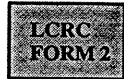
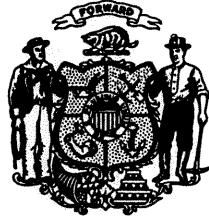


WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

Richard Sweet
Assistant Director
(608) 266-2982

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-011

AN ORDER to repeal Tax 11.14 (2) (a) 3. to 7., (7) (title) and (b), (10) (b), (11) (b) and (12) (b) 1. and 11.53 (1) (a), (b) and (e); to renumber Tax 11.14 (7) (a) 1., 2., 3., 5. and 6., (8) (b), (11) (a) 1. to 3. and (12) (b) 2. and 3. and 11.53 (1) (d); to renumber and amend Tax 11.14 (7) (a) (intro.) and 4., (8) (title) and (a), (9), (10) (title) and (a), (11) (title) and (a) (intro.) and (12) (title), (a) and (b) (intro.) and 11.53 (1) (c); to amend Tax 11.14 (title), (1), (2) (a) (intro.) and (c), (3) (a) and (b), (5) (b) and (6) (title), (a) (title) and 2. and (b) (title), (intro.) and 3. and 11.53 (3), (4) and (6); to repeal and recreate Tax 11.14 (2) (a) 1. and 2. and 11.53 (2) and (5); and to create Tax 11.14 (6) (b) 4. c., (12) (title) and (16), relating to sales and use tax exemption certificates and the sales and use tax treatment of temporary events.

Submitted by **DEPARTMENT OF REVENUE**

01-26-99 RECEIVED BY LEGISLATIVE COUNCIL.
02-19-99 REPORT SENT TO AGENCY.

RS:WF;jal;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-011

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. It is suggested that the slash mark be removed from between the words "county" and "stadium" in s. Tax 11.14 (2) (a) 2. In addition, this provision can be clarified by including an appropriate cross-reference to the tax and by a statement as to whether the provision applies to any such tax or only applies to the tax imposed for the construction of Miller Park.

b. In s. Tax 11.14 (3) (b), the fourth sentence either should be contained in a note or should be deleted.

c. In s. Tax 11.53 (5), the phrase "shall be subject" should be replaced by the phrase "are subject." Also, it appears that the cross-reference should read: "s. 77.52 (19) or 77.58 (1) and (2), Stats."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Tax 11.14 (6) (b) (intro.), it appears that a typographical error has occurred; the first occurrence of the word "or" should be replaced by the word "of."

b. In the new example following s. Tax 11.14 (6), the word "claming" should be replaced by the word "claiming."

c. It is suggested that the word "nonfixed" in s. Tax 11.53 (1) (a) either be replaced by the word "temporary" or that it be deleted and the phrase "that are not the retailer's fixed business locations" be placed after the word "locations."

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

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.14(2)(a)3. to 7., (7)(title) and (b), (10)(b), (11)(b) and (12)(b)1. and Tax 11.53(1)(a), (b) and (e); renumber Tax 11.14(7)(a)1., 2., 3., 5. and 6., (8)(b), (11)(a)1. to 3. and (12)(b)2. and 3. and Tax 11.53(1)(d); renumber and amend Tax 11.14(7)(a)(intro.) and 4., (8)(title) and (a), (9), (10)(title) and (a), (11)(title) and (a)(intro.) and (12)(title), (a) and (b)(intro.) and Tax 11.53(1)(c); amend Tax 11.14(title), (1), (2)(a)(intro.) and (c), (3)(a) and (b), (5)(b) and (6)(title), (a)(title) and 2. and (b)(title), (intro.) and 3. and Tax 11.53(3), (4) and (6); repeal and recreate Tax 11.14(2)(a)1. and 2. and Tax 11.53(2) and (5); and create Tax 11.14(6)(b)4.c., (12)(title) and (16), relating to sales and use tax exemption certificates and the sales and use tax treatment of temporary events.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 73.03(50), 77.52(14) and (19), 77.53(11) and 77.61(2), Stats., s. 77.52(7), (9) and (12), Stats., as affected by 1997 Wis. Act 27, s. 77.52(13), Stats., as amended by 1997 Wis. Act 237 and s. 77.53(10), Stats., as amended by 1997 Wis. Acts 27 and 237.

