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👉 Details: Miscellaneous reports

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Notes to LRB: 1. Amend the second example at the end of Tax 11.35(6)(b) as follows:

2) A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a temporary seller's permit because entertainment is involved and collects sales tax on its receipts of \$5,000 from that event. Taxable receipts from its other events must be combined with the \$5,000 of receipts from the event for which it held a temporary seller's permit for purposes of determining whether the ~~\$45,000~~ \$25,000 taxable receipts test is met.

2. Amend the example at the end of Tax 11.35(7)(b) as follows:

Example: A nonprofit organization has held seven 3-day events for a total of 21 days each year for the past 5 years. Receipts were always over ~~\$20,000~~ \$25,000, and there were no admissions to entertainment. One event has lost money for the past 2 years. The organization intends to discontinue that event for the following year; thus, it may anticipate coming under the 20-day standard. Its seller's permit may be delivered to the department for cancellation in good faith.

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

(8) **WHEN SALES DO NOT QUALIFY FOR OCCASIONAL SALES EXEMPTION.** If a nonprofit organization has sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, and the sales do not qualify as exempt occasional sales, it is required to obtain a seller's permit and collect and remit sales tax on its taxable sales.

Note to LRB: Amend the first and second notes at the end of Tax 11.35(8) as follows:

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

Note: The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to ~~1989~~ 1987 Wis. Act 399; except that (a) the \$25,000 receipts standard and the \$500 entertainment standard became effective January 1, 2006 pursuant to 2005 Wis. Act 25 and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 129. Tax 11.38(title), (1)(title), (intro.), and (a), (2)(e), and (3)(b) are amended to read:

Tax 11.38(title) **Fabricating, and processing, and printing.**

(1)(title) SALES OF FABRICATING, PROCESSING, AND PRINTING SERVICES.

(intro.) The producing, fabricating, processing, printing, or imprinting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting is subject to Wisconsin sales or use tax unless:

(a) The printing or imprinting is done on tangible personal property ~~which will subsequently be shipped outside Wisconsin by the consumer for advertising purposes~~ or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed materials that are exempt under s. 77.54 (25), Stats., or catalogs and their mailing envelopes that are exempt under s. 77.54 (25m), Stats.

Notes to LRB: 1. Amend the second and third examples at the end of Tax 11.38(1)(b) as follows:

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

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

2. Amend the example at the end of Tax 11.38(1)(c) as follows:

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

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

Note to LRB: Amend the example at the end of Tax 11.38(3)(a) as follows:

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

(3)(b) Tangible personal property or items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and which becomes an ingredient or component part of the property or item destined for sale or is consumed or destroyed or losing loses its identity in the manufacture of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., in any form destined for sale, except for fuel and electricity as provided in s. 77.54 (30) (a) 6., Stats.

Note to LRB: Replace the third note at the end of Tax 11.38(3)(b) with the following:

Note: The interpretations in s. Tax 11.38 are effective under the general sales and use tax law on and after September 1, 1969 except that (a) The exemption for catalogs and the envelopes in which they are mailed became effective April 1, 2009 pursuant to 2007 Wis. Act 20; and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 130. Tax 11.39(1) and (2) are repealed and recreated to read:

Tax 11.39(1) DEFINITIONS. (a) 1. Manufacturing means the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing.

2. Manufacturing does not include storing raw materials or finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

(b) "Plant" as defined in s. 77.51 (10b), Stats., means a parcel of property or adjoining parcels of property, including parcels that are separate only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer. Plant inventory does not include unsevered mineral deposits as provided in s. 77.51 (10c), Stats.

(2) SCOPE OF MANUFACTURING. (a) Manufacturing:

1. Begins with conveying or raw materials and supplies from plant inventory to the place where the work is performed in the same plant and ends with conveying finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to the point of first storage in the same plant.

2. Includes conveying work in progress directly from one manufacturing operation to another in the same plant.

3. Includes testing or inspecting, throughout the manufacturing process, the new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is being manufactured.

4. Includes storing work in progress in the same plant where the manufacturing occurs.

5. Includes assembling finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

6. Includes packaging a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., if the manufacturer or another person on the manufacturer's behalf performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

(b) Manufacturing does not include storing raw materials or finished units of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., delivery to or from the plant, repairing or maintaining facilities, or research and development.

SECTION 131. Tax 11.39(4)(intro.) and (a) are amended to read:

Tax 11.39(4)(intro.) **NONMANUFACTURERS.** Nonmanufacturers ordinarily include the following:

(a) Contractors, when engaged in real property construction activities and installing or repairing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

SECTION 132. Tax 11.39(4)(h) and (i) are repealed

SECTION 133. Tax 11.39(4)(j) to (n) are renumbered 11.39(4)(h) to (L)

Note to LRB: Replace the notes at the end of Tax 11.39(4)(L)11. with the following:

Note: Section Tax 11.39 interprets ss. 77.51 (7h), (10b), and (10c) and 77.54 (2) and (6) (a), Stats.

Note: The interpretations in s. Tax 11.39 are effective under the general sales and use tax law on and after September 1, 1969 except that (a) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., and certain leased property affixed to real property under s. 77.52 (1) (c), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 134. Tax 11.40(1)(a) to (c), (2)(a), (3)(b), (c), and (e), and (4) are amended to read:

Tax 11.40(1)(a) Section 77.54 (6) (a), Stats., exempts the ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of "~~Machines~~ machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., and safety attachments for those machines and equipment." "Exclusively", as used in s. 77.54 (6) (a), Stats., and in this section, means that the machines and specific processing equipment and repair parts or replacements thereof are used solely by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. This exemption is to be strictly construed.

(b) Section ~~77.54 (6m)~~ 77.51 (7h) (a), Stats., provides ~~that "For purposes of s. 77.54 (6) (a) 'manufacturing' is~~ manufacturing means the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) with a different form, use, and name from existing materials by a process popularly regarded as manufacturing-, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or item or property under s. 77.52 (1) (b) or (c) to the point of first storage in the same plant".

(c) In determining whether a particular machine or piece of processing equipment is included in the exemption under ~~par. (a), ss. 77.51 (7h) (a) and s. 77.54 (6) (a), Stats., ss. 77.54 (6) (a) and 77.51 (7h), Stats.~~, must be considered together.

(2)(a) Machines and processing equipment shall be used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities.

Note to LRB: Amend the example at the end of Tax 11.40(2)(a) as follows:

Example: Machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor producer of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(3)(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by the manufacturer to produce tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

Note to LRB: Amend the example at the end of Tax 11.40(3)(d) as follows:

Example: Machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities or equipment, research, or crating or packaging of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., for shipment are not exempt.

(e) The exemption does not apply to tangible personal property or an item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., which is not machinery or equipment, but is used in a manufacturing plant.

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

Note to LRB: Replace the notes at the end of Tax 11.40(4) with the following:

Note: Section Tax 11.40 interprets ss. 77.51 (7h) and 77.54 (5) (c) and (d), (6) (a), (6r), and (26m), Stats.

Note: The interpretations in s. Tax 11.40 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Mobile mixing units are exempt effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Vehicles and machines used in waste reduction and recycling are exempt effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) Motor vehicles or trailers upon which mobile mixing units are mounted are exempt effective July 20, 1985, pursuant to 1985 Wis. Act. 29; (d) Safety attachments became exempt effective June 1, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption in s. 77.54 (6), Stats., shall be strictly construed effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The definition of "manufacturing" and what is included in the scope of manufacturing is effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (g) The change of the term "gross receipts" to "sales price"

and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 135. Tax 11.41(title) and (1)(a) are amended to read:

Tax 11.41(title) **Exemption of property and items consumed or destroyed in manufacturing.**

(1)(a) Tangible personal property and items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becomes an ingredient or component part of the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or is consumed or destroyed or losing loses its identity in the manufacture manufacturing the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., in any form destined for sale is exempt from Wisconsin sales or use tax under s. 77.54 (2), Stats., except as provided in s. 77.54 (30) (a) 6., Stats.

SECTION 136. Tax 11.41(1)(b) is repealed and recreated to read:

Tax 11.41(1)(b) Manufacturing is defined in s. 77.51 (7h), Stats., to mean the production by machinery of a new article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., to the point of first storage in the same plant.

SECTION 137. Tax 11.41(2)(title), (a)(intro.), and (b) are amended to read:

(2)(title) PROPERTY AND ITEMS EXEMPT.

(a)(intro.) The following property is and items are within the exemption provided by s. 77.54 (2), Stats., if the property or item is used exclusively and directly by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and is consumed, destroyed or loses its identity in the manufacture of tangible personal property manufacturing the property or item that is destined for sale:

(b) Tangible personal property and items under s. 77.52 (1) (b), Stats., used exclusively and directly by a manufacturer and which becoming become an ingredient or component part of tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale as tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., is exempt from Wisconsin sales or use tax.

Note to LRB: Amend the examples at the end of Tax 11.41(2)(b) as follows:

Examples: 1) Property and items sold to an automobile repair shop or other repair business to repair a customer's product does not qualify for exemption under s. 77.54 (2), Stats., because the property or items are not used exclusively and directly by a manufacturer in manufacturing.

