



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

January 26, 1999

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

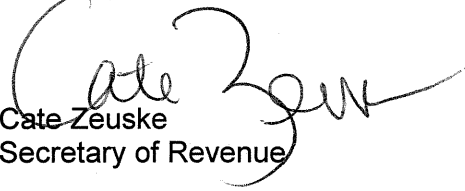
Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Clearinghouse Rule 98-128

Dear Senator Robson and Representative Grothman:

Copies of Clearinghouse Rule 98-128 in final draft form and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats., are enclosed.

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:cli
i:/rules/1109 Committees - JCRAR

Enclosure

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 98-128
SECTION 227.19(2) AND (3), STATS., REPORT

Need For Proposed Rule

The rule is necessary to:

- Reflect a new law relating to an exemption for certain medicines furnished without charge.
- Reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.
- Clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).
- Reflect the department's position that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.
- Conform format to Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was not required, pursuant to s. 227.16(2)(e), Stats.

Legislative Council Staff Recommendations

All recommendations of the Legislative Council staff have been incorporated into the proposed order.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.09(6); amend Tax 11.09(1), (2)(title) and (4)(e) and 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c); and create Tax 11.09(4)(f) and 11.28(7), relating to medicines and to gifts and other advertising specialties.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.54(14)(f) and 77.57, Stats.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended, to conform language to Legislative Council Rules Clearinghouse standards.

SECTIONS 2, 3 AND 5. Tax 11.09(4)(f) and 11.28(7) are created and Tax 11.09(6) is repealed, to reflect the sales and use tax exemption for certain medicines furnished without charge, as a result of the creation of s. 77.54(14)(f), Stats., by 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b) and (f), (3)(c)1.b. and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).

Tax 11.28 (2)(c) is amended, to reflect that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.

Tax 11.28(4)(b) is amended, to reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended to read:

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

(2)(title) ~~EXAMPLES OF ITEMS WHICH ARE~~ ITEMS WHICH ARE MEDICINES.

(4)(e) Sold to this state or any political subdivision or municipal corporation thereof of the state, 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 of the state.

SECTION 2. Tax 11.09(4)(f) is created to read:

Tax 11.09(4)(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

SECTION 3. Tax 11.09(6) is repealed.

Note to Revisor: Replace the second note at the end of Tax 11.09 with the following:

Note: The interpretations in s. Tax 11.09 are effective under the general sales and use tax law on and after September 1, 1969, except: The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c) are amended to read:

Tax 11.28(2)(b) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a grand opening or similar event, such as an open house, celebrity appearance or farm days, cannot accept a resale certificate in good faith if the seller is aware, or should be aware, of how the property will be used. In cases where a seller furnishes free property to a retailer for use as gifts at a grand opening or similar event, the seller furnishing the property to the retailer without charge is subject to the sales or use tax on its cost of the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

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

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

(3)(c)1.b. A retailer may not use a resale certificate when purchasing taxable tangible personal property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the use tax ~~based on the cost of the property~~.

Note to Revisor: Replace example 2 at the end of sub. (3)(c)1.b. with the following:

2) A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier a resale certificate, the retailer is liable for tax on the key chains given away.

(4)(b) ~~The~~ A sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is ~~providing an advertising service~~ selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

(c) Retailers are subject to the sales and use tax on ~~their cost of~~ taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies.

Note to Revisor: Replace the example at the end of sub. (4)(c) with the following:

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods including rolls, bagels, muffins and bread, ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A's customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods, ground coffee beans and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items not for direct consumption on the premises of the vendor under s. 77.54(20), Stats. Motel A's purchases of the napkins, plastic utensils and paper plates and cups are subject to sales or use tax because no exemption applies.

SECTION 5. Tax 11.28(7) is created to read:

Tax 11.28(7) CERTAIN MEDICINES FURNISHED WITHOUT CHARGE. No sales or use tax is owed on medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

Example: A drug manufacturer furnishes medicine samples to doctors without charge. The medicine samples may not be dispensed without a prescription. The drug manufacturer does not owe sales or use tax on its cost of the ingredients for the medicine samples.

Note to Revisor: 1) Remove example 3 at the end of sub. (2)(a).

2) Replace the two notes at the end of Tax 11.28 with the following:

Note: Section Tax 11.28 interprets ss. 77.51(4)(a) and (14)(k), 77.54(14)(f), 77.56(3) and 77.57, Stats.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; and (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: Oct 2, 1998

By: Cate Zeuske
Cate Zeuske
Secretary of Revenue

Proposed Order 1109

LRB or Bill No./Adm. Rule No.

TAX 11.09 and 11.28

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Medicines, and of Gifts and Other Advertising Specialties

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Towns Villages Cities
 Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule interprets the sales and use tax exemption, created in 1997 Wisconsin Act 27, for prescription medicines furnished without charge by health practitioners, and clarifies the sales and use tax treatment of promotional gifts, gift certificates, and coupon and voucher books. These changes have no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department Of Revenue

Dennis Collier, (608) 266-5773

Authorized Signature/Telephone No.

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(608) 266-2700

Yeang-Eng Braun

Date

8/21/98