SECTIONS 1 TO 16. Tax 11.14(title), (1), (2)(a) and (c), (3)(a) and (b), (5)(b), (6)(title), (a)(title) and 2. and (b)(title), (intro.) and 3., the example following sub. (6) and subs. (7) to (12) and the second note at the end of Tax 11.14 are revised, to reflect a change in department policy to discontinue the issuance of various types of exemption certificates and replace them with Form S-211, a multipurpose exemption certificate. Form S-211 may be used for any sales and use tax exemption provided by law, except the exemption for construction contracts entered into before the effective date of county/stadium tax, and direct pay permits.

Tax 11.14(1) is further revised and the first note at the end of Tax 11.14 is revised, to reference all of the subsections of ss. 77.52 and 77.53, Stats., which relate to exemption certificates.

Tax 11.14(5)(b) is further revised, to clarify that a seller is not liable for tax on transactions covered by a valid exemption certificate.

Tax 11.14(6)(b)4.c. is created, to reflect department policy that a person who makes exempt sales only may use a certificate of exemption (Form S-211) to claim exemption on tangible personal property or taxable services the person resells.

Tax 11.14(16) is created and the second note at the end of Tax 11.14 is further revised, to reflect a change in exemption certificate requirements for sales of certain commodities, as a result of amendments to ss. 77.52(13) and 77.53(10), Stats., by 1997 Wis. Acts 27 and 237.

SECTIONS 17 AND 19 TO 22. Tax 11.53(1)(a),(b) and (e) are repealed, subs. (2) to (5)

are revised, and a note is added at the end of sub. (3), to reflect a change in department policy, to no longer issue temporary seller's permits and concessionaire permits.

SECTION 18. Tax 11.53(1)(c) and (d) are renumbered Tax 11.53(1)(a) and (b), because of the repeal of Tax 11.53(1)(a) and (b). Tax 11.53(1)(a) as renumbered is revised, to reflect a change in department policy, to now permit use of a mobile seller's permit simultaneously at multiple locations.

SECTION 23. Tax 11.53(6) is revised, to clarify the conditions under which the permit violation provisions apply.

SECTION 1. Tax 11.14(title), (1) and (2)(a)(intro.) are amended to read:

Tax 11.14(title) **Exemption certificates, including resale certificates.**

(1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52(13) to ~~(16)~~ (17), Stats., and the use tax status of exemption certificates is contained in s. 77.53(10) and ~~(14)~~ to (13), Stats.

(2)(a)(intro.) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors shall exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with ~~7 types of the following 2 sales and use tax exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this section, are the following:~~

SECTION 2. Tax 11.14(2)(a)1. and 2. are repealed and recreated to read:

Tax 11.14(2)(a)1. Wisconsin sales and use tax exemption certificate, form S-211, a multipurpose form which may be used for any sales and use tax exemption provided by law, except as provided in subs. (13) and (15).

2. Construction contract entered into before the effective date of county/stadium tax, form S-207 CT-1.

J.
reference
contract
performance
district.

SECTION 3. Tax 11.14(2)(a)3. to 7. are repealed.

SECTION 4. Tax 11.14(2)(c), (3)(a) and (b), (5)(b) and (6)(title), (a)(title) and 2. and (b)(title), (intro.) and 3. are amended to read:

Tax 11.14(2)(c) ~~Under s. 77.57, Stats., if~~ If a purchaser certifies in writing by using an exemption certificate, ~~other than a resale certificate,~~ that the property purchased will be used for activities or under circumstances which make the purchase of the property exempt from the sales tax or for resale, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

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

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

(5)(b) Continuous exemption certificates, ~~including continuous resale certificates,~~ approved by the department do not allow a purchaser to issue "this time only" purchase orders cancelling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for a previously issued continuous certificate, unless it. The seller is not liable for the tax on transactions covered by a valid exemption certificate, unless the purchase order is

accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6)(title) ~~RESALE CERTIFICATE, FORM S-205.~~

(a)(title) *Effect of obtaining ~~resale exemption~~ certificate claiming resale.*

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

(b)(title) *Contents of ~~resale exemption~~ certificates claiming resale.*

(intro.) ~~A resale certificate, form S-205,~~ An exemption certificate claiming resale shall contain the following information for the seller to be relieved from the burden or proving the sale of property or services was not a taxable sale:

3. A general description of the property or service purchased for resale if a "continuous" ~~resale exemption~~ certificate is used, or an itemization of the property or service purchased if a "single purchase" certificate is used.

SECTION 5. Tax 11.14(6)(b)4.c. is created to read:

Tax 11.14(6)(b)4.c. A person who makes exempt sales only in the regular course of business may insert the words "exempt sales only" in the space for a seller's permit number.