2) A manufacturer-contractor is not entitled to the exemption when purchasing tangible personal property or items under s. 77.52 (1) (b), Stats., consumed, destroyed or losing its identity in the manufacture of manufacturing building components which it, as a contractor, will affix to real property in a real property construction activity, because the item or property is not sold by the manufacturer-contractor as tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats.

SECTION 138. Tax 11.41(3) is repealed and recreated to read:

(3) PROPERTY AND ITEMS NOT EXEMPT. (a) An exemption under sub. (1) (a) is not allowed for property or items consumed or destroyed or losing their identity if any of the following apply:

1. The activity is not manufacturing or is not within the scope of manufacturing.
2. The property or item manufactured is not destined for sale as tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats.

(b) The following property and items are not within the exemption provided by s. 77.54 (2), Stats., although the property or item may be exempt under s. 77.54 (6) (a), Stats., if the property or item is a machine or specific processing equipment, or a part for that machine or equipment, used exclusively and directly in manufacturing, as described in s. Tax 11.40:

1. Machine drills and auger bits.
2. Milling cutters.
3. Grinding wheels.
4. Chucks, jigs, and dies.
5. Saw blades.
6. Machine tool holders.
7. Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels, and spray guns.
8. Wearing apparel for the comfort or welfare of the employee or for the protection of the employee's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur-lined boots and jackets.

SECTION 139. Tax 11.41(4)(a) is amended to read:

(4)(a) Fuel and electricity are specifically excluded from the exemption provided by s. 77.54 (2), Stats., ~~even though they may be consumed or destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except that any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edging, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue is exempt from sales or use tax.~~ However, an exemption is provided in s. 77.54 (30) (a) 6., Stats., for fuel and

electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in this state.

Note to LRB: Replace the second and third notes at the end of Tax 11.41(4)(b)3. with the following:

Note: Section Tax 11.41 interprets ss. 77.51 (7h) and 77.54 (2), (6) (a), (6r), and (30) (a) 6., Stats.

Note: The interpretations in s. Tax 11.41 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) The exemption for wood residue was effective on September 1, 1987, pursuant to 1987 Wis. Act 27; (b) The exemption for fuel and electricity consumed in manufacturing was effective January 1, 2006 pursuant to 2003 Wis. Act 99; (c) The requirement that property and items which qualify for exemption under s. 77.54 (2), Stats., be consumed exclusively and directly by a manufacturer in manufacturing property and items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; and (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., and certain leased property affixed to real property under s. 77.52 (1) (c), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 140. Tax 11.45 is repealed and recreated to read:

Tax 11.45 Sales by pharmacies and drug stores. (1) TAXABLE SALES. All sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c) and (d), Stats., by a pharmacy or drug store are taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) DRUGS AND PRESCRIPTION DRUGS. (a) "Drug" is defined in s. 77.51 (3p), Stats., to mean a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

1. It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them:

2. It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.

3. It is intended to affect a function or structure of the body.

(b) Drugs are exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient, who is a human being, for treatment and dispensed on prescription filled by a registered pharmacist in accordance with law.

(c) Drugs described in par. (b) which are exempt from the tax include:

1. Pills and capsules.

2. Powders.

3. Liquids, including sterile water and irrigation solutions.

4. Salves and ointments.
5. Insulin.
6. Other preparations consumed orally, injected or applied, including dermal fillers.
7. Parenteral nutrition formulas.
8. Enteral nutrition formulas that contain a drug facts box.
9. Suppositories.
10. Radioactive isotopes such as implanted seeds.
11. Dyes and other contrast media.
12. Other items which remain or dissolve in the body, such as birth control implants including intra-uterine devices (IUD).
13. Gases - medical grade, such as oxygen and nitrous oxide.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.
17. Medicated dressings.

(d) This exemption does *not* include:

1. Prosthetic devices, mobility-enhancing equipment, or durable medical equipment.
2. Non-medicated bandages, pads, compresses, supports, or dressings.
3. Alcoholic beverages.
4. Casts and casting materials.
5. Food and food ingredients, including dietary supplements and soft drinks.

(3) PROSTHETIC DEVICES. The exemption for prosthetic devices under s. 77.54 (22b), Stats., applies to sales of all prosthetic devices, including repair and replacement parts, that are used for a human being. The exemption also includes accessories for exempt prosthetic devices.

(a) "Prosthetic device" is defined in s. 77.51 (11m), Stats., to mean a device, including repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility-enhancing equipment and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

(b) "Prosthetic devices" include the following items, as well as repair and replacement parts and accessories for those items, if they are implanted or worn on the body:

1. Trusses; post-operative shoes; orthopedic shoes, shoe lifts, inserts, arch supports, and heel protectors; braces including ankle, knee, neck, and back braces; knee immobilizers; traction devices; cervical collars; head halters; abdominal belts, binders, and supports; slings; suspensories; and bone pins, plates, nails, screws, wax, and cement.

2. Antiembolism elastic hose and stockings, and compression stockings and sleeves.

3. Pressure garments, including edema gloves, mast pants, and burn garments.

4. Artificial limbs; skin, shoulder, elbow, tendon, testicular, penile, hip, and knee implants and acetabular cups for hip implants; neuro, spinal, and joint membranes implants; adhesion barriers; artificial eyes; ocular, orbital, ear, nose, and throat implants; cochlear implants; maxillofacial devices; hands and feet implants; orthobiologics implants; surgical mesh implants; vena cava filters; artificial heart valves; artificial larynx; trachea tubes; grafts; sphincters; stump shrinkers; gastric bands and intragastric balloons; nasogastric tubes; stents; pacemakers and leads that are implanted or worn; defibrillator and leads that are implanted; and hearing aids and batteries.

5. Contact lenses and corrective eyeglasses (prescription and non-prescription).

6. Ostomy adhesives, barriers, catheters, collection bags and pouches, drain tubes, stoma caps, tubing, belts, hernia belts, and valves, but not barrier prep wipes, barrier powder, or lubricants.

7. Feeding, drainage, urinary and dialysis catheters, access ports, drains, and shunts.

8. Collagen implants, implanted tissue expanders, breast implants and prosthesis, and mastectomy surgical bras.

9. Casts and casting materials, splint and splint materials, staples, sutures, and suture alternatives.

10. Bone growth stimulators, CPAP machines, infuser pumps, programmable drug infusion devices, insulin pumps, penile pumps, electronic speech aids and tracheostomy speaking valves, tens units, and nerve stimulators implanted with leads.

(4) MOBILITY-ENHANCING EQUIPMENT. The exemption for mobility-enhancing equipment under s. 77.54 (22b), Stats., applies to all mobility-enhancing equipment, including repair and replacement parts, that is for human use. The exemption also includes accessories for exempt mobility-enhancing equipment.

(a) "Mobility-enhancing equipment" is defined in s. 77.51 (7m), Stats., to mean equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a

person who has normal mobility. "Mobility-enhancing equipment" does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer. "Mobility-enhancing equipment" does not include durable medical equipment.

(b) "Mobility-enhancing equipment" includes the following items, as well as repair and replacement parts and accessories for those items:

1. Raised toilet seats and tub and shower stools.
2. Canes, crutches, walkers, wheelchairs including motorized wheelchairs and scooters, specialty chairs such as all terrain wheelchairs and pool wheelchairs, and wheelchair ramps.
3. Swivel seats which enable a handicapped person to rotate his or her body, while seated, in order to get into position to rise from a chair.
4. Handrails and grab bars to assist in rising from the commode, tub, or shower.
5. Lift chairs, patient lifts, bed pull-ups including trapeze bars, and transfer belts and benches.
6. Mobility enhancing car seats which are car seats that provide restraint and support (five point harness) for disabled children who have outgrown standard size child car seats but still need the restraint and support provided by car seats.

(5) DURABLE MEDICAL EQUIPMENT. The exemption for durable medical equipment under s. 77.54 (22b), Stats., applies to all durable medical equipment, including repair and replacement parts, that is for use in a person's home, if the equipment is used for a human being. The exemption also includes accessories for exempt durable medical equipment.

(a) "Durable medical equipment" is defined in s. 77.51 (3pm), Stats., to mean equipment, including the repair parts and replacement parts for the equipment that is primarily and customarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" does not include mobility-enhancing equipment.

(b) 1. "Use in a person's home" means that the equipment is sold to an individual for use where they are living, regardless of whether the individual resides in a single family home, apartment building, nursing home, assisted living center, convalescent home or school dormitory.

2. Durable medical equipment is not for use in a person's home if it is purchased by a hospital, clinic, nursing home, assisted living center, convalescent home, dental office, chiropractor or optician's office. In addition, purchases of durable medical equipment by a nursing home, assisted living center and convalescent home are not for use in a person's home even if the equipment is purchased for use by the residents of the nursing home, assisted living center or convalescent home.

