refining Corp.* 80 W (2d) 44, 257 NW (2d) 855.

Provisions of UCC as to time title passes are inapplicable to sales tax law. Application of 77.51 subsections discussed. *Harold W. Fuchs Agency, Inc. v. Dept. of Revenue*, 91 W (2d) 283, 282 NW (2d) 625 (Ct. App. 1979).

Sale of business assets of taxpayer which held seller's permit was not exempted as "occasional sale" under sub. (10) (a), 1983 stats. [now sub. (9) (a)]. Constitutional-ity discussed. *Midcontinent Broadcasting Co. v. Dept. of Revenue*, 98 W (2d) 379, 297 NW (2d) 191 (1980).

Manhole fabricator was not engaged in real property construction activities under (2). *Advance Pipe & Supply v. Revenue Dept.* 128 W (2d) 431, 383 NW (2d) 502 (Ct. App. 1986).

Photocopying expenses billed to law firm's clients are not subject to sales tax. *Frisch, Dudek & Slattery v. Rev. Dept.* 133 W (2d) 444, 396 NW (2d) 355 (Ct. App. 1986).

**77.52 Imposition of retail sales tax.** (1) For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the gross receipts from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state.

(1m) The sales tax applies to the receipts of operators of vending machines located on army, navy or air force installations in this state and dispensing tangible personal property. This subsection shall not be deemed to require payment of sales tax measured by receipts of such operators who lease the machines to exchanges of the army, air force, navy or marine corps which acquire title to and sell the merchandise through the machines to authorized purchasers from such exchanges. The term "operator" as used in this subsection, means any person who owns or possesses vending machines and who controls the operations of the machines as by placing the merchandise therein or removing the coins therefrom, and who has access thereto for any purpose connected with the sale of merchandise through the machines, and whose compensation is based, in whole or in part, upon receipts from sales made through such machines.

(2) For the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or

furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services:

1. The furnishing of rooms or lodging to transients by hotel-keepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations, including the furnishing of rooms or lodging through the sale of a time-share property, as defined in s. 707.02 (32), if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit. In this subdivision, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations, including mobile homes as defined in s. 66.058 (1) (d), rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual. In this subdivision, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

2. The sale of admissions to amusement, athletic, entertainment or recreational events or places except county fairs, the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players 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 devices or facilities, including, in connection with the sale or use of time-share property, as defined in s. 707.02 (32), the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.

5. The sale of telecommunications services that either originate or terminate in this state; except services that are obtained by means of a toll-free number, that originate outside this state and that terminate in this state; and are charged to a service address in this state, regardless of the location where that charge is billed or paid, and the sale of the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code.

5m. The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental, as defined in s. 77.51 (5), element of another service that is sold to that purchaser and is not taxable under this subchapter.

6. Laundry, dry cleaning, pressing and dyeing services, except when performed on raw materials or goods in process destined for sale, except when performed on cloth diapers by a diaper service and except when the service is performed by the customer through the use of coin-operated, self-service machines.

7. Photographic services including the processing, printing and enlarging of film as well as the service of photographers for the taking, reproducing and sale of photographs.

9. Parking or providing parking space for motor vehicles and aircraft for a consideration and docking or providing storage space for boats for a consideration.

10. Except for installing or applying tangible personal property which, when installed or applied, will constitute an addition or capital improvement of real property, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all items of tangible personal property unless, at the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance, a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51 (14r). For purposes of this paragraph, 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. "Service" does not include services performed by veterinarians.

11. 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. This subdivision does not apply to the printing or imprinting of tangible personal property which will be subsequently transported outside the state for use outside the state by the consumer for advertising purposes.

12. The sale of cable television system services including installation charges.

20. The sale of landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services.

(am) For purposes of par. (a) 12. "cable television system" means any facility which, for a fee, regularly amplifies and transmits by wire, coaxial cable, lightwave or microwave, simultaneously to 50 or more subscribers, programs broadcast by television or radio stations or originated by themselves or any other party. "Cable television system" does not include a master antenna system which serves one residential, commercial or government building or complex of buildings under common ownership or control if that facility does not provide any broadcast signals other than those which may be viewed in that facility.

(2m) (a) With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property if the property transferred by

the service provider is incidental to the selling, performing or furnishing of the service, except as provided in par. (b).

(b) With respect to the services subject to tax under sub. (2) (a) 7., 10., 11. and 20., all property physically transferred to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property separate from the selling, performing or furnishing of the service.

(3) The taxes imposed by this section may be collected from the consumer or user.

(3m) In regard to the sale of the rights to purchase telecommunications services under sub. (2) (a) 5.:

(a) If the sale takes place at a retailer's place of business, the situs of the sale is that place.

(b) If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's shipping address.

(c) If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

(4) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor.

(5) The department may by rule provide that the amount collected by the retailer from the consumer or user in reimbursement of the retailer's tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

(6) A retailer is relieved from liability for sales tax insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income or franchise tax purposes. If the retailer has previously paid the tax, the retailer may, under rules prescribed by the department, take as a deduction from the measure of the tax the amount found worthless and charged off for income or franchise tax purposes. If any such accounts are thereafter collected in whole or in part by the retailer, the amount as collected shall be included in the first return filed after such collection and the tax paid with the return.

(7) Every person desiring to operate as a seller within this state who holds a valid certificate under s. 73.03 (50) shall file with the department an application for a permit for each place of operations. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant's place of operations, and the other information that the department requires. The application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers. A nonprofit organization that has gross receipts taxable under s. 77.54 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable gross receipts received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

(9) After compliance with sub. (7) and s. 77.61 (2) by the applicant, the department shall grant and issue to each applicant a separate permit for each place of operations within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of operations at the place designated in it. It shall at all times be conspicuously displayed at the place for which it was issued.