Note to Revisor: Replace the example following sub. (6) with the following:

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

SECTION 6. Tax 11.14(7)(title) is repealed.

SECTION 7. Tax 11.14(7)(a)(intro.) and 1. to 6. are renumbered Tax 11.14(12)(intro.) and (a) to (f), and as renumbered Tax 11.14(12)(intro.) and (d) are amended to read:

Tax 11.14(12)(intro.) ~~The certificate of exemption, form S-207, is a multiple purpose form which~~ Wisconsin sales and use tax exemption certificate, form S-211, may also be used for purchasing any of any other sales and use tax exemption provided by law, including the following ~~6 exempt types of property or services:~~

(d) Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization or governmental unit holding a certificate of exempt status, CES. Sales to organizations holding a CES also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, which is located out-of-state, may use the ~~certificate of exemption, form S-207~~ Wisconsin sales and use tax exemption certificate, form S-211, to purchase without tax even though it has not been issued a Wisconsin certificate of exempt status.

SECTION 8. Tax 11.14(7)(b) is repealed.

SECTION 9. Tax 11.14(8), (9) and (10)(title) and (a) are renumbered Tax 11.14(7), (8) and (9), and as renumbered Tax 11.14(7)(title) and (a), (8) and (9) are amended to read:

Tax 11.14(7)(title) MANUFACTURER'S MANUFACTURING EXEMPTION
CERTIFICATE, FORM S-207M.

(a) A supplier which accepts a properly completed manufacturer's exemption certificate, ~~form S-207m,~~ claiming a manufacturing exemption in good faith marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of

the property or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If a ~~form S-207~~ an exemption certificate is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser shall designate which items are taxable.

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

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

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

SECTION 10. Tax 11.14(10)(b) is repealed.

SECTION 11. Tax 11.14(11)(title) and (a)(intro.) and 1. to 3. are renumbered Tax 11.14(10)(title) and (intro.) and (a) to (c), and as renumbered Tax 11.14(10)(title) and (intro.) are amended to read:

Tax 11.14(10)(title) ~~CERTIFICATE OF EXEMPTION FOR ELECTRICITY AND NATURAL GAS SOLD FOR RESIDENTIAL OR FARM USE, FORM S-017~~.

(intro.) A retailer of electricity or natural gas shall have a signed exemption certificate, ~~form S-017~~, for all sales of electricity or natural gas for residential or farm use which are exempt from sales or use tax unless any, or all, of the following apply:

SECTION 12. Tax 11.14(11)(b) is repealed.

SECTION 13. Tax 11.14(12)(title), (a) and (b)(intro.) are renumbered Tax 11.14(11)(title), (a) and (b)(intro.) and amended to read:

Tax 11.14(11)(title) GOVERNMENT SALES AND USE TAX EXEMPTION
CERTIFICATE, FORM S-209.

(a) A retailer of tangible personal property or taxable services may accept from a federal or Wisconsin governmental unit ~~a government sales and use tax~~ an exemption certificate, ~~form S-209~~, as proof that a sale is exempt from sales or use tax.

(b)(intro.) In lieu of accepting ~~a form S-209~~ an exemption certificate as provided in par.

(a) a retailer may accept ~~any~~ either one of the following:

SECTION 14. Tax 11.14(12)(b)1. is repealed.

SECTION 15. Tax 11.14(12)(b)2. and 3. are renumbered Tax 11.14(11)(b)1. and 2.

SECTION 16. Tax 11.14(12)(title) and (16) are created to read:

Tax 11.14(12)(title) OTHER EXEMPTIONS.

(16) CERTAIN COMMODITIES. No exemption 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.

Note to Revisor: 1) Replace the first note at the end of Tax 11.14 with the following:

Note: Section Tax 11.14 interprets ss. 77.52(13) to (17), 77.53(10) to (13) and 77.77(3), Stats.

2) In the second note at the end of Tax 11.14, remove the word "and" before part (b) and add the following at the end of the note:

; (c) The elimination of the exemption certificate requirement for sales of certain consigned commodities became effective December 1, 1997 as it relates to sales taxes on commodities consigned for resale, pursuant to 1997 Wis. Act 27, and June 17, 1998 as it relates to sales and use taxes on commodities consigned for sale, pursuant to 1997 Wis. Act 237; and (d) The multipurpose exemption certificate, form S-211, was created in November 1998 to replace various types of exemption certificates.

SECTION 17. Tax 11.53(1)(a) and (b) are repealed.