(c) "Durable medical equipment" includes the following equipment, as well as repair and replacement parts for the equipment if it is primarily and customarily used for a medical purpose related to a person, can withstand repeated use, is not generally useful to a person who is not ill or injured, and that is not placed in or worn on the body:

1. Anesthesia machines and ventilators; anti-thrombolytic pumps; artificial inhalation equipment; audiology equipment including audiometers and acoustic impedance meters or bridges; automatic external defibrillators; autotransfusion equipment; billie lights; bone growth stimulators that are not worn; cardiology machines; cauterization equipment; chair and sling scales; continuous passive motion devices; crash carts; exam and surgical tables and stirrups; electroencephalogram equipment; heat lamps and bulbs; intraaortic balloon pump; kidney dialysis machines and dialyzers; lithotripters; mammography equipment; monitors; MRI/CT machines; needleless drug delivery system injection guns; nerve stimulator programmer; external pacemakers; pacemaker programmers and transmitters; percussors; platelet separators; drug infusion pumps; radiology and ultrasound equipment; pulse oximetry equipment and blood parameter monitors; respiratory equipment; resuscitators; staplers; stretchers; suction regulators; tens units; tourniquets; traction equipment; vaporizers; and medical atomizers and instruments.

2. Apnea monitors and CPAP machines that are not worn.

3. Alternating pressure beds, incubators, hospital beds, kinetic therapy beds, kodel bed pads, pressure reduction therapy beds; blanket cradles, patient positioners, and overbed tables and trays.

4. Abduction, cervical, and orthotic pillows.

5. Enteral and parenteral feeding bags that are generally used for up to 24 hours which will encompass numerous feedings and are then disposed, and enteral and parenteral connectors, pumps, stands, and tubing and feeding plugs.

6. IV poles, stands and reusable therapy arm boards, but not disposable arm boards.

7. Oxygen delivery equipment, oxygen tents or beds, nebulizers, and respiratory bags.

8. Electronic speech aids.

9. Therapeutic heating or cooling pads or compresses or packs.

10. Thermometers; glucose meters; scopes and lasers including stethoscopes, ophthalmoscopes, otoscopes, and endoscopes; and blood pressure equipment.

11. Commodes and collection basins including bed pans, urine containers, and emesis basins.

12. Wheelchair cushions that are braces or supports that are not attached and do not become a component part of the wheelchair itself.

13. Portable over-the-tub whirlpool devices that are not available for sale to the general public and are specifically manufactured for a medical purpose.

(6) MEDICARE CLAIMS. The administrator of Medicare claims, such as surgical care-blue shield, is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills the administrator directly in full or in part, the portion paid by the administrator is a tax exempt sale to the United States. If the provider of a taxable item bills an individual in full or in part who

then seeks reimbursement from Medicare, the portion paid by the administrator to the individual is not an exempt sale to the United States.

Note: Section Tax 11.45 interprets ss. 77.51 (3pj), (3pm), (7m), and (11m) and 77.54 (14), (14m), (22b), and (28), Stats.

Note: The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Sales of parts and accessories for certain medical items became exempt effective August 15, 1991, pursuant to 1991 Wis. Act 39; (f) The definitions of "drug," "durable medical equipment," "mobility-enhancing equipment," and "prosthetic devices" and the exemptions for these items became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (g) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 141. Tax 11.46(2)(a), (3)(c), and (4)(a) and (b) are amended to read:

Tax 11.46(2)(a) Meals Prepared foods, as defined in s. 77.51 (10m), Stats., soft drinks, as defined in s. 77.51 (17w), Stats., candy, as defined in s. 77.51 (1fm), Stats., dietary supplements, as defined in s. 77.51 (3n), Stats., or and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold by agency camps or private camps.

~~(3)(c) Food, and food products and beverages ingredients, as defined in s. 77.54 (20) (a) and (b) 77.51 (3t), Stats., excluding those food, food products and beverages listed in s. 77.54 (20) (c), Stats., sold at a camp for consumption off the premises of the camp candy, soft drinks, dietary supplements, and prepared foods. "Off the premises of the camp" means a location outside the boundaries of the camp.~~

~~(4)(a) Gross receipts The sales price from the sale of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c) and (d), Stats., or taxable services by agency camps not engaged in a trade or business and not otherwise required to hold a seller's permit are exempt from Wisconsin sales tax if entertainment, as defined in s. 77.54 (7m), Stats., is not provided.~~

~~(b) An agency camp is not engaged in a trade or business if its sales of otherwise taxable tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or services or its events occur on 20 days or less during the calendar year or if its taxable receipts for the calendar year are \$45,000 \$25,000 or less.~~

SECTION 142. Tax 11.46(5) is repealed and recreated to read:

Tax 11.46(5) COMBINED CHARGE. (a) Except as provided in par. (b), if a single, combined charge is made for all the privileges extended by a camp and both taxable and nontaxable property, items, goods, and services are provided, and the transaction meets the

definition of a "bundled transaction" as defined in s. 77.51 (1f), Stats., the entire charge is subject to tax.

(b) At the retailer's option, if the retailer can identify by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products that are not subject to the tax imposed under this subchapter, that portion of the sales price is not taxable. However, this option does not apply to a transaction that otherwise meets the definition of a bundled transaction if that transaction contains food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies.

Note to LRB: Replace the notes at the end of Tax 11.46(5)(b) with the following:

Note: Section Tax 11.46 interprets ss. 77.51 (1f), (1fm), (3n), (3t), (10m), and (17w), 77.52 (1), (2) (a) 1., and (20), and 77.54 (7m), Stats.

Note: The interpretations in s. Tax 11.46 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The provisions of sub. (4) became effective January 1, 1989, pursuant to 1987 Wis. Act 399; (b) The amount shown in sub. (5) (b) became effective January 1, 1991. From September 15, 1970 to December 31, 1990, the rate was \$3 per person per night and prior to September 15, 1970, the rate was \$2 per person per night; (c) The \$25,000 receipts standard became effective January 1, 2006, pursuant to 2005 Act 25; (d) The definitions of "bundled transactions," "candy," "dietary supplements," "prepared food," and "soft drinks" and the change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 143. Tax 11.47(1)(title), (intro.), (a) to (c), and (e), (2)(title), (a), and (b), and (3)(a)(intro.) and 1. to 3. and (b)(intro.) are amended to read:

Tax 11.47(1)(title) TAXABLE GROSS-RECEIPTS SALES.

(intro.) Taxable services and sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., of commercial photographers and others providing photographic services, including video taping, include gross receipts from charges for:

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

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

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

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

(2)(title) AMOUNTS INCLUDED IN GROSS-RECEIPTS SALES PRICE.

(a) ~~Gross receipts~~ The sales price subject to the tax includes charges for photographic and video materials, time and talent.

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

(3)(a)(intro.) Commercial photographers and others providing photographic services, including video ~~taping~~ services, may purchase, without paying sales or use tax, any tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., which will be resold or which becomes a component part of an article of tangible personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale if a properly completed resale exemption certificate is given the seller. These items include:

1. Mounts, frames, and sensitized paper used in the finished photograph and transferred to the customer.
2. ~~Video tapes~~ Videos and film, including colored transparencies and movie film, in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.
3. Containers, labels, or other packaging and shipping materials used to transfer merchandise to customers.

(b)(intro.) ~~Photographers~~ Except as provided in par. (bm), photographers and others providing photographic services, including video ~~taping~~ services, are required to pay tax when purchasing tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which is used, consumed or destroyed in providing photographic services. These items include:

SECTION 144. Tax 11.47(3)(bm) is created to read:

Tax 11.47(3)(bm) The items and property listed in par. (b) are exempt from tax if used by a manufacturer in manufacturing, as defined in s. 77.51 (7h), Stats., and the requirements for the exemptions provided in s. 77.54 (2), (2m), or (6), Stats., are met.

SECTION 145. Tax 11.47(3)(c) is amended to read:

Tax 11.47(3)(c) If a photographer or other person providing photographic services, including video taping, gives a ~~resale~~ an exemption certificate for property, items, or goods to a seller and then uses the property, item, or good for a taxable purpose, the photographer or other person providing photographic services shall be liable for use tax at the time the property, item, or good is first used in a taxable manner.

Note to LRB: Replace the notes at the end of Tax 11.47(3)(c) with the following:

Note: Section Tax 11.47 interprets ss. 77.51 (7h), (13) (e) and (f), and (15a) (b) 3., 77.52 (2) (a) 7., (2m) (b), and (13), 77.53 (10), and 77.54 (2), (2m), and (6) (a), Stats.

Note: The interpretations in s. Tax 11.47 are effective under the general sales and use tax law on and after September 1, 1969, except (a) The exemption for property resold by a photographer is effective September 1, 1983, pursuant to 1983 Wis. Act 27 and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 146. Tax 11.48(1)(a) to (d), (2)(intro.), (a), (b), (c)(intro.), 2.(intro.) and b., and 3., (d), and (e), and (3)(a) and (b) are amended to read:

Tax 11.48(1)(a) Landlords are the consumers of household furniture, furnishings, equipment, appliances, or other items of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased by them for use by their tenants in leased or rented living quarters. The sales and use tax applies to a landlord's purchases of all these items. The ~~gross receipts~~ sales price from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

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

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

2. The sale, furnishing or use of recreational facilities on a periodic basis and of other recreational rights, including membership rights, vacation services and club memberships, with respect to time-share property, is not taxable, if the facilities are not available to persons who have not purchased the time-share property, other than guests.

Note to LRB: Replace the example at the end of Tax 11.48(1)(c)2. with the following:

Example: If a golf course is available to the general public for a fee, charges for access to the golf course are taxable, even if the charges are made in connection with the sale or use of time-share property.