(11) If any person fails to comply with any provision of this subchapter relating to the sales tax or any rule of the department

relating to the sales tax adopted under this subchapter, is delinquent in respect to any tax imposed by the department or fails timely to file any return or report in respect to any tax under ch. 71, 72, 76, 77, 78 or 139 after having been requested to file that return or report, the department upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring the person to show cause why the permit should not be revoked or suspended, may revoke or suspend any one or more of the permits held by the person. The department shall give to the person written notice of the suspension or revocation of any of the permits. The notices required in this subsection may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. If the department suspends or revokes a permanent permit under this subsection, it may grant a temporary permit that is valid for one month and may then grant additional temporary permits if the person pays all amounts owed under this chapter for the month for which the previous temporary permit was issued. Persons who receive a temporary permit waive the notice requirement under s. 77.61 (2). The department shall not issue a new permanent permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this subchapter, the rules of the department relating to the sales tax and the provisions relating to other taxes administered by the department.

(12) A person who operates as a seller in this state without a permit or after a permit has been suspended or revoked or has expired, unless the person has a temporary permit under sub. (11), and each officer of any corporation, partnership member, limited liability company member or other person authorized to act on behalf of a seller who so operates, is guilty of a misdemeanor. Permits shall be held only by persons actively operating as sellers of tangible personal property or taxable services. Any person not so operating shall forthwith surrender that person's permit to the department for cancellation. The department may revoke the permit of a person found not to be actively operating as a seller of tangible personal property or taxable services.

(13) For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser a certificate to the effect that the property or service is purchased for resale or is otherwise exempt; except that no certificate is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse.

(14) (a) The certificate referred to in sub. (13) relieves the seller from the burden of proof only if any of the following is true:

1. The certificate is taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services and who holds the permit provided for in sub. (9) and who, at the time of purchasing the tangible personal property or services, intends to sell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose.

2. The certificate is taken in good faith from a person claiming exemption.

(b) The certificate referred to in sub. (13) shall be signed by and bear the name and address of the purchaser, and shall indicate the general character of the tangible personal property or service sold by the purchaser and the basis for the claimed exemption. The certificate shall be in such form as the department prescribes.

(15) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of the purchaser's operations, the use shall be taxable to the purchaser

under s. 77.53 as of the time the property is first used by the purchaser, and the sales price of the property to the purchaser shall be the measure of the tax. Only when there is an unsatisfied use tax liability on this basis because the seller has provided incorrect information about that transaction to the department shall the seller be liable for sales tax with respect to the sale of the property to the purchaser.

(16) Any person who gives a resale certificate for property or services which that person knows at the time of purchase is not to be resold by that person in the regular course of that person's operations as a seller for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor. Any person certifying to the seller that the sale of property or taxable service is exempt, knowing at the time of purchase that it is not exempt, for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction, is guilty of a misdemeanor.

(17) If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

(17m) (a) A person who holds a valid certificate issued under s. 73.03 (50) may apply for a direct pay permit by filing a completed form that the department prescribes.

(b) The department shall issue a direct pay permit, at the beginning of a taxpayer's taxable year, if the following requirements are fulfilled:

1. Because of the nature of the applicant's business, issuing the permit will significantly reduce the work of administering the taxes under this subchapter.

2. The applicant's accounting system will clearly indicate the amount of tax that the applicant owes under this subchapter.

3. The applicant makes enough purchases that are taxable under this subchapter to justify the expense of regular audits by the department.

4. The applicant is not liable for delinquent taxes; including costs, penalties, surcharges and interest; under ch. 71, 72, 76, 78 or 139 or this chapter of \$400 or more if any part of the tax is delinquent for at least 5 months.

5. It is in this state's best interests to issue the permit.

6. The applicant purchases enough tangible personal property under circumstances that make it difficult to determine whether the property will be subject to a tax under this subchapter.

7. The applicant holds a permit under sub. (9) or is registered under s. 77.53 (9).

(c) A holder of a permit that is issued under par. (b) may not transfer or assign it.

(d) The department may revoke a permit that is issued under par. (b) if the holder misuses it or the department determines that revocation is in this state's best interests.

(e) A retailer may not collect a tax under this subchapter, and is not liable for a tax under this subchapter, on any sale, except those of a type specified as ineligible for an exemption under this paragraph by a rule promulgated by the department, for which the buyer furnishes to the retailer a copy of the permit that is issued under par. (b) or a statement that the buyer holds such a permit, a statement of that permit's number and a statement of the date that the permit was issued.

(f) A person who holds a permit that is issued under par. (b) shall keep a record of all retailers from whom the person made a purchase for which the person used a permit that is issued under par. (b) and shall do one of the following:

1. Fulfill the requirements for an exempt sale under par. (e) for every purchase that the person makes that may be exempt

under that paragraph and pay the tax under s. 77.53 (1) to the department on all of those purchases for which the tax is due.

2. Maintain accounting records that show the tax under ss. 77.52 (1) and (2) and 77.53 (3) paid on each purchase during each reporting period under s. 77.58 and the total tax paid during each reporting period, pay the tax under ss. 77.52 (1) and (2) and 77.53 (3) on either all or none of the purchases made from each retailer during each reporting period and pay the tax under s. 77.53 (1) to the department on all of the purchases for which the tax is due.

(18) If any retailer liable for any amount of tax under this subchapter sells out the retailer's business or stock of goods or quits the business, the retailer's successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the department that it has been paid or a certificate stating that no amount is due.

(a) If the purchaser of a stock of goods fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than 90 days after receiving the request, the department shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the department of the amount that must be paid as a condition of issuing the certificate. Failure of the department to mail the notice will release the purchaser from any further obligation to withhold the purchase price as above provided. The obligation of the successor may be enforced within 4 years of the time the retailer sells out the retailer's business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

(19) The department shall by rule provide for the efficient collection of the taxes imposed by this subchapter on sales of property or services by persons not regularly engaged in selling at retail in this state or not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessions at fairs and carnivals, and the like. The department may authorize such persons to sell property or sell, perform or furnish services on a permit or nonpermit basis as the department by rule prescribes and failure of any person to comply with such rules constitutes a misdemeanor.

**History:** 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291.

Where gold sold to dentists was used in dental work, sale was not taxable under (1). Dept. of Revenue v. Milw. Refining Corp. 80 W (2d) 44, 257 NW (2d) 855.