SECTION 18. Tax 11.53(1)(c) and (d) are renumbered Tax 11.53(1)(a) and (b) and as renumbered Tax 11.53(1)(a) is amended to read:

Tax 11.53(1)(a) "Mobile seller's permit" means a permit issued under s. 77.52(7) and (19), Stats., which is valid at any temporary event conducted by the permittee within Wisconsin but which is valid at only one event at a time. A mobile seller's permit may be used

S
Temporary
is
not at
all?
? simultaneously at multiple nonfixed locations. Except for its use at more than one place of operations, all provisions of ~~s.~~ ss. 73.03(50) and 77.52(7), (8), (9), (10), (11) and (12), Stats., apply to it.

SECTION 19. Tax 11.53(1)(e) is repealed.

SECTION 20. Tax 11.53(2) is repealed and recreated to read:

Tax 11.53(2) PERMITS FOR TEMPORARY EVENTS. Except as provided in sub. (3), a person conducting business as a retailer at a temporary event shall hold one of the following permits:

(a) A mobile seller's permit, if the event is not held at the retailer's fixed business location.

(b) A seller's permit, if the event is held at the retailer's fixed business location.

SECTION 21. Tax 11.53(3) and (4) are amended to read:

Tax 11.53(3) EXCEPTION. Persons, other than nonprofit organizations, not otherwise required to hold a seller's permit who have total taxable gross receipts from sales of tangible personal property or taxable services of less than \$1,000 during the calendar year are not required to hold ~~any of the permits listed in sub. (2)~~ a seller's permit or mobile seller's permit.

(4) SECURITY. Application for ~~permits referred to in this section~~ a seller's permit or mobile seller's permit shall be on ~~forms as a form~~ as a form prescribed by the department. The applicant shall be subject to security requirements of s. 77.61(2), Stats., ~~except that for events of 7~~

~~consecutive days or less retailers holding concessionaire permits shall deposit security of \$25 per concession for each event and deposits for events which exceed 7 consecutive days shall be \$50 per concession for each event and may be required to deposit security in an amount determined by the department, but not in excess of \$15,000.~~

SECTION 22. Tax 11.53(5) is repealed and recreated to read:

Tax 11.53(5) RETURNS. Sales and use tax returns due from persons holding seller's permits and mobile seller's permits ~~shall be subject~~ ^{are subject} to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the returns and shall be due quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis ^{or} under ss. 77.52(19) and 77.58(1) and (2), Stats., and shall include on the return gross receipts from all temporary events and other taxable transactions of the permittee during the reporting period.

SECTION 23. Tax 11.53(6) is amended to read:

Tax 11.53(6) VIOLATION. Under s. 77.52(12), Stats., any person required to hold a seller's permit who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

Note to Revisor: Replace the first note at the end of Tax 11.53 with the following:

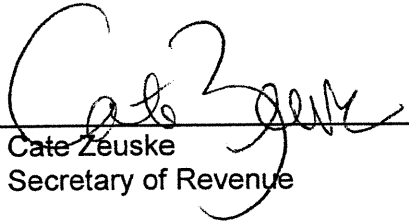
Note: Section Tax 11.53 interprets ss. 73.03(38) and (50), 77.52(7), (9), (11), (12) and (19), 77.58 and 77.61(2), Stats.

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: 1/22/99 By: 
Cate Zeuske
Secretary of Revenue

i.rules\1114 Proposed Order

FISCAL ESTIMATE

ORIGINAL UPDATED

DOA-2048 N(R10/98)

CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Tax 11.14 and 11.53

Amendment No. if Applicable

Subject

Rules Relating to Sales and Use Tax Exemption Certificates, and Treatment of Temporary Events

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
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- 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

This order revises rules relating to exemption certificates to reflect the creation by the Department of Revenue of a multipurpose exemption certificate, Form S-211, which will replace several single-use exemption certificates. In addition, it reflects a change in exemption certificate requirements for sales of certain commodities enacted in 1997 Wisconsin Acts 27 and 237, and makes several clarifications regarding the use of exemption certificates.

The order also reflects a change in department policy eliminating temporary seller's permits and concessionaire permits, and allowing the simultaneous use at multiple locations of mobile seller's permits. It also clarifies the conditions under which permit violation provisions apply.

These changes will 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.