(d) The rental for a continuous period of one month or more of a mobile home, as defined in s. 66.0435 (1) (d) 101.91 (10), Stats., or a manufactured home, as defined in s. 101.91 (2), Stats., used for lodging for a continuous period of one month or more as a residence is exempt from the sales and use tax, whether the mobile home or manufactured home is classified as real or personal property.

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

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

(b) The rental of space for meetings, conventions, and similar activities that are not amusement, athletic, entertainment, or recreational in nature, is not taxable. However, the

rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the type of use.

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

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

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

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

(d) Separately stated charges by hotels, motels, and inns for the rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., including televisions and refrigerators, are taxable.

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

(3)(a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to the lessor's total gross investment in all real and personal property on the effective date of the lease being leased to that operator, except as provided in par. (c). This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department for reasonableness.

(b) ~~In computing the~~ The numerator of the ratio in par. (a); is the purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., includes property subject to the sales tax purchased by the lessor, except as provided in par. (c). This includes furniture, furnishings, equipment, or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio, and other indoor and outdoor areas; beds, bedding, linen, and towels; vending machines; and maintenance equipment.

Note to LRB: Replace the example at the end of Tax 11.48(3)(b) with the following:

Example: If the lessor's purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., is \$100,000, and the lessor's gross investment is \$500,000 for all real and personal property, items, and goods, taxable lease receipts shall be determined by applying a ratio of 20% ($\$100,000 \div \$500,000$) to the gross lease receipts for each sales tax reporting period.

SECTION 147. Tax 11.48(3)(c) is created to read:

Tax 11.48(3)(c) For purposes of par. (a), if the lessor of the property under s. 77.52 (1) (c), Stats., is also the lessor of the real property to which the property under s. 77.52 (1) (c), Stats., is affixed, the numerator of the ratio described in par. (a), does not include the lessor's gross investment in such property, but the lessor is liable for the sales or use tax on its purchases of such property.

Note to LRB: Replace the notes at the end of Tax 11.48(3)(b) with the following:

Note: Section Tax 11.48 interprets ss. 77.51 (13) (n), 77.52 (1), (2) (a) 1., 2., and 9., and (2m), and 77.54 (36), Stats.

Note: The interpretations in s. Tax 11.48 are effective under the general sales and use tax law on and after September 1, 1969, except (a) The provisions of sub. (1) (c) 1. are effective on or after August 9, 1989, pursuant to 1989 Wis. Act 31 and (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 148. Tax 11.49(1)(b) to (e) and (2)(a), (b), (c), and (g) to (j) are amended to read:

Tax 11.49(1)(b) The repair, service, alteration, fitting, cleaning, painting, coating, inspection, and maintenance of motor vehicles, including the total amount charged for parts and labor and including motor vehicles and truck bodies owned by nonresidents except as provided in sub. (2).

(c) The towing of motor vehicles, which includes the hauling of motor vehicles by a tow truck, as defined in s. 340.01 (67n), Stats.

Notes to LRB: 1. Replace the second example at the end of Tax 11.49(1)(c) with the following:

2) The charge to a customer by a towing company for towing the customer's vehicle from a no parking zone is taxable.

2. Amend the third, fourth, and fifth examples at the end of Tax 11.49(1)(c) as follows:

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

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

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

(d) Retail sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including motor oil, antifreeze, motor vehicle parts and supplies, tobacco products, candy, and soft drinks by service stations except as provided in sub. (2).

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

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

(b) Sales made directly to ~~governmental units of this state, schools or any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals~~ this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority; any county, city, village, town, or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any transit authority created under ss. 59.58 (7) or 66.1039, Stats.; 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 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation; a local exposition district under subch II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats. Sales to a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, are exempt from sales and use tax if the cemetery company or corporation uses the items exclusively for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and 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. Sales to employees of these entities are not exempt, even though the entity may reimburse the employee for the expenditure.

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

(g) Sales of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood, and biomass as defined in s. 196.378 (1) (ar), Stats., used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) ~~(L)~~ ~~7~~ and 8 (g) 2. and 3.

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

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

(j) Sales of ~~wood~~ any residue used for fuel ~~and sold for use~~ in a business activity. ~~Weed residue includes 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 wood residue.~~

SECTION 149. Tax 11.49(2)(k) and (L) are created to read:

Tax 11.49(2)(k) Sales of fuel consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin.

(L) Sales of fuel consumed in operating an industrial waste treatment facility.

SECTION 150. Tax 11.49(3)(a) and (b) are amended to read:

Tax 11.49(3)(a) Service station operators who repair motor vehicles may purchase, without tax, "for resale", repair parts and materials used in the work which are physically transferred to their customers. This includes auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers, and welding rods.

(b) A service station operator's purchases of equipment, tools, supplies, and other property, items, or goods not physically transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives, and other property or items used or consumed in performing motor vehicle repair service are taxable.

Note to LRB: Replace the notes at the end of Tax 11.49(3)(b) with the following:

Note: Section Tax 11.49 interprets ss. 77.52 (2) (a) 8m., 9., and 10. and (2m) (b) and 77.54 (3), (5), (9a), (11), and (30), Stats.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1,

1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985; (d) The repair of motor vehicles used in waste reduction or recycling processes is exempt pursuant to 1983 Wis. Act 426, effective July 1, 1984; (e) The repair of mobile mixing and processing units and the vehicle or trailer on which mounted, as well as parts, accessories, attachments, supplies and materials are exempt pursuant to 1985 Wis. Act 29, effective July 20, 1985; (f) Peat and solid waste fuel cubes sold for residential use are exempt pursuant to 1985 Wis. Act 149, effective April 2, 1986; (g) Wood residue sold for fuel use in a business activity is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (h) Repair to nonresident vehicles not otherwise exempt is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (i) The exemption for fuel used in farming, other than in machines, became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (j) All towing services became taxable effective May 1, 1993; (k) Fuel consumed in manufacturing became exempt effective January 1, 2006, pursuant to 2003 Wis. Act 99; (L) Towing by a tow truck as defined in s. 340.01 (67n), Stats., became taxable effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (m) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 151. Tax 11.50, 11.51, and 11.52 are repealed and recreated to read:

Tax 11.50 Auctions. (1) STATUTE. Section 77.51 (13) (b), Stats., provides that every person engaged in the business of making sales at auction of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., owned by the person making the sale or others is a "retailer". The definition of "sale" contained in s. 77.51 (14) (a), Stats., includes any sale at an auction.

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

(3) TAXABLE AUCTION RECEIPTS. Taxable receipts from auctions include the sales price received from:

(a) Auction sales of heavy equipment and going-out-of-business auction sales of retail stores, motels, wholesalers, manufacturers, contractors, and service enterprises, but not certain sales of personal farm property, as explained in sub. (4) (a). The household goods exemption does not apply to these sales.

(b) Auction sales, including radio and television auction sales held at a location where the auctioneer holds more than 5 auctions during the calendar year.

(c) Auctions sponsored by a nonprofit organization, except as provided in sub. (4) (c). The household goods exemption does not apply to these auctions.

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

(e) Auction sales of professional or business inventories or equipment, except certain personal farm property as explained in sub. (4) (a), even though they may consist of household goods.

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

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

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

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

(a) Except as provided in sub. (5), auction sales of personal farm property or household goods which are held at a location where the auctioneer holds 5 or fewer auctions during the calendar year. In this paragraph:

1. "Household goods" includes tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which is associated with maintaining a household and is for family use. "Household goods" does not include:

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

b. Professional or business inventory or equipment.

Example: Household goods include furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus household goods include goods removed from a family home, such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars, sporting goods or hobby equipment including bats, balls, tennis racquets, golf clubs, guns and ammunition, and related hunting equipment, fishing equipment, camping equipment, photographic equipment, tools, bicycles, and personal collections of those items.

2. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used by the owner in the business of farming. "Personal farm property" does not include racing, pleasure riding, or show horses, pets or other recreational animals not used in farming, highway vehicles and boats.

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

(c) Auction sales by religious, charitable, educational, or civic organizations and other nonprofit organizations that conduct a fund raising event, if both of the following apply:

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

2. The sales qualify as exempt occasional sales under s. Tax 11.35 (4).

(5) AUCTION SALES OF MOTOR VEHICLES, BOATS, SNOWMOBILES, RECREATIONAL VEHICLES AS DEFINED IN S. 340.01 (48r), STATS., TRAILERS, SEMI-TRAILERS, ALL-TERRAIN VEHICLES, AND AIRCRAFT. (a) An auctioneer shall collect, report, and remit tax on its sales of any of the following items if the auctioneer is a retailer, unless an exemption applies:

1. Motor vehicles.
2. Boats.
3. Snowmobiles.
4. Recreational vehicles as defined in s. 340.01 (48r), Stats.
5. Trailers.
6. Semi-trailers.
7. All-terrain vehicles.
8. Aircraft.

(b) 1. A buyer who purchases any of the items listed in par. (a) 1. to 8. from an auctioneer who is a retailer shall pay the tax to the auctioneer, unless an exemption applies. If the buyer does not pay the tax to the auctioneer, the buyer shall file a return and pay the tax, as prescribed by the department, prior to registering or titling the item in Wisconsin.