Data processing service which transfers tangible property such as cards, tapes and printouts, but whose essential service is the sale of intangible coded or processed data, is not taxable under this section. Janesville Data Center v. Dept. of Revenue, 84 W (2d) 341, 267 NW (2d) 656 (1978).

See note to Art. I, sec. 18, citing *Kollasch v. Adamany*, 104 W (2d) 552, 313 NW (2d) 47 (1981).

Phrase "in this state" as used in (1) and defined in 77.51 (6) does not include airspace. Republic Airlines, Inc. 159 W (2d) 247, 464 NW (2d) 62 (Ct. App. 1990).

Payments under lease of taxicab from owner to driver are sales at retail, subject to tax. *Sanfelippo v. Department of Revenue*, 170 W (2d) 381, 490 NW 530 (2d) (Ct. App. 1992).

Sub. (18) provides no relief from successor liability where the entire purchase price is paid to a secured creditor. *Kastengren v. Dept. of Revenue*, 179 W (2d) 587, 508 NW (2d) 431 (Ct. App. 1993).

Contractors are considered to be the consumers of personal property used by them in real property construction and are subject to sales tax. Performing a real property construction activity for an exempt entity does not make a contractor exempt. *Zig-nego Co., Inc. v. DOR*, 211 W (2d) 817, 565 NW (2d) 590 (Ct. App. 1997).

A resort's sale of flexible time-share interests in condominiums was subject to sales tax. Sub. (2) (a) 1., as applied to sales of flexible time-shares, does not violate the Art. VIII, s. 1, "uniformity clause" nor does it violate guarantees of equal protection. *Telemark Development, Inc. v. DOR*, 218 W (2d) 809, 581 NW (2d) 585 (Ct. App. 1998).

**77.525 Reduction to prevent double taxation.** Any person who is subject to the tax under s. 77.52 (2) (a) 5. on telecommunications services that terminate in this state and who has paid a similar tax on the same services to another state may reduce the

amount of the tax remitted to this state by an amount equal to the similar tax properly paid to another state on those services or by the amount due this state on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52 (2) (a) 5. was passed on an amount equal to the amounts not remitted.

**History:** 1997 a. 27.

**77.53 Imposition of use tax.** (1) Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of taxable services under s. 77.52 purchased from any retailer, at the rate of 5% of the sales price of those services; on the storage, use or other consumption in this state of tangible personal property purchased from any retailer, at the rate of 5% of the sales price of that property; and on the storage, use or other consumption of tangible personal property manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5% of the sales price of that material.

(1m) For motor vehicles that are used for a purpose in addition to retention, demonstration or display while held for sale in the regular course of business by a dealer who is licensed under s. 218.01, the base for the tax imposed under sub. (1) is the following:

(a) If the motor vehicle is assigned to and used by an employee of the dealer for whom the dealer is required to withhold amounts for federal income tax purposes or by a person who both has an ownership interest in the dealership and actively participates in the day-to-day operation of the dealership, \$96 per month for each motor vehicle registration plate held by the dealer, except that beginning in 1997 the department shall annually, as of January 1, adjust the dollar amount under this paragraph, rounded to the nearest whole dollar, to reflect the annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year before the change. In this paragraph, "actively participates" means performs services for the motor vehicle dealership: including selling, accounting, managing and consulting; for more than 500 hours in a taxable year for which the person receives compensation, and "actively participates" does not include services performed only in the capacity of an investor; including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use or monitoring the finances or operations of the activity in a nonmanagerial capacity.

(b) If the motor vehicle is used by the dealer or any person other than an employee of the dealer, the lease value as shown in the lease value tables that the internal revenue service prepares to interpret section 61 of the internal revenue code.

(2) Every person storing, using or otherwise consuming in this state tangible personal property or taxable services purchased from a retailer is liable for the tax imposed by this section. The person's liability is not extinguished until the tax has been paid to this state, but a receipt with the tax separately stated from a retailer engaged in business in this state or from a retailer who is authorized by the department, under such rules as it prescribes, to collect the tax and who is regarded as a retailer engaged in business in this state for purposes of the tax imposed by this section given to the purchaser under sub. (3) relieves the purchaser from further liability for the tax to which the receipt refers.

(3) Every retailer engaged in business in this state and making sales of tangible personal property or taxable services for delivery into this state or with knowledge directly or indirectly that the property or service is intended for storage, use or other consumption in this state, shall, at the time of making the sales or, if the storage, use or other consumption of the tangible personal property or taxable service is not then taxable under this section, at the time the storage, use or other consumption becomes taxable, collect the

aircraft: in this state at the time the aircraft is registered in this state.

(d) If the owner or lessee is a partnership, all of the corporate partners fulfill the requirements under par. (c) and none of the general partners and none of the limited partners who has management or control responsibilities is domiciled in this state and the partnership has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(dm) If the owner or lessee is a limited liability company, all of the corporate members fulfill the requirements under par. (c) and none of the managers and none of the members who has management or control responsibilities is domiciled in this state and the limited liability company has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(e) If the owner or lessee is an individual, the owner or lessee is not domiciled in this state.

(f) If the owner or lessee is an estate, trust or cooperative; that estate, that trust and its grantor or that cooperative does not have real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(g) The department has not determined that the owner, if the owner is a corporation, trust, partnership or limited liability company, was formed to qualify for the exception under this subsection.

(18) This section does not apply to the storage, use or other consumption in this state of household goods for personal use or to aircraft, motor vehicles, boats, snowmobiles, mobile homes, trailers, semitrailers and all-terrain vehicles, for personal use, purchased by a nondomiciliary of this state outside this state 90 days or more before bringing the goods or property into this state in connection with a change of domicile to this state.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316; 1993 a. 16, 112; 1995 a. 27, 209; 1997 a. 27, 41, 237.

**77.535 Increases; building materials.** Increases in the rates of the taxes under this subchapter do not apply to building materials purchased by persons engaged in constructing, altering, repairing or improving real estate for others when the materials so purchased by those persons are affixed and made a structural part of real estate in the fulfillment of a written contract for a fixed price not subject to change or modification, or to a formal written bid that cannot be altered or withdrawn, if the contract is entered into or the bid is made before the effective date of the sales and use tax rate increase.