Yeang-Eng Braun

(608) 266-2700

Yeang-Eng Braun

Date

12/28/98



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

June 4, 1999

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 115 South State Capitol
PO Box 7882
Madison WI 53707-7882


Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 15 North State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 99-011

Dear Senator Robson and Representative Grothman:

Copies of Clearinghouse Rule 99-011 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:cil
e:rules\1114 Committees - JCRAR

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 99-011
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to:

- Update Tax 11.14 to reflect law changes contained in 1997 Wis. Acts 27 and 237, relating to exemption certificate requirements for sales of certain commodities.
- Clarify various Department policies relating to exemption certificates.
- Reflect the Department's multipurpose exemption certificate, Form S-211, which replaces various types of exemption certificates.
- Reference all of the statutes which relate to exemption certificates.
- Add references to the stadium tax and cross-reference the definition in Tax 11.001(4).
- Reflect the Department's discontinuance of temporary seller's permits and concessionaire permits.
- Change Department policy to allow the use of a mobile seller's permit simultaneously at multiple locations.
- Clarify conditions under which permit violation provisions apply.

Public Hearing

A public hearing was not required, pursuant to s. 227.17(2)(e), Stats.

Legislative Council Staff Recommendations

All recommendations of the Legislative Council staff have been incorporated into the proposed order, except the portion of comment 2.a relating to the slash mark in Tax 11.14(2)(a)2. The slash mark is not removed because it appears in the title of Form S-207CT-1.

Regulatory Flexibility Analysis

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

e:rules1114 Committees – Report

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

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.14(2)(a)3. to 7., (7)(title) and (b), (10)(b), (11)(b) and (12)(b)1. and Tax 11.53(1)(a), (b) and (e); renumber Tax 11.14(7)(a)1., 2., 3., 5. and 6., (8)(b), (11)(a)1. to 3., (12)(b)2. and 3., (13), (14) and (15)(a)2. and Tax 11.53(1)(d); renumber and amend Tax 11.14(7)(a)(intro.) and 4., (8)(title) and (a), (9), (10)(title) and (a), (11)(title) and (a)(intro.), (12)(title), (a) and (b)(intro.) and (15)(title), (a)(intro.), 1. and 3. and (b) and Tax 11.53(1)(c); amend Tax 11.14(title), (1), (2)(a)(intro.) and (c), (3)(a) and (b), (5)(b) and (6)(title), (a)(title) and 2. and (b)(title), (intro.) and 3. and Tax 11.53(3), (4) and (6); repeal and recreate Tax 11.14(2)(a)1. and 2. and Tax 11.53(2) and (5); and create Tax 11.14(6)(b)4.c., (12)(title) and (16), relating to sales and use tax exemption certificates and the sales and use tax treatment of temporary events.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 73.03(50), 77.52(7), (9), (12), (13), (14) and (19), 77.53(10) and (11) and 77.61(2), Stats.

SECTIONS 1 TO 16. Tax 11.14(title), (1), (2)(a) and (c), (3)(a) and (b), (5)(b), (6)(title), (a)(title) and 2. and (b)(title), (intro.) and 3., the example following sub. (6) and subs. (7) to (12) and the second note at the end of Tax 11.14 are revised, to reflect a change in department policy to discontinue the issuance of various types of exemption certificates and replace them with Form S-211, a multipurpose exemption certificate. Form S-211 may be used for any sales and use tax exemption provided by law, except the exemption for construction contracts entered into before the effective date of county/stadium tax, and direct pay permits.

Tax 11.14(1) is further revised and the first note at the end of Tax 11.14 is revised, to reference all of the subsections of ss. 77.52 and 77.53, Stats., which relate to exemption certificates.

Tax 11.14(3)(b) is further revised, to place a nonsubstantive statement in a note rather than in the text of the rule.

Tax 11.14(5)(b) is further revised, to clarify that a seller is not liable for tax on transactions covered by a valid exemption certificate.

Tax 11.14(6)(b)4.c. is created, to reflect department policy that a person who makes exempt sales only may use a certificate of exemption (Form S-211) to claim exemption on tangible personal property or taxable services the person resells.

Tax 11.14(15) is renumbered Tax 11.14(13) and revised, to place the subsection in a more logical order and to add references to the stadium tax. Consequently, subs. (13) and (14) are renumbered (14) and (15).

Tax 11.14(16) is created and the second note at the end of Tax 11.14 is further revised, to reflect a change in exemption certificate requirements for sales of certain commodities, as a result of amendments to ss. 77.52(13) and 77.53(10), Stats., by 1997 Wis. Acts 27 and 237.