2. Auction sales of the items listed in par. (a) 1. to 8. do not qualify for exemption as occasional sales of personal farm property or household goods if the items are registered or titled or required to be registered or titled in Wisconsin. Auction sales of boats also do not qualify for exemption as occasional sales of personal farm property or household goods if the boats are registered or titled or required to be registered or titled under the laws of the United States.

Note: Section Tax 11.50 interprets ss. 77.51 (9) (e), (13) (b), and (14) (intro.) and (a), 77.52 (1), 77.54 (7), and 77.61 (1), Stats.

Note: The interpretations in s. Tax 11.50 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The standard in sub. (4) (d) 2. became effective January 1, 1989, pursuant to 1987 Wis. Act 399; (b) The occasional sale exemption for five or fewer auctions at a location became effective January 1, 2000, pursuant to 1999 Wis. Act 9; (c) The requirement for auctioneers to collect, report, and remit tax on sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semi-trailers, all-terrain vehicles, and aircraft, regardless of whether the auctioneer is a dealer of such items became effective October 1, 2009; (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

Tax 11.51 Grocers' guidelist. (1) GENERAL. (a) All sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats., are taxable except when a specific exemption applies. One of the exemptions is for "food and food ingredients," which generally exempts all food and food ingredients for human consumption, except candy, soft drinks, dietary supplements, and prepared food. This exemption also does

not include many items normally available in grocery and food stores, such as soft drinks, alcoholic beverages, tobacco products, paper products, and detergents.

(b) "Food and food ingredients" is defined in s. 77.51 (3t), Stats., to mean a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

(c) The lists in sub. (2) shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

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

- Adhesive tape.
- Air fresheners.
- Albums.
- Alcoholic beverages.
- Ammonia.
- Anti-acid products.
- Anti-freeze.
- Appliances.
- Ash trays.
- Aspirin.
- Auto supplies.
- Baby needs, except food.
- Bags of all kinds.
- Bakeware.
- Baking chips, sweetened.
- Baking chocolate that contains a sweetener in the form of bars, drops, or pieces.
- Barbecue supplies.
- Baskets.
- Batteries, except hearing aid batteries.
- Beauty aids.
- Beer.
- Binders.
- Bird food and supplies.
- Bleach.
- Blueing.
- Bobby pins and rollers.
- Books.
- Bottled water, sweetened.
- Bottles.
- Bowl cleaner.
- Breath mints, unless they contain flour.
- Brooms.
- Brushes.
- Bubble bath.
- Cake decorations, non-edible.
- Cake decorations that are candy.
- Calcium tablets.
- Cameras and supplies.
- Can openers.

Candy.
Candy apples.
Canning and freezer supplies.
Caramel apples.
Caramel corn.
Cat food and supplies.
Charcoal and starter.
Chewing gum.
Chocolate chips and other flavored chips, if sweetened.
Chocolate covered raisins and nuts.
Cigarette lighter fluid, wicks, flints.
Cigarettes.
Cigars.
Cleaning equipment and supplies.
Cleansers.
Clocks.
Clothes lines.
Clothespins.
Clothing.
Cocktail mixes containing 50% or less fruit or vegetable juice.
Cod liver oil.
Coffee drinks that contain sweeteners, unless it also contains milk or milk products.
Cold remedies.
Combs and brushes.
Confections that are candy.
Cough drops.
Crayons.
Deli items, as explained in sub. (3) (g) 2.
Dental aids.
Deodorants.
Deodorizers.
Detergents.
Diapers.
Dietary supplements.
Dinnerware.
Disinfectants.
Distilled spirits.
Dog food and supplies.
Dolls.
Drain cleaners.
Dried fruit with sweeteners.
Drug sundries.
Dry cleaners.
Dry ice.
Dye.
Electrical supplies.
Facial tissues.
Farm and garden implements.
Feminine hygiene needs including napkins and tampons.
Fermented malt beverages.
Fertilizers.
Film.
First aid products.

Flash bulbs.
Flatware.
Floor care products.
Flowers and seeds.
Foil, aluminum and similar products.
Foot care products.
Frames.
Fruit drinks that contain a sweetener and have 50 percent or less fruit juice by volume.
Fuel and lubricants.
Furniture polish.
Games.
Garbage bags and cans.
Garden needs.
Gifts, non-food and nonexempt food.
Ginseng sold as a dietary supplement.
Glassware.
Gloves.
Glue.
Granola bars, unless they contain flour.
Greeting cards.
Grilling supplies.
Grooming aids.
Gum.
Hair care products.
Hardware.
Health and beauty aids.
Heated foods and beverages, as explained in sub. (3) (c).
Honey roasted and honey coated nuts.
Hosiery.
Household equipment and supplies.
Hygiene products.
Ice blocks.
Insect and pest control products.
Insulated containers.
Internal remedies.
Intoxicating liquor.
Iron tablets.
Jewelry.
Juices that contain sweeteners and 50% or less fruit or vegetable juice by volume.
Laundry products.
Lawn furniture.
Light bulbs and fuses.
Lozenges.
Lunch boxes.
Lye.
Magazines.
Manicure needs.
Marshmallows, unless they contain flour.
Mason jars.
Matches.
Medicinal preparations.
Milk of magnesia.
Mineral tablets.

Nail polish and remover.
Nails.
Napkins.
Nonalcoholic beer that contains a sweetener.
Notebooks.
Nursery stock.
Nuts that are candy, such as honey roasted cashews.
Pails.
Paint and paint supplies.
Paper products, including tissues, plates, cups, towels, napkins and writing paper.
Peanuts that are candy, such as honey roasted peanuts.
Pens and pencils.
Periodicals.
Pet food and supplies.
Plants.
Plastic utensils.
Polishes.
Popcorn that is candy, such as caramel corn.
Pots and pans.
Powder, face and body.
Prepared foods as explained in sub. (4).
Raisins that are candy, such as yogurt coated raisins.
Razors and blades.
Records.
Root beer.
Rotisseries.
Rubber bands.
Salt, water softener.
Sandwiches that are prepared food.
Sanitary goods.
School supplies.
Scissors.
Sewing aids.
Shampoo and rinse.
Shaving supplies.
Shelf coverings.
Shoe laces and polishes.
Soaps.
Soft drinks.
Sponges.
Starch.
Stationery.
Steel wool.
Stockings.
Sun glasses.
Sun tan lotion.
Tableware.
Taffy apples.
Tape.
Tea drinks that contain sweeteners.
Thread.
Tobacco products.
Toilet tissue.

Tonics.
Tools.
Tooth brushes.
Toothpaste and powders.
Toothpicks.
Toys.
Trail mix that includes candy.
Utensils.
Vegetable juices that contain a sweetener and 50% or less juice by volume.
Video rentals.
Vitamins.
Wash cloths.
Waste baskets.
Watches.
Water, sweetened.
Water conditioners.
Wax paper.
Waxing.
Wearing apparel.
Wine making supplies.
Wrap, foil, plastic and waxed paper.
Writing supplies.
Yogurt covered raisins and nuts.
Zippers.

(b) *Exempt sales by grocers.* Exempt sales include sales of the following items, but not if the items meet the definition of candy, soft drinks, dietary supplements, or prepared foods:

Apple cider, sweet.
Baby food.
Bakery goods.
Baking powder and soda.
Barbecue sauces.
Berries.
Beverage powders, unless they are a dietary supplement.
Beverages that contain milk.
Biscuit mix.
Bouillon cubes.
Bread and rolls.
Breakfast pastries.
Brownies.
Butter.
Cake mixes and flour.
Cakes, prepared, mixes and snack type.
Canned foods, except candy, soft drinks, dietary supplements, and prepared foods.
Catsup.
Cereal and cereal products.
Cheese.
Chicken.
Chip dip.
Chips, potato, corn and similar items.
Chocolate, unsweetened or not sold in form of bars, drops, or pieces.
Citrus fruits.

Cocoa.
Coffee beans, grounds, freeze dried and coffee substitutes.
Coffee drinks that contain no sweeteners or that contain a milk or milk product.
Condiments.
Cookies and crackers.
Cooking oils.
Cones, ice cream cups.
Cream.
Dairy products.
Deli items, as explained in sub. (3) (e).
Desserts and toppings.
Dinners, frozen.
Doughnuts.
Dressings.
Dried fruits, unsweetened.
Dried milk products.
Eggs.
Fish and fish products.
Flavoring extracts.
Flour.
Food coloring.
Frozen desserts.
Frozen fruit juices.
Frozen fruits and vegetables.
Frozen pizza.
Frozen TV dinners.
Fruit.
Fruit juices that contain more than 50% fruit juice by volume.
Garlic.
Gelatin.
Granola bars that contain flour.
Gravy extracts and mixes.
Grits.
Hash.
Honey.
Ice cream.
Ice cream bars and similar products.
Ice cream in cones.
Ice cubes.
Jams.
Jellies.
Juices that contain more than 50% fruit or vegetable juice by volume.
Ketchup.
Lobster.
Luncheon meats.
Macaroni.
Malted milk powder.
Maraschino cherries.
Margarine.
Marshmallow creme.
Marshmallows that contain flour.
Mayonnaise.
Meal.