History: 1981 c. 317.

**77.54 General exemptions.** There are exempted from the taxes imposed by this subchapter:

(1) The gross receipts from the sale of and the storage, use or other consumption in this state of tangible personal property and services the gross receipts from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

(2) 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.

(2m) The gross receipts from the sales of and the 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. In this subsection, "shoppers guides", "newspapers" and "periodicals" have the meanings under sub. (15). The exemption under this subdivision does not apply to advertising supplements that are not newspapers.

(3) (a) The gross receipts from the sales of and the storage, use or other consumption 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 creation 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.

(b) In par. (a):

1. "Building" has the meaning given under s. 70.111 (10) (a) 1.
2. "Machine" means an assemblage of parts that transmits force, motion and energy from one part to another in a predetermined manner.
3. "Used exclusively" means used to the exclusion of all other uses except for other use not exceeding 5% of total use.

(c) For purposes of this subsection, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to or built into real property:

1. Auxiliary power generators.
2. Bale loaders.
3. Barn cleaners and elevators.
4. Conveyors.
5. Feed elevators and augers.
6. Grain dryers and grinders.
7. Milk coolers.
8. Milking machines; including piping, pipeline washers and compressors.
9. Powered feeders, excluding platforms and troughs constructed from ordinary building materials.
10. Silo unloaders.

(3m) The gross receipts from the sale of and the storage, use or other consumption of the following items if they are used exclusively by the purchaser or user in the business of farming; including dairy farming, agriculture, horticulture, floriculture and custom farming services:

- (a) Seeds for planting.
- (b) Plants.
- (c) Feed.
- (d) Fertilizer.
- (e) Soil conditioners.
- (f) Animal bedding.
- (g) Sprays, pesticides and fungicides.
- (h) Breeding and other livestock.
- (i) Poultry.
- (j) Farm work stock.

(k) Baling twine and baling wire.

(L) Containers for fruits, vegetables, grain, hay, silage and animal wastes.

(m) Plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage.

(4) Gross receipts from the sale of tangible personal property, and the storage, use or other consumption in this state of tangible personal property which is the subject of any such sale, by any elementary school or secondary school, exempted as such from payment of income or franchise tax under ch. 71, whether public or private.

(5) The gross receipts from the sale of and the storage, use or other consumption of:

(a) Aircraft, including accessories, attachments, fuel and parts therefor, sold to persons using such 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 sold to any foreign government for use by such government outside this state and aircraft, motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such aircraft, motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such aircraft, motor vehicles or trucks from this state.

(b) 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 such 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.

(c) Motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

(d) 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.

(6) The gross receipts from the sale of and the storage, use or other consumption of:

(a) 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.

(b) Containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property, if such items are used by the purchaser to transfer merchandise to customers and 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 such items are used to transfer merchandise to customers.

(c) Fuel converted to electric energy, gas or steam by utilities and that portion of the amount of fuel converted to steam for purposes of resale by persons other than utilities.

(6m) For purposes of sub. (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. "Manufacturing" includes but is not limited to:

(a) Crushing, washing, grading and blending sand, rock, gravel and other minerals.

(b) 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.

(6r) The exemption under sub. (6) shall be strictly construed.

(7) (a) Except as provided in pars. (b) to (d), the occasional sales of tangible personal property and services and the storage, use or other consumption in this state of tangible personal property the transfer of which to the purchaser is an occasional sale.

(b) If the item transferred is a motor vehicle, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft and the item is registered or titled, or required to be registered or titled, in this state or if the item is a boat that is registered or titled, or required to be registered or titled, in this state or under the laws of the United States, the exemption under par. (a) applies only if all of the following conditions are fulfilled:

1. The item is transferred to a child, spouse, parent, father-in-law, mother-in-law, daughter-in-law or son-in-law of the transferor or, if the item is a motor vehicle, from the transferor to a corporation owned solely by the transferor or by the transferor's spouse.

2. The item has been registered or titled in the name of the transferor.

3. The transferor is not engaged in the business of selling the type of item that is transferred.

(c) The exemption under par. (a) does not apply to 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.

(d) The exemption under par. (a) does not apply to sales by a nonprofit organization.

(7m) Occasional sales of tangible personal property or services, including but not limited to admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds \$300 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee; conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year. The exemption under this subsection 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.

(8) Charges for interest, financing or insurance where such charges are separately set forth upon the invoice given by the seller to the purchaser.

(9) The gross receipts from sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious or charitable purposes.

(9a) The gross receipts from sales to, and the storage by, use by or other consumption of tangible personal property and taxable services by:

(a) This state or any agency thereof and the University of Wisconsin Hospitals and Clinics Authority.

(b) Any county, city, village, town or school district in this state.

(c) A county-city hospital established under s. 66.47.

(d) A sewerage commission organized under s. 281.43 (4) or a metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918.

(e) Any other unit of government in this state or any agency or instrumentality of one or more units of government in this state.

(em) Any joint local water authority created under s. 66.0735.

(f) 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, except hospital service insurance corporations under s. 613.80 (2), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

(g) A local exposition district under subch. II of ch. 229.

(10) The gross receipts from the sale of all admission fees, admission stickers or camping fees under s. 27.01 (7) to (11) and all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

(11) The gross receipts from the sales of and the storage, use or other consumption in this state of motor vehicle fuel, general aviation fuel or alternate fuel, subject to taxation under ch. 78, unless the motor vehicle fuel or alternate fuel tax is refunded under s. 78.75 because the buyer does not use the fuel in operating a motor vehicle upon the public highways.

(12) 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.

(13) 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.

(14) The gross receipts from the sales of and the storage, use or other consumption in this state of medicines:

(a) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law;

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

(c) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, podiatrist or dentist;

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

(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.

(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist who is licensed under ch. 447, podiatrist who is licensed under ch. 448 or optometrist who is licensed under ch. 449 if the medicine may not be dispensed without a prescription.

(14g) "Medicines" as used in sub. (14) 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; but "medicines" do not include:

(a) Any auditory, prosthetic, ophthalmic or ocular device or appliance.