SECTIONS 17 AND 19 TO 22. Tax 11.53(1)(a),(b) and (e) are repealed, subs. (2) to (5) are revised, and a note is added at the end of sub. (3), to reflect a change in department policy, to no longer issue temporary seller's permits and concessionaire permits.

SECTION 18. Tax 11.53(1)(c) and (d) are renumbered Tax 11.53(1)(a) and (b), because of the repeal of Tax 11.53(1)(a) and (b). Tax 11.53(1)(a) as renumbered is revised, to reflect a change in department policy, to now permit use of a mobile seller's permit simultaneously at multiple locations.

SECTION 23. Tax 11.53(6) is revised, to clarify the conditions under which the permit violation provisions apply.

SECTION 1. Tax 11.14(title), (1) and (2)(a)(intro.) are amended to read:

Tax 11.14(title) **Exemption certificates, including resale certificates.**

(1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52(13) to ~~(16)~~ (17), Stats., and the use tax status of exemption certificates is contained in s. 77.53(10) and ~~(11)~~ (13), Stats.

(2)(a)(intro.) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors shall exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with ~~7 types of~~ the following 2 sales and use tax exemption certificates, each of which is designed for use in specific types of transactions. ~~These certificates, discussed individually in this section, are the following:~~

SECTION 2. Tax 11.14(2)(a)1. and 2. are repealed and recreated to read:

Tax 11.14(2)(a)1. Wisconsin sales and use tax exemption certificate, form S-211. This is a multipurpose form which may be used for any sales and use tax exemption provided by law, except as provided in sub. (14). For direct pay, form S-211 may be used as the document

described in s. Tax 11.13(5)(a)2. if all of the required information is included on the form S-211.

2. Construction contract entered into before the effective date of county/stadium tax, form S-207CT-1. This is a certificate which may be used by a contractor to purchase building materials without a county or stadium tax under the circumstances described in sub. (13).

SECTION 3. Tax 11.14(2)(a)3. to 7. are repealed.

SECTION 4. Tax 11.14(2)(c), (3)(a) and (b), (5)(b) and (6)(title), (a)(title) and 2. and (b)(title), (intro.) and 3. are amended to read:

Tax 11.14(2)(c) ~~Under s. 77.57, Stats., if~~ If a purchaser certifies in writing by using an exemption certificate, ~~other than a resale certificate,~~ that the property purchased will be used for activities or under circumstances which make the purchase of the property exempt from the sales tax or for resale, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

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

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

Note to Revisor: Insert the following note at the end of sub. (3)(b):

Note: All retailers should be familiar with the instructions contained in an exemption certificate.

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

(6)(title) RESALE CERTIFICATE, FORM S-205.

(a)(title) *Effect of obtaining resale exemption certificate claiming resale.*

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

(b)(title) *Contents of resale exemption certificates claiming resale.*

(intro.) A ~~resale certificate, form S-205,~~ An exemption certificate claiming resale shall contain the following information for the seller to be relieved from the burden of proving the sale of property or services was not a taxable sale:

3. A general description of the property or service purchased for resale if a "continuous" resale exemption certificate is used, or an itemization of the property or service purchased if a "single purchase" certificate is used.

SECTION 5. Tax 11.14(6)(b)4.c. is created to read:

Tax 11.14(6)(b)4.c. A person who makes exempt sales only in the regular course of business may insert the words "exempt sales only" in the space for a seller's permit number.

Note to Revisor: Replace the example following sub. (6) with the following:

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

SECTION 6. Tax 11.14(7)(title) is repealed.

SECTION 7. Tax 11.14(7)(a)(intro.) and 1. to 6. are renumbered Tax 11.14(12)(intro.) and (a) to (f), and as renumbered Tax 11.14(12)(intro.) and (d) are amended to read:

Tax 11.14(12)(intro.) ~~The certificate of exemption, form S-207, is a multiple purpose form which~~ Wisconsin sales and use tax exemption certificate, form S-211, may also be used for purchasing any of any other sales and use tax exemption provided by law, including the following 6 exempt types of property or services:

(d) Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization or governmental unit holding a certificate of exempt status, CES. Sales to organizations holding a CES also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, which is located out-of-state, may use the ~~certificate of exemption, form S-207~~ Wisconsin sales and use tax exemption certificate, form S-211, to purchase without tax even though it has not been issued a Wisconsin certificate of exempt status.

SECTION 8. Tax 11.14(7)(b) is repealed.