Meat and meat products.
Meat extracts and tenderizers.
Melons.
Milk and milk products.
Mustard.
Newspapers, as defined in s. 77.51 (8), Stats.
Noodles.
Nuts, except as provided in par. (a).
Oil, cooking, salad.
Oleomargarine.
Olives.
Pancake mix.
Pasta.
Peanut butter.
Peanuts, in shell or canned, salted or not, except as provided in par. (a).
Pectins.
Pepper.
Pickles.
Pie and pie fillings.
Pie crust and mixes.
Popcorn, that is not candy as defined in sub. (3) (a).
Popcorn, unpopped.
Popsicles.
Potato chips.
Potato salad, as explained in sub. (3) (e).
Poultry and poultry products.
Powdered drink mixes, except dietary supplements.
Preserves.
Pretzels.
Puddings.
Raisins, except as provided in par. (a).
Ravioli.
Relishes.
Rice.
Rolls and biscuits.
Salad dressing.
Salt and salt substitutes.
Salted nuts.
Sardines.
Seafood.
Seasonings.
Sherbet.
Shortening.
Soup.
Spaghetti products.
Spices.
Spreads.
Sugar.
Sweeteners.
Syrup.
Tea, bags, leaves or instant.
Tea and ice tea beverages that are not sweetened.
Turkey.

Vanilla and vanilla extract.
Vegetable juices that contain more than 50% juice by volume.
Vegetables.
Vinegar.
Waffle mix.
Water, carbonated, unsweetened.
Water, flavored, unsweetened.
Water, unsweetened.
Yeast.
Yogurt and yogurt bars, cones and sundaes.

(3) EXPLANATIONS OF SOME TAXABLE AND EXEMPT SALES BY GROCERS. For purposes of sub. (2):

(a) 1. "Candy" is defined in s. 77.51 (1fm), Stats., to mean a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include a preparation that contains flour or that requires refrigeration.

2. Items that otherwise meet the definition of candy and do not require refrigeration but which are sold frozen or refrigerated are still "candy."

Example: A grocery store sells candy bars at room temperature or from a refrigerated display case. Unless the candy bar is required to be refrigerated, it is still candy when sold, even if it was refrigerated when sold.

(b) 1. "Dietary supplement" is defined in s. 77.51 (3n), Stats., to mean a product other than tobacco, that is intended to supplement a person's diet if all of the following apply:

a. The product contains a vitamin, mineral, herb or other botanical, amino acid, dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake, concentrate, metabolite, constituent, or extract, or any combination thereof.

b. The product is intended for ingestion in tablet, capsule, powder, soft-gel, gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not represented as conventional food and is not represented for use as the sole item of a meal or diet.

c. The product is required to be labeled as a dietary supplement as required under 21 CFR 101.36.

2. Dietary supplements can be identified by the "Supplemental Facts" box found on the label as required by 21 CFR 101.36.

3. Dietary supplements include antioxidants, bee pollen, enzymes, garlic capsules, ginseng, herbal supplements, immune supports, lecithin, metabolic supplements, vitamins and minerals, and zinc lozenges.

(c) "Heated state" means sold at any temperature higher than the air temperature of the room or place where the product is sold.

(d) 1. "Soft drink" is defined in s. 77.51 (17w), Stats., to mean a beverage that contains less than 0.5 percent of alcohol and that contains natural or artificial sweeteners. "Soft drink"

does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50 percent vegetable or fruit juice by volume.

2. Soft drinks are beverages that are in liquid form and do not include items that are not in liquid form such as powdered fruit drinks, powdered teas and frozen drink concentrates.

3. Natural and artificial sweeteners include corn syrup, dextrose, sucrose, fructose, sucralose, saccharin, and aspartame.

4. a. Water and tea that contain any sweeteners are soft drinks.

b. Water and tea that are unsweetened are not soft drinks, even if carbonated or flavored.

(e) 1. Deli foods sold unheated by weight or volume are exempt, unless utensils are provided, as explained in sub. (4) (d).

2. Deli sales of items sold in a heated state are prepared foods.

Examples: 1) A grocer's deli sells potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls at room temperature. These items are sold by weight or volume and utensils are not provided. The sale of these items is not taxable.

2) A grocer's deli sells a serving of each of the following for \$3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls and provides utensils. The sale is taxable as a sale of prepared food.

3) A grocer's deli sells party trays by weight or volume in an unheated condition and for which utensils are not provided. The types of party trays include shrimp and sauce, meats, fresh vegetables, fresh fruits, cheeses or cookies. The sale of these party trays is not subject to tax.

(4) PREPARED FOOD. "Prepared food" is defined in s. 77.51 (10m), Stats., to mean any of the following:

(a) Food and food ingredients sold in a heated state.

Example: A retailer sells heated sandwiches to a customer. The heated sandwich is prepared food.

(b) Food and food ingredients heated by the retailer, except for the following:

1. Two or more food ingredients that are mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the North American Industry Classification System (NAICS), 2002 edition, published by the federal office of management and budget is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

Example: A food manufacturer classified under industry code 31161 of the North American Industry Classification System (NAICS), 2002 edition, makes hot dogs by mixing and combining 2 or more food ingredients, heating the hot dogs so that they are fully cooked and then packaging the hot dogs for sale once they have cooled. Although the hot dogs were

heated by the retailer while they were being manufactured, they are not prepared food because they meet the exception in par. (b) 1. and do not meet any of the other definitions of prepared food.

2. Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

Examples: 1) A bakery mixes ingredients together to make a cake. The cake mix is then heated (baked). Once the cake cools, it is decorated and sold to a customer. Although the cake was heated by the retailer, it is not prepared food because it meets the exception in par. (b) 2. and does not meet any of the other definitions of prepared food.

2) A bakery mixes 2 or more ingredients together to make a bagel. The bagel is then heated and placed in a heated display case for sale to a customer. The bagel is prepared food since it is sold heated. Although the bagel would meet the exception provided in par. (b) 2., since it is sold heated, it is prepared food.

3. Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by volume or weight.

(c) Two or more food ingredients mixed or combined by the retailer for sale as a single item, except if any of the following apply:

1. The retailer's primary classification in the North American Industry Classification System, 2002 edition, published by the federal office of management and budget is manufacturing under subsector 311, but not including bakeries and tortilla manufacturing under industry group number 3118.

2. The item is sold unheated and by volume or weight.

3. The item is a bakery item made by the retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

4. The food and food ingredients are only sliced, repackaged, or pasteurized by the retailer.

5. The item contains eggs, fish, meat, or poultry in raw form that requires cooking by the consumer, as recommended by the food and drug administration in chapter 3, part 401.11 of its food code to prevent food-borne illnesses.

(d) 1. Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. However a "plate" does not include a container or packaging used to transport the food and food ingredients. Eating utensils are provided by the retailer if:

a. The eating utensils are available to the purchasers and the retailer's sales of food and food ingredients sold in a heated state and the retailer's sales of 2 or more food ingredients mixed or combined by a retailer for sale as a single item as provided in s. 77.51 (10m) (a) 4., Stats., are more than 75 percent of the retailers total sales of all food and food ingredients at that establishment; or

b. The retailer's customary practice is to physically give or hand the utensils to the purchaser, except that plates, glasses, or cups that are necessary for the purchaser to receive the food and food ingredients need only be made available to the purchaser.

2.a. The numerator of the percentage described in subd. 1. a. includes only sales of prepared food as defined in pars. (a), (b), and (c) and food for which plates, bowls, glasses, or cups are necessary to receive the food, but not including alcoholic beverages.

b. The denominator of the percentage described in subd. 1. a. includes all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks, but not including alcoholic beverages.

3.a. If the percentage determined under subd. 2. is 75 percent or less, utensils are considered to be provided by the retailer if the retailer's customary practice is to physically give or hand the utensils to the purchaser or, in the case of plates, bowls, glasses, or cups that are necessary to receive the food, to make such items available to the purchaser.

b. If the percentage determined under subd. 2. is greater than 75 percent, utensils are considered to be provided by the retailer if the utensils are made available to the purchaser.

4.a. For a retailer whose percentage determined under subd. 2. is greater than 75 percent, an item sold by the retailer that contains 4 or more servings packaged as one item and sold for a single price does not become prepared food simply because the retailer makes utensils available to the purchaser of the item.

b. For a retailer whose percentage determined under subd. 2. is greater than 75 percent, an item sold by the retailer that contains 4 or more servings packaged as one item and sold for a single price does become prepared food if the retailer physically gives or hands utensils to the purchaser of the item, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food, need only be made available to the purchaser.

c. For purposes of subds. 4. a. and 4. b., serving sizes are based on the information contained on the label of each item sold, except that, if the item sold has no label, the serving size is based on the retailer's reasonable determination.

5.a. Except as provided in subd. 5. b., if a retailer sells food items that have a utensil placed in a package by a person other than the retailer, the utensils are considered to be provided by the retailer.

b. Except as provided in subds. 3. and 4., if a retailer sells food items that have a utensil placed in a package by a person other than the retailer and the person's primary classification in the North American Industrial Classification System (NAICS), 2002 edition, published by the federal office of management and budget, is manufacturing under subsector 311, the utensils are not considered to be provided by the retailer.