(b) Articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts or accessories thereof.

(c) Any alcohol beverage the manufacture, sale, purchase, possession or transportation of which is licensed or regulated under the laws of this state.

(14m) For purposes of sub. (14), insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed dispensed on prescription.

(14r) For purposes of sub. (14) hospital has the meaning ascribed to it in s. 30.33 (2).

(14s) The gross receipts from the sale or rental of and the storage, use or other consumption in this state 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.

(15) The gross receipts from the sale of and the storage, use or other consumption of all newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under sub. (9a) (f), 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. In this subsection, "shoppers guide" means 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. In this subsection, "controlled circulation publication" means 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.

(16) The gross receipts from the sale of and the storage, use or other consumption of fire trucks and fire fighting equipment, including accessories, attachments, parts and supplies therefor, sold to volunteer fire departments.

(17) The gross receipts from the sales of and the storage, use or other consumption of water when delivered through mains.

(18) When the sale, lease or rental of a service or property that was previously exempt or not taxable under this subchapter becomes taxable, and the service or property is furnished under a written contract by which the seller is unconditionally obligated to provide the service or property for the amount fixed under the contract, the seller is exempt from sales or use tax on the gross receipts for services or property provided until the contract is terminated, extended, renewed or modified. However, from the time the service or property becomes taxable until the contract is terminated, extended, renewed or modified the user is subject to use tax, measured by the sales price, on the service or property purchased under the contract.

(20) Except as provided in par. (c), there are exempt from the taxes imposed by this subchapter the gross receipts from the sales of, and the storage, use or other consumption of, food, food products and beverages for human consumption.

(a) "Food", "food products" and "beverages" include, by way of illustration and not of limitation, the following:

1. Milk and milk products.
2. Cereal and cereal products, including meal, grits, flour, bread and other bakery products.
3. Meats and meat products.
4. Fish, fish products and seafoods.
5. Poultry and poultry products.
6. Vegetables and vegetable juices.
7. Fruit and fruit juices, as defined in ch. 97, 1967 stats.
- 7m. Bottled water that is for human consumption and that is not carbonated or sweetened or flavored.
8. Canned goods, including jams, jellies and preserves.
9. Nuts, berries and melons.
10. Sugar and salt.

11. Coffee, coffee substitutes, tea and cocoa.
  12. Condiments.
  13. Spices.
  14. Spreads and relishes.
  15. Desserts.
  16. Flavoring.
  17. Oleomargarine and shortening.
  18. Candy and confections.
  19. Dietary foods and health supplements.
  20. Any combination of the items listed under subds. 1 to 19.
- (b) "Food", "food products" and "beverages" do not include:
1. Medicines, tonics, vitamins and medicinal preparations in any form.
  2. Fermented malt beverages as defined in s. 125.02.
  3. Intoxicating liquors as defined in s. 139.01 (3).
  4. Soda water beverages as defined in s. 97.29 (1) (i), bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks and ades not defined as fruit juices in s. 97.02 (27), 1967 stats.

(bg) In this subsection:

1. "Meal" includes, but is not limited to, a diversified selection of food, food products or beverages that are customarily consumed as a breakfast, lunch or dinner, that may not easily be consumed without an article of tableware and that may not conveniently be consumed while standing or walking; except that "meal" does not include frozen items that are sold to a consumer, items that are customarily heated or cooked after the retail sale and before they are consumed or a diversified selection of food, food products and beverages that is packaged together by a person other than the retailer before the sale to the consumer.

2. "Sandwich" means food that consists of a filling; such as meat, cheese or a savory mixture; that is placed on a slice, or between 2 slices; of a variety of bread or something that takes the place of bread; such as a roll, croissant or bagel. "Sandwich" includes, but is not limited to, burritos, tacos, enchiladas, chimichangas, pita sandwiches, gyros and pocket sandwiches. "Sandwich" does not include hors d'oeuvres, canapes, egg rolls, cookies, cakes, pies and similar desserts and pastries and food that is sold frozen.

(c) 1. The gross receipts from sales of meals, food, food products and beverages sold by any person, organization or establishment for direct consumption on the premises are taxable, except as provided in subd. 4.

2. The gross receipts from sales by any person, organization or establishment of the following items for off-premises consumption are taxable:

- a. Meats and sandwiches, whether heated or not.
- b. Heated food or heated beverages.
- c. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones and sodas.
- d. Candy, chewing gum, lozenges, popcorn and confections.

3. Taxable gross receipts shall include cover, minimum, entertainment, service or other charges made to patrons or customers.

4. Taxable sales do not include meals, food, food products or beverages sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g) or day care centers registered under ch. 48 and served at a hospital, sanatorium, nursing home, retirement home, community-based residential facility or day care center. In this subdivision "retirement home" means a nonprofit residential facility 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. Taxable sales do not include meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

5. Taxable sales shall not include meals, food, food products or beverages, furnished in accordance with any contract or agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the goods are consumed by that student and meals, food, food products or beverages furnished to a national football league team under a contract or agreement.

6. For purposes of subd. 1., "premises" shall be construed broadly, and, by way of illustration but not limitation, shall include the lobby, aisles and auditorium of a theater or the seating, aisles and parking area of an arena, rink or stadium or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served. Vending machine premises shall include the room or area in which located.

(20m) The gross receipts from the sales of, and the storage, use or other consumption of, food, food products or beverages and of other goods that are packaged together by a person other than a retailer before the sale to the final consumer if 50% or more of the sales price of the package is attributable to goods that are exempt.

(21) The gross receipts from the sales of and the storage, use or other consumption of caskets and burial vaults for human remains.

(22) The gross receipts from the sales of or the storage, use or other consumption of the following property and of parts and accessories for the following property:

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

(b) Artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body.

(c) Artificial teeth sold by a dentist.

(d) Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser.

(e) Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled.

(f) Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer.

(g) Adaptive equipment that makes it possible for handicapped persons to enter, operate or leave a vehicle, as defined in s. 27.01 (7) (a) 2., if that equipment is purchased by the individual who will use it, a person acting directly on behalf of that individual or a nonprofit organization.