SECTION 9. Tax 11.14(8), (9) and (10)(title) and (a) are renumbered Tax 11.14(7), (8) and (9), and as renumbered Tax 11.14(7)(title) and (a), (8) and (9) are amended to read:

Tax 11.14(7)(title) MANUFACTURER'S MANUFACTURING EXEMPTION CERTIFICATE, FORM S-207M.

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

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

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

(9)(title) CERTIFICATE OF EXEMPTION FOR FUEL OIL, PROPANE, COAL, STEAM AND WOOD FOR FUEL FOR RESIDENTIAL OR FARM USE, FORM S-046. A retailer shall have a signed exemption certificate, ~~form S-046~~, if the sale of fuel oil, propane, coal, steam or wood for residential or farm use is partially exempt from sales or use tax. If the sale is 100% exempt, an exemption certificate is not required.

SECTION 10. Tax 11.14(10)(b) is repealed.

SECTION 11. Tax 11.14(11)(title) and (a)(intro.) and 1. to 3. are renumbered Tax 11.14(10)(title) and (intro.) and (a) to (c), and as renumbered Tax 11.14(10)(title) and (intro.) are amended to read:

Tax 11.14(10)(title) ~~CERTIFICATE OF EXEMPTION FOR ELECTRICITY AND NATURAL GAS SOLD FOR RESIDENTIAL OR FARM USE, FORM S-017.~~

(intro.) A retailer of electricity or natural gas shall have a signed exemption certificate, ~~form S-017~~, for all sales of electricity or natural gas for residential or farm use which are exempt from sales or use tax unless any, or all, of the following apply:

SECTION 12. Tax 11.14(11)(b) is repealed.

SECTION 13. Tax 11.14(12)(title), (a) and (b)(intro.) are renumbered Tax 11.14(11)(title), (a) and (b)(intro.) and amended to read:

Tax 11.14(11)(title) GOVERNMENT SALES AND USE TAX EXEMPTION ~~CERTIFICATE, FORM S-209.~~

(a) A retailer of tangible personal property or taxable services may accept from a federal or Wisconsin governmental unit ~~a government sales and use tax~~ an exemption certificate, ~~form S-209~~, as proof that a sale is exempt from sales or use tax.

(b)(intro.) In lieu of accepting ~~a form S-209~~ an exemption certificate as provided in par.

(a) a retailer may accept any either one of the following:

SECTION 14. Tax 11.14(12)(b)1. is repealed.

SECTION 15. Tax 11.14(12)(b)2. and 3., (13), (14) and (15) are renumbered Tax 11.14(11)(b)1. and 2., (14), (15) and (13) and as renumbered Tax 11.14(13)(title), (a)(intro.), 1. and 3. and (b) are amended to read:

Tax 11.14(13)(title) ~~CONSTRUCTION CONTRACT~~ CONTRACTS ENTERED INTO BEFORE THE EFFECTIVE DATE OF A COUNTY OR STADIUM TAX, ~~FORM S-207CT-1.~~

(a) (intro.) The certificate for a construction contract entered into before the effective date of a county tax, or a stadium tax as defined in s. Tax 11.001(4), form S-207CT-1, is used by contractors to purchase building materials without the county or stadium tax. The certificate

shall be used by a contractor only if the following 3 conditions are met:

1. The contractor entered into a written contract or made a formal bid before the effective date of the county or stadium tax to construct, alter, repair or improve real estate for another person.

3. The building materials purchased on or after the effective date of the county or stadium tax are affixed and made a part of real estate in fulfilling the written contract or formal written bid.

(b) The certificate shall give the descriptive name of the contract, job site, county or stadium tax effective date, date of prime contract and bid, date contract was signed, the seller's name, the date of performance of the contract and the contractor's name and address and shall be signed by the contractor.

SECTION 16. Tax 11.14(12)(title) and (16) are created to read:

Tax 11.14(12)(title) OTHER EXEMPTIONS.

(16) CERTAIN COMMODITIES. No exemption 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.

Note to Revisor: 1) Replace the first note at the end of Tax 11.14 with the following:

Note: Section Tax 11.14 interprets ss. 77.52(13) to (17), 77.53(10) to (13) and 77.77(3), Stats.

2) In the second note at the end of Tax 11.14, remove the word "and" before part (b) and add the following at the end of the note:

; (c) The elimination of the exemption certificate requirement for sales of certain consigned commodities became effective December 1, 1997 as it relates to sales taxes on commodities consigned for resale, pursuant to 1997 Wis. Act 27, and June 17, 1998 as it

relates to sales and use taxes on commodities consigned for sale, pursuant to 1997 Wis. Act 237; and (d) The multipurpose exemption certificate, form S-211, was created in November 1998 to replace various types of exemption certificates.