6.a. For purposes of subd. 1. a., a retailer shall determine the percentage for the retailer's tax year or business fiscal year based on the retailer's data from the retailer's prior tax or business fiscal year as soon as practical after the retailer's accounting records are available, but no later than 90 days after the day on which the retailer's tax or business fiscal year begins.

b. For retailers with more than one establishment in Wisconsin, a single determination under subd. 1. a. that combines the information for all of the retailer's establishments in

Wisconsin shall be made annually, and will apply to all of the retailer's establishments in Wisconsin.

c. If a retailer has no prior tax or business fiscal year in Wisconsin, the retailer shall make a good faith estimate of its percentage under subd. 1. a. for the retailer's first tax or business fiscal year and shall adjust the estimate prospectively after the first 3 months of the retailer's operations if the actual percentage is materially different from the estimated percentage.

(5) FEDERAL FOOD STAMPS. A grocer's receipts from federal food stamps are not subject to sales tax even if the items purchased by the consumer are not exempt food or food ingredients under s. 77.54 (20n), Stats.

Note: Section Tax 11.51 interprets ss. 77.51 (1fm), (3n), (3t), (10m), and (17w), 77.52 (1), and 77.54 (15) and (20n), Stats.

Note: The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975; (b) Magazines and periodicals sold over-the-counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27; (c). The definitions of "meals" and "sandwiches" and the tax treatment of prepackaged food combinations became effective August 1, 1997, pursuant to 1997 Wis. Act 237; The definitions of "candy," "dietary supplement," "food and food ingredient," "prepared food," and "soft drink," and the exemption for food and food ingredients became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (d) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

Tax 11.52 Coin-operated vending machines and amusement devices. (1) SCOPE. This section applies to all sales from coin-operated machines, except those located on army, air force, navy, or marine corps exchanges where the operator leases the machines to those exchanges which acquire title to and sell the merchandise through the machines to authorized purchasers from those exchanges.

(2) DEFINITIONS. In this section:

(a) "Heated" means the food or beverages have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

(b) "Operator" has the meaning in s. 77.52 (1m), Stats.

(c) "Retailer" for purposes of this section means either of the following:

1. Any person who owns or possesses coin-operated vending machines or amusement devices, who controls the operations of the machines as by stocking or removing the receipts from the machines or devices, who has access to the machines or devices for any purpose connected with the sale of merchandise or services through the machines or devices, and whose compensation is based, in whole or in part, upon receipts from sales made through the machines or devices.

2. A person who is responsible for providing laundry, dry cleaning, photographic, photocopy, or other taxable services through vending machines.

Note: If there is a question of who is the retailer for a single machine or device, a determination regarding who is the retailer liable for tax may be obtained by writing to: Wisconsin Department of Revenue, PO Box 8902, Madison, WI 53708-8902.

(3) SELLER'S PERMITS. (a) Retailers of tangible personal property, items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services sold through coin-operated vending machines or devices dispensing taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each retailer.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(b) A notice must be affixed to each coin-operated machine or device showing the retailer's name, address and seller's permit number.

(4) TAXABLE RECEIPTS. Taxable receipts include receipts from:

(a) Coin-operated machines dispensing tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., such as:

1. Candy.
2. Chewing gum.
3. Dietary supplements.
4. Heated foods and beverages.
4. Prepared foods, such as sandwiches prepared by the retailer.
5. Soft drinks.
6. Non-edible items such as:
 - a. Beauty supplies, such as make-up, hair spray, nail polish, and combs.
 - b. Cameras, film, and photography supplies.
 - c. Cigars, cigarettes, other tobaccos products, and lighters.
 - d. Drugs and other medical supplies, such as aspirin, bandages, and suntan lotion.
 - e. Hygiene products, such as soap and shampoo.
 - f. Photocopies.
 - g. Photographs.
 - h. Reading materials.
 - i. Toys and games.
 - j. Videos.
 - k. Wearing apparel, such as gloves, hosiery, shoelaces, and sunglasses.

(b) Coin-operated machines which provide a taxable service, such as telephones, car washes, televisions, vacuums, parking meters, shoe shine machines, bowling ball cleaning machines and coin-operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

(c) Coin-operated machines of non-governmental retailers located on army, navy, or air force installations, hospitals, or other facilities of the United States government.

(5) NONTAXABLE RECEIPTS. Receipts from the following are not taxable:

(a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin-operated, self-service machines.

(b) Coin-operated storage lockers, pay toilets, and scales.

(c) Coin-operated hair drying machines.

(d) Hospitals sales from vending machines of food and food ingredients, except soft drinks to patients, staff, or visitors.

(e) Sales from a vending machine of food and food ingredients except, candy, soft drinks, dietary supplements, and prepared foods.

(6) REPORTING AND RECORD KEEPING. (a) The receipts from the sale of taxable property, items, goods, or services from vending machines and amusement devices are subject to sales tax. Thus, taxable receipts include, for example, receipts from property, items, goods, and services selling for one, 5, and 10 cents and more. No deduction shall be permitted for the cost of the property, item, good, or service sold, materials used, labor or service cost, or any other expense, including commissions paid to place machines in an establishment.

(b) Sales tax collected from customers may be deducted from the total receipts before computing the tax payable, if customers are notified the prices include sales tax. If customers are not notified that the prices include sales tax, no deduction shall be allowed. The notification of the customer may be made by either:

1. Conspicuously posting the bracket system charts issued by the department.

2. Conspicuously posting a sign that states "Prices Include Sales Tax."

(c) Each retailer shall maintain adequate and complete records including:

1. The location of each machine.

2. The serial number of each machine.

3. Purchases and inventories of all merchandise sold through machines.

4. Receipts from sales of exempt merchandise.

5. Purchase records of all machines and the cost of all supplies of which the retailer is deemed to be the user or consumer.

Example: Purchase records shall be maintained for a vending machine or juke box, including repairs and parts, and records or compact discs used in the juke box.

(7) SALE, LICENSE, LEASE, OR RENTAL OF MACHINES. (a) Except as provided in par. (b), receipts from the sale, lease, rental, or license to use coin-operated machines and attachments, parts and supplies for the machines are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

(b) Nontaxable receipts include the lease of coin-operated machines by non-governmental retailers to exchanges of the army, air force, navy, or marine corps which acquire title to and sell merchandise through the machines to authorized purchasers from such exchanges.

(c) Machines purchased exclusively for license, lease, or rental to others may be purchased by the lessor without tax if the lessor gives an exemption certificate to the lessor's supplier. If the lessor intends to make any use of the machines other than license, lease, or rental, an exemption certificate claiming resale may not be given. In either event, the lessor's rental receipts are taxable.

Note: Section Tax 11.52 interprets ss. 77.51 (1m), (3n), (3t), (13), and (17w), 77.52 (1), (1m), (2) (a) 2., 6., 7., 10., and 11., and (2m), and 77.54 (20n), Stats.

Note: The interpretations in s. Tax 11.52 are effective under the general sales and use tax law on and after September 1, 1969, except the definitions of "candy," "dietary supplement," "food and food ingredient," and "soft drink," the exemption for food and food ingredients, the change of the term "gross receipts" to "sales price," and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 152. Tax 11.53(1) is repealed and recreated to read:

Tax 11.53(1) **DEFINITION.** In this section, "temporary event" means an activity at one place of operation for a brief duration where taxable sales are made. A place of operation includes a fair, carnival, circus, festival or portable roadside stand.

SECTION 153. Tax 11.53(2)(intro.) is renumbered 11.53(2) and amended as renumbered 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 seller's permit.

SECTION 154. Tax 11.53(2)(a) and (b) are repealed

SECTION 155. Tax 11.53(3) to (5) and (7) are amended to read:

Tax 11.53(3) **EXCEPTION.** Persons, other than nonprofit organizations, who do not hold and are not otherwise required to hold a seller's permit who have total taxable gross receipts

from sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or taxable services of less than \$1,000 during the calendar year are not required to hold a seller's permit or mobile seller's permit. Sales by such persons are exempt occasional sales. However, a person's purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services which when resold are exempt occasional sales under this section, are taxable purchases by that person.

(4) SECURITY. Application for a seller's permit ~~or mobile seller's permit~~ shall be on a form prescribed by the department. The applicant shall be subject to security requirements of s. 77.61 (2), Stats., and may be required to deposit security in an amount determined by the department, but not in excess of \$15,000.

(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.

(7) OPERATOR REPORTING REQUIREMENTS. An operator of a swap meet, flea market, craft fair, or similar event shall report to the department for each event, the legal and business name, address, telephone number, e-mail address, tax account number, if available, social security number and, if available, the seller's permit number or federal employer identification number, if applicable, for each vendor selling merchandise at the swap meet, flea market, craft fair, or similar event as provided in s. Tax 11.535.

Note to LRB: Replace the notes at the end of Tax 11.53(7) with the following:

Note: Section Tax 11.53 interprets ss. 73.03 (38) and (50), 77.52 (1), (7), (9), (11), (12), and (19), 77.58, and 77.61 (2), Stats.