(23m) The gross receipts from the sale, lease or rental of or the storage, use or other consumption of motion picture film or tape, and advertising materials related thereto, sold, leased or rented to a motion picture theater or radio or television station.

(25) The gross receipts from the sale of and the storage of 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 the state by the purchaser for use thereafter solely outside the state.

(26) 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 under s. 70.11 (21) (a) or that would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or tangible personal property which becomes a component part of a waste treatment facility of this state or any agency thereof, or any political subdivision of the state or agency thereof as provided in s. 40.02 (28). The exemption includes replacement parts therefor,

and also applies to chemicals and supplies used or consumed in operating a waste treatment facility and to purchases of tangible personal property made by construction contractors who transfer such property to their customers in fulfillment of a real property construction activity. This exemption does not apply to tangible personal property installed in fulfillment of a written construction contract entered into, or a formal written bid made, prior to July 31, 1975.

(26m) The gross receipts from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semi-solid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

(27) The gross receipts from the sale of semen used for artificial insemination of livestock.

(28) The gross receipts from the sale of and the storage, use or other consumption to or by 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.

(29) The gross receipts from the sales of and the storage, use or other consumption of equipment used in the production of maple syrup.

(30) (a) The gross receipts from the sale of:

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. Any residue that is used as 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.

5. Fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

(b) For purposes of this subsection, 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.

(c) If fuel or electricity is sold partly for a use exempt under this subsection and partly for a use which is not exempt under this subsection, no tax shall be collected on that percentage of the gross receipts equal to the percentage of the fuel or electricity which is used for an exempt use, as specified in an exemption certificate provided by the purchaser to the seller.

(d) In this subsection "residential use" means use in a structure or portion of a structure which is a person's permanent residence, but does not include use in transient accommodations, as specified in s. 77.52 (2) (a) 1., motor homes, travel trailers or other recreational vehicles.

(e) For purposes of this subsection, a seller of electricity or natural gas is not required to comply with the requirement of obtaining exemption certificates under s. 77.52 (13) for sales of electricity or natural gas to accounts not covered by par. (c) which are properly classified as residential or farms pursuant to schedules which are filed for rate tariff purposes with the public service com-

mission under s. 196.19 and which are in force at the time of the sales or are properly so classified for classification purposes as directed by the federal rural electrification administration. Nothing in this paragraph shall be construed to broaden the exemption specified in par. (a).

(f) Sellers of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel shall not be required to obtain an exemption certificate under s. 77.52 (13) from a purchaser if all the fuel sold is for residential use and the seller maintains adequate records to identify which sales are exempt.

(31) The gross receipts from the sale of and the storage, use or other consumption in this state, but not the lease or rental, of used mobile homes that are primary housing units under s. 340.01 (29).

(32) The gross receipts from charges, including charges for a search, imposed by an authority, as defined in s. 19.32 (1), for copies of a public record that a person may examine and use under s. 16.61 (12) or for copies of a record under s. 19.35 (1).

(33) The gross receipts from sales of and the storage, use or other consumption of medicines used on farm livestock, not including workstock.

(34) The gross receipts from the sale of and the storage, use or other consumption of milk house supplies used exclusively in producing and handling milk on dairy farms.

(35) 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.

(36) The gross receipts from the rental for a continuous period of one month or more of a mobile home, as defined in s. 66.058 (1) (d), that is used as a residence. In this subsection, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

(37) The gross receipts from revenues collected under s. 146.70 (3).

(38) The gross receipts from the sale of and the storage, use or other consumption of snowmobile trail groomers and attachments for them that are purchased, stored, used or consumed by a snowmobile club that meets at least 3 times a year, that has at least 10 members, that promotes snowmobiling and that participates in the department of natural resources' snowmobile program under s. 350.12 (4) (b).

(39) The gross receipts from the sale of and the storage, use or other consumption of off-highway, heavy mechanical equipment such as feller bunchers, slashers, delimiters, chippers, hydraulic loaders, loaders, skidder-forwarders, skidders, timber wagons and tractors used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the logging business. In this subsection, "heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

(40) The gross receipts from the sale, lease or rental of and the storage, use or other consumption of cloth diapers.

(41) The gross receipts from the sale of building materials, supplies and equipment to; and the storage, use or other consumption of those kinds of property by; owners, contractors, subcontractors or builders if that property is acquired solely for or used solely in, the construction, renovation or development of property that would be exempt under s. 70.11 (36).

(42) The gross receipts from the sale of and the storage, use or other consumption of animal identification tags provided under s. 93.06 (1h) and standard samples provided under s. 93.06 (1s).

(43) The gross receipts from the sale of and the storage, use or other consumption of raw materials used for the processing, fabricating or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside this state.

History: 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174;

1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291.

A taxpayer in the business of processing scrap metal is engaged in manufacturing as defined by s. 77.51 (27), 1983 stats. [now s. 77.54 (6m)]. *H. Samuels Co. v. Dept. of Revenue*, 70 W (2d) 1076, 236 NW (2d) 250.

A carrier's contract status is established under the "primary business test" if his primary occupation is the supplying of transportation for compensation even though the operator owns the goods at time of transport and carries them for the purpose of sale; if, however, the operator's primary business is manufacturing or another noncarrier commercial enterprise, a determination must be made as to whether the motor operations are in furtherance of the primary business or are conducted as a related enterprise with the purpose of profiting from the transportation. *Gensler v. Dept. of Revenue*, 70 W (2d) 1108, 236 NW (2d) 648.

Sale of furnishings and equipment of supper club was an "occasional sale" under s. 77.54 (7) as defined under s. 77.51 (10), 1983 stats. [now s. 77.51 (9)]. *Three Lions Supper Club v. Dept. of Revenue*, 72 W (2d) 546, 241 NW (2d) 190.

Consumption of gas at interstate pipeline compressor stations in Wisconsin is protected from state use tax by commerce clause. *Midwestern Gas Transmission Co. v. Revenue Dept.* 84 W (2d) 261, 267 NW (2d) 253 (1978).