SECTION 17. Tax 11.53(1)(a) and (b) are repealed.

SECTION 18. Tax 11.53(1)(c) and (d) are renumbered Tax 11.53(1)(a) and (b) and as renumbered Tax 11.53(1)(a) is amended to read:

Tax 11.53(1)(a) "Mobile seller's permit" means a permit issued under s. 77.52(7) and (19), Stats., which is valid at any temporary event conducted by the permittee within Wisconsin ~~but which is valid at only one event at a time.~~ A mobile seller's permit may be used simultaneously at multiple locations that are not the retailer's fixed business locations. Except for its use at more than one place of operations, all provisions of ~~s. ss.~~ ss. 73.03(50) and 77.52(7), (8), (9), (10), (11) and (12), Stats., apply to it.

SECTION 19. Tax 11.53(1)(e) is repealed.

SECTION 20. Tax 11.53(2) is repealed and recreated to read:

Tax 11.53(2) PERMITS FOR TEMPORARY EVENTS. Except as provided in sub. (3), a person conducting business as a retailer at a temporary event shall hold one of the following permits:

(a) A mobile seller's permit, if the event is not held at the retailer's fixed business location.

(b) A seller's permit, if the event is held at the retailer's fixed business location.

SECTION 21. Tax 11.53(3) and (4) are amended to read:

Tax 11.53(3) EXCEPTION. Persons, other than nonprofit organizations, not otherwise required to hold a seller's permit who have total taxable gross receipts from sales of tangible personal property or taxable services of less than \$1,000 during the calendar year are not required to hold ~~any of the permits listed in sub. (2)~~ a seller's permit or mobile seller's permit.

(4) SECURITY. Application for permits ~~referred to in this section~~ a seller's permit or mobile seller's permit shall be on ~~forms as a form~~ prescribed by the department. The applicant shall be subject to security requirements of s. 77.61(2), Stats., ~~except that for events of 7 consecutive days or less retailers holding concessionaire permits shall deposit security of \$25 per concession for each event and deposits for events which exceed 7 consecutive days shall be \$50 per concession for each event~~ and may be required to deposit security in an amount determined by the department, but not in excess of \$15,000.

SECTION 22. Tax 11.53(5) is repealed and recreated to read:

Tax 11.53(5) RETURNS. Sales and use tax returns due from persons holding seller's permits and mobile seller's permits are subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the returns and shall be due quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under s. 77.52(19) or 77.58(1) and (2), Stats., and shall include on the return gross receipts from all temporary events and other taxable transactions of the permittee during the reporting period.

SECTION 23. Tax 11.53(6) is amended to read:

Tax 11.53(6) VIOLATION. Under s. 77.52(12), Stats., any person required to hold a seller's permit who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

Note to Revisor: Replace the first note at the end of Tax 11.53 with the following:

Note: Section Tax 11.53 interprets ss. 73.03(38) and (50), 77.52(7), (9), (11), (12) and (19), 77.58 and 77.61(2), Stats.


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: June 3, 1999

By: 
Cate Zeuske
Secretary of Revenue

e.rules/1114 Proposed Order

1999 Session

FISCAL ESTIMATE

ORIGINAL UPDATED

DOA-2048 N(R10/98)

CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Tax 11.14 and 11.53

Amendment No. if Applicable

Subject

Rules Relating to Sales and Use Tax Exemption Certificates, and Treatment of Temporary Events

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
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 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

This order revises rules relating to exemption certificates to reflect the creation by the Department of Revenue of a multipurpose exemption certificate, Form S-211, which will replace several single-use exemption certificates. In addition, it reflects a change in exemption certificate requirements for sales of certain commodities enacted in 1997 Wisconsin Acts 27 and 237, and makes several clarifications regarding the use of exemption certificates.

The order also reflects a change in department policy eliminating temporary seller's permits and concessionaire permits, and allowing the simultaneous use at multiple locations of mobile seller's permits. It also clarifies the conditions under which permit violation provisions apply.

These changes will have no fiscal effect.

Long-Range Fiscal Implications

| Agency/Prepared by: (Name & Phone No.) | Authorized Signature/Telephone No. | Date |
|---|---|----------|
| Wisconsin Department of Revenue Dennis Collier, (608) 266-5773 | Yeang-Eng Braun <i>Yeang Eng Braun</i> (608) 266-2700 | 12/28/98 |