To satisfy s. 77.51 (27), 1983 stats. [now s. 77.54 (6m)], change in name must be attributable to change in nature, purpose, and function of article. *Dept. of Revenue v. Bailey-Bohrman Steel Corp.* 93 W (2d) 602, 287 NW (2d) 715 (1980).

Semitrailers are "truck bodies" under (5) (a). *Dept. of Revenue v. Trudell Trailer Sales*, 104 W (2d) 39, 310 NW (2d) 612 (1981).

Vending machine company, which placed machines in schools and hospitals, was "seller" of products dispensed by machine. *Servomation Corp. v. Dept. of Revenue*, 106 W (2d) 616, 317 NW (2d) 464 (1982).

Under "use or function" test, greenhouse was "machine" used in floriculture under (3). *Revenue Dept. v. Greiling*, 112 W (2d) 602, 334 NW (2d) 118 (1983).

Exemption under (9a) (f) is limited to services used by tax-exempt organizations and doesn't extend to services by such foundations. *Rev. Dept. v. EAA Aviation Foundation*, 143 W (2d) 681, 422 NW (2d) 458 (Ct. App. 1988).

Calf hutches are not "machines" exempt from sales taxes under (3). *L.T. Hampel Corp. v. DOR*, 157 W (2d) 422, 459 NW (2d) 598 (Ct. App. 1990).

Motor vehicles and machinery used with motor vehicles are not used "directly" in recycling activities and are not exempt under sub. (26m). *Dept. of Revenue v. Parks-Pioneer*, 170 W (2d) 44, 487 NW (2d) 63 (Ct. App. 1992).

The exemption for occasional sales under sub. (7) cannot apply to a seller who continues to make sales in a business after the business was sold and surrender of the sales tax permit attempted. *Carrion Corp. v. DOR*, 179 W (2d) 254, 507 NW (2d) 356 (Ct. App. 1993).

"Merchandise" as used in sub. (6) (b) denotes commodities that are bought and sold. *Luetzow Industries v. DOR*, 197 W (2d) 917, 541 NW (2d) 810 (Ct. App. 1995).

A Mississippi River excursion boat which embarked and disembarked on a Wisconsin port crossing into out-of-state water, but did not land in that state, was not engaged in "interstate commerce" under sub. (13). *LaCrosse Queen, Inc. v. DOR*, 208 W (2d) 439, 561 NW (2d) 686 (1997).

**77.55 Exemptions from sales tax.** (1) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property or services to:

(a) The United States, its unincorporated agencies and instrumentalities;

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property to a common or contract carrier, shipped by the seller via 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 this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier.

(2m) There are exempted from the computation of the amount of sales tax the gross receipts from sales of railroad crossties to a common or contract carrier, 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 this state if the property is transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier. Interruption of the shipment for storage, drying, processing or creosoting of the railroad crossties in this state does not invalidate the exemption under this subsection.

(3) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal

property purchased for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

History: 1985 a. 29.

**77.56 Exemptions from use tax.** (1) The storage, use or other consumption in this state of property, the gross receipts from the sale of which are reported to the department in the measure of the sales tax, is exempted from the use tax.

(2) The loan by an automobile dealer of a motor vehicle to any school or school district for a driver training educational program conducted by the school or school district is exempt from the use tax.

(3) The donation to an entity specified under s. 77.54 (9a) of property that has been purchased tax-free for resale or upon the presentation of a valid exemption certificate is exempt from the use tax.

History: 1989 a. 31; 1995 a. 27.

**77.57 Liability of purchaser.** If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this subchapter from the computation of the amount of the sales tax and uses the property in some other manner or for some other purpose, the purchaser is liable for payment of the sales tax. The tax shall be measured by the sales price of the property to the purchaser, but if the taxable use first occurs more than 6 months after the sale to the purchaser, the purchaser may use as the measure of the tax either that sales price or the fair market value of the property at the time the taxable use first occurs.

History: 1983 a. 405.

Seller is not relieved of liability if purchaser's certificate on its face fails to state a legal basis for exempting the sale. *Department of Revenue v. Moebius Printing Co.* 89 W (2d) 610, 279 NW (2d) 213 (1979).

**77.58 Returns and payments.** (1) The taxes imposed by this subchapter for each calendar quarter are due and payable on the last day of the month next succeeding the calendar quarter for which imposed except that:

(a) If the amount of tax for any calendar quarter exceeds \$600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the last day of the month next succeeding the calendar month for which imposed.

(b) If the amount of tax for any calendar quarter exceeds \$3,600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the 20th day of the month next succeeding the calendar month for which imposed. The payment is timely if it fulfills the requirements under s. 77.61 (14).

(1m) Persons who owe amounts under this subchapter shall pay them by mailing or delivering them to the department or, if the department prescribes another method of submitting or another destination, those persons shall pay those amounts in that other method or to that other destination.

(2) A return shall be filed by the last day of the month next succeeding each calendar quarter for taxes imposed for the preceding calendar quarter except that:

(a) If payments are required to be made monthly and are due and payable on the last day of the month next succeeding the calendar month for which imposed under sub. (1) (a), a return shall be filed by the last day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

(b) If payments are required to be made monthly and are due and payable on the 20th day of the month next succeeding the calendar month for which imposed under sub. (1) (b), a return shall

**Kreye, Joseph**

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**To:** Villa, Jim  
**Subject:** sales tax exemption for materials bought for a local government construction project

Jim:

I'm wondering what entities you want included in the sales tax exemption for a local government construction project. A unit of local government is, generally, considered to be a county, city, village, town and school district. However, other entities are also treated as units of local government, for some purposes. For example, under section 77.54 (9a) of the statutes the following entities, other than the ones I mentioned above, are exempt from paying sales taxes: the University of Wis. Hospital and Clinics Authority; a county-city hospital; a sewerage commission; a joint local water authority; a corporation organized for charitable, scientific or educational purposes; and a local professional baseball park district.

The draft I'm working on will exempt a builder from paying sales tax on materials that are purchased for a local government construction project. Do you want "local government" to refer to a county, city, village, town and school district; the entities under section 77.54 (9a) of the statutes; or some combination thereof? If you have any questions, please contact me.

**Joseph T. Kreye**, Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263  
[joseph.kreye@legis.state.wi.us](mailto:joseph.kreye@legis.state.wi.us)

## Kreye, Joseph

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**From:** Villa, Jim  
**Sent:** Tuesday, October 26, 1999 8:42 AM  
**To:** Kreye, Joseph  
**Subject:** RE: sales tax exemption for materials bought for a local government construction project

county, city, village, town and school district would be great.

Jim Villa  
Office of Senator Alberta Darling  
Room 22 South - State Capitol  
Madison, Wisconsin 53707  
(608) 266-5830 (608) 267-0588 fax  
jim.villa@legis.state.wi.us

-----Original Message-----

**From:** Kreye, Joseph  
**Sent:** Monday, October 25, 1999 2:22 PM  
**To:** Villa, Jim  
**Subject:** sales tax exemption for materials bought for a local government construction project

Jim:

I'm wondering what entities you want included in the sales tax exemption for a local government construction project. A unit of local government is, generally, considered to be a county, city, village, town and school district. However, other entities are also treated as units of local government, for some purposes. For example, under section 77.54 (9a) of the statutes the following entities, other than the ones I mentioned above, are exempt from paying sales taxes: the University of Wis. Hospital and Clinics Authority; a county-city hospital; a sewerage commission; a joint local water authority; a corporation organized for charitable, scientific or educational purposes; and a local professional baseball park district.

The draft I'm working on will exempt a builder from paying sales tax on materials that are purchased for a local government construction project. Do you want "local government" to refer to a county, city, village, town and school district; the entities under section 77.54 (9a) of the statutes; or some combination thereof? If you have any questions, please contact me.

**Joseph T. Kreye**, Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263  
joseph.kreye@legis.state.wi.us



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-37627

JK:.....

ys

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JK

in 10-26-99

gen

1 AN ACT ...; relating to: a sales tax and a use tax exemption for building materials  
2 sold to a builder for a local government construction project.

*Analysis by the Legislative Reference Bureau*

Under current law, municipalities and school districts are exempt from paying the sales tax and the use tax on purchases of tangible personal property. To receive the sales tax or use tax exemption, the municipality or school district must purchase the tangible personal property. A builder hired by the municipality or school district may not receive the exemption for property purchased by the builder to be used for a municipality or school district construction project.

Under this bill, the sale of building materials to builders is exempt from the sales tax and the use tax, if the materials are used for the construction, renovation or development of property pursuant to a contract with a municipality or school district.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 77.54 (41) of the statutes is amended to read:

4 77.54 (41) The gross receipts from the sale of building materials, supplies and  
5 equipment to; and the storage, use or other consumption of those kinds of property

1 by; owners, contractors, subcontractors or builders if that property is acquired solely  
2 for or used solely in, the construction, renovation or development of property that  
3 would be exempt under s. 70.11 (36); or if that property is acquired solely for or used  
4 solely in the construction, renovation or development of property pursuant to a  
5 contract with a municipality, as defined under s. 70.375 (1) (c).

6 **SECTION 2. Effective date.**

7 (1) This act takes effect on the first day of the 2nd month beginning after  
8 publication. ✓

9 (END)

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**Smith, Irma**

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**From:** Kreye, Joseph  
**Sent:** Thursday, March 09, 2000 8:41 AM  
**To:** Smith, Irma  
**Subject:** FW:

Hi Irma. Would you be so kind as to jacket LRB-3762 for Sen. Darling? Thank you very much. (yippy skippy)

Joseph T. Kreye, Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263  
joseph.kreye@legis.state.wi.us

-----Original Message-----

**From:** Villa, Jim  
**Sent:** Wednesday, March 08, 2000 7:04 PM  
**To:** Kreye, Joseph  
**Subject:**

Please jacket LRB 3762 for Senator Darling and forward to her office. THANKS

Jim Villa - Chief of Staff  
State Senator Alberta Darling  
22 South, State Capitol  
Madison, Wisconsin 53702



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
REFERENCE SECTION: (608) 266-0341  
FAX: (608) 266-5648

STEPHEN R. MILLER  
CHIEF

March 30, 2000

LRB  
COPY

### MEMORANDUM

**To:** Senator Darling

**From:** Joseph Kreye, Sr. Legislative Attorney, (608) 266-2263

**Subject:** Technical Memorandum to **1999 SB 470** (LRB 99-3762/1)

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We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

**MEMORANDUM**

March 28, 2000

**TO:** Joseph Kreye  
Legislative Reference Bureau

**FROM:** Yeang-Eng Braun <sup>YEB</sup>  
Department of Revenue

**SUBJECT:** Technical Memorandum on SB 470, Relating to Expanding the Sales and Use Tax Exemption for Building Materials Sold to Builders of Municipal Projects

The Department of Revenue has several concerns and suggestions related to the language of SB 470.

1. The bill should only apply to Wisconsin municipalities and school districts. Under current law, sales to other states' governmental units are not exempt; however, under this proposal, items purchased in Wisconsin for construction of municipal projects in other states would become exempt.
2. The Department also suggests limiting the exemption to "tangible personal property becoming a component of real property." Such a change would make it easier for the Department, contractors and municipalities to administer the exemption. As written, the exemption would extend to tools and equipment used by the contractor, including work trailers, office supplies, telephone service, etc.—allocating the appropriate value of these items used for municipal projects would be burdensome. Further, with the suggested change, the exemption would apply to tangible personal property used in repair, cleaning, service and maintenance activities. Such activities currently are not covered by this bill because they are not considered construction, renovation, or development activities.
3. As a technical and administrative concern, the effective date does not currently deal with transitional issues. Most notably, contracts between municipalities and builders entered into before the law change and materials purchased before the law change. The Department suggests the language be modified to state, "this act takes effect for tangible personal property purchased on or after the first day of the 2<sup>nd</sup> month beginning after publication pursuant to contracts with municipalities entered into on or after the first day of the 2<sup>nd</sup> month beginning after publication."

If you have questions regarding this technical memorandum, please contact John Stott at 266-9706.

YEB:JTS:dls  
t:\fsn99-00\js\sb470.tec