Note: The interpretations in s. Tax 11.53 are effective under the general sales and use tax law effective on and after September 1, 1969, except: (a) The security amounts given in sub. (4) became effective February 1, 1982; (b) The provisions of sub. (7) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; and (c) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 156. Tax 11.535(title), (1), (2)(b), (c), and (d), (3), and (5) are amended to read:

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

(1) PURPOSE. This section clarifies requirements and establishes a time standard for the reports required under s. 73.03 (38), Stats., which authorizes the department to require operators of swap meets, flea markets, craft fairs, and similar events to report to the department specific identifying information of each vendor selling merchandise at these events.

(2)(b) "Operator" means a person who, or an entity such as an association, partnership, corporation, or nonprofit organization, which arranges, organizes, promotes, or sponsors an event.

(c) "Selling merchandise" means the sale, rental, license, lease, exchange, trade or barter of, or taking orders for merchandise, goods, or products for money or other consideration, or both.

(d) "Similar events" means events which are similar to swap meets, flea markets and craft fairs and includes tradeshow, carnivals, fairs, and fund-raising events.

(3) REPORT REQUIRED. Each operator shall furnish to the department within 10 days following the close of an event, the name, address, telephone number and e-mail address of the operator; the name of the event; the date or dates of the event; and the location of the event; and the real legal name, business name, address, telephone number, e-mail address, tax account number, if available, social security number and, if available, the seller's permit number of each vendor at the event the federal employer identification number of each vendor, if applicable.

Note to LRB: Replace the note at the end of Tax 11.535(4) with the following:

Note: Copies of the S-240, Wisconsin Temporary Event Operator and Seller Information reporting form may be obtained at any Department of Revenue office, by calling (608) 266-2776, by electronic mail at sales10@revenue.wi.gov or by writing to Wisconsin Department of Revenue, Post Office Box 8902, Madison, WI 53708.

(5) ALTERNATIVE REPORTING METHOD. Operators of continuing or successive events may report all vendors for each event or may report under an alternative method approved by the department. Any operator may request approval from the department of an alternative method of reporting which will provide the department with the required information on all vendors at each event. The request shall be made in writing to: Wisconsin Department of Revenue, Operator/Vendor Program, Post Office Box 8902, Madison, WI 53708 Temporary Events Program, 265 W Northland Avenue, Appleton, WI 54911. It shall list the dates and locations of events to be held during the calendar year and the proposed method for reporting the information required.

SECTION 157. Tax 11.54(title), (1)(a), (b), and (c), (2), (3)(title), (a), and (b), and (4)(a) and (b) are amended to read:

Tax 11.54(title) **Temporary amusement, entertainment, or recreational events or places.**

(1)(a) "Admission" means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment, or recreation is provided.

(b) Pursuant to s. 77.51 (10), Stats., "person" includes any natural person, firm, partnership, limited liability company, joint venture, joint stock company, association, public or private corporation, the United States, the state, including any unit or division of the state, any county, city, village, town, municipal utility, municipal power district, or other governmental unit, cooperative, unincorporated cooperative association, estate, trust, receiver, personal representative, executor, administrator, any other fiduciary, and any other legal entity, and any representative appointed by order of any court or otherwise acting on behalf of others.

(c) "Places of amusement, entertainment or recreation" include, ~~but are not limited to,~~ auditoriums, race tracks, street fairs, rock festivals, or other places where there is any show or exhibition for which any charge is made including, ~~but not limited to,~~ the sale of tickets, gate charges, seat charges, entrance fees, and motor vehicle parking fees.

(2) GENERAL. The gross receipts from the sale of admissions to amusement, entertainment, and recreational events or places are subject to sales tax.

(3)(title) ENTREPRENEURS, PROMOTERS, SPONSORS, OR MANAGERS.

(a) Entrepreneurs, promoters, sponsors, or managers of an amusement, entertainment, or recreational event shall be regarded as retailers for the purposes of s. 77.51 (13) (c), Stats., if the entrepreneurs, promoters, sponsors, or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment, or recreation to be offered; deciding the scale of the prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(b) As retailers, the entrepreneurs, promoters, sponsors, or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52 (7), Stats., and may be required to post security as provided in s. 77.61 (2), Stats. The retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

(4)(a) Traveling attractions which perform in stadiums, theaters, or other places where the permanent management of the stadium, theater, or other location holds a valid seller's permit, controls the sale of tickets or admissions, and assumes the liability for the payment of the sales tax.

(b) Churches or other nonprofit groups which operate within the occasional sale limitations of provided in s. 77.54 (7m), Stats.

SECTION 158. Tax 11.54(4)(d) is created to read:

Tax 11.54(4)(d) Sales of admissions by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger.

Note to LRB: Replace the notes at the end of Tax 11.54(4)(d) with the following:

Note: Section Tax 11.54 interprets ss. 77.51 (10) and (13) (c), 77.52 (2) (a) 2., (7), and (19), 77.54 (35), and 77.61 (2), Stats.

Note: The interpretations in s. Tax 11.54 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales by a baseball team of the Wisconsin department of American legion baseball pursuant to 1985 Wis. Act 29, is effective September 1, 1985; and (b) The exemption for certain sales of admissions by a nonprofit organization to participants in sports activities became effective July 1, 2009, pursuant to 2009 Wis. Act 28.

SECTION 159. Tax 11.55(title), (1), (2)(a), (3), and (4) are amended to read:

Tax 11.55(title) Agents, consignees, lienors, and brokers.

Tax 11.55(1) **UNDISCLOSED PRINCIPAL.** A person who has possession of tangible personal property or items, property, or goods under s. 77.52 (1), (b), (c), or (d), Stats., owned by an unknown or undisclosed principal and has the power to transfer title to that property, item, or good to a third person, and who exercises that power, is a retailer whose gross receipts are subject to the tax.

(2)(a) Gross receipts The sales price received from the sale of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., made by a person with possession of the property, item, or good who is acting for a known or disclosed principal, are is taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. If the principal fails to pay the tax, the agent may be liable for it.

(3) **ENFORCEMENT OF LIENS.** Pawnbrokers, storage persons, and others selling tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to enforce a lien are retailers with respect to such sales, and tax applies to the gross receipts from such sales.

(4) **REPOSSESSIONS.** Repossessions of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property, item, or good is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

Note to LRB: Replace the second note at the end of Tax 11.55(4) with the following:

Note: The interpretations in s. Tax 11.55 are effective under the general sales and use tax law on and after September 1, 1969, except that the change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 160. Tax 11.56(1)(a), (b)2., and (c), (2)(intro.) and (b), and (3)(a)(intro.), 1., and 2. and (b) are amended to read:

Tax 11.56(1)(a) "Manufacturer" includes a printer or other person who performs any one or more of the processes in manufacturing printed matter, provided that the printer or other person qualifies as being engaged in manufacturing under s. 77.51 (7h) (a), Stats., whether or not the printed matter is sold.

(b)2. Using computers, scanners, proofers, typesetters, photographic equipment, film processors, and direct-to-plate equipment exclusively in performing any of the processes listed in subd. 1. "Manufacturing printed matter" does not include using the equipment described in this subdivision to design, write, or compose an original document to be printed.

(c) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes fonts, video display terminals, tape and disc making equipment, computers, and typesetters which are interconnected to

operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

(2)(intro.) PRINTERS' TAXABLE SALES. Taxable receipts of printers include gross receipts from the following, unless otherwise exempt:

(b) Charges for services in connection with the sale of printed matter, such as overtime and set-up charges, die cutting, embossing, folding, and binding operations, and charges for painting signs, show cards, and posters, whether the materials are furnished by the printer or by the customer.

(3)(a)(intro.) Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by persons who are not printers, including so-called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binders, or finishers are taxable unless the sales qualify for a statutory exemption, including the following:

1. Section 77.54 (2), Stats., which exempts from tax the gross receipts from sales price of "...tangible personal property becoming or items under s. 77.52 (1) (b), Stats., that are used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c) that is destined for sale and that becomes an ingredient or component part of an the article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or which is consumed or destroyed or loses its identity in the manufacture manufacturing the article of tangible personal property in any form or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale, except as provided in s.77.54 (30) (a) 6., Stats...."

2. Section 77.54 (2m), Stats., which exempts from tax the gross receipts from sales price of "tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and that become an ingredient or component of shoppers guides, newspapers, or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers, or periodicals, whether or not the shoppers guides, newspapers, or periodicals are transferred without charge to the recipient... The exemption...does not apply to advertising supplements that are not newspapers."

(b) Tangible personal property includes and items under s. 77.52 (1) (b), Stats., include typed matter, whether or not combined with artwork, such as typeset output, a paste-up, mechanical, assembly, camera-ready copy, flat, or a photoreproduction, including film plates.

SECTION 161. Tax 11.56(4) is repealed and recreated to read:

Tax 11.56(4) NONTAXABLE SALES. (a) Tax does not apply to charges, if stated separately on invoices and in the accounting records, for mailing services such as:

1. Addressing printed matter by hand or mechanically for the purpose of mailing.
2. Enclosing, sealing, and preparing for mailing.
3. Mailing letters or other printed matter.

(b) Tax also does not apply to a printer's sales of:

1. Catalogs, as defined in s. Tax 11.19 (5m) (b), and the envelopes in which the catalogs are mailed.

2. Printed advertising materials for out-of-state use, as provided in s. Tax 11.19 (4) (a).

SECTION 162. Tax 11.56(5), (6)(a)(intro.) and 1. to 3. and (b), and (7)(a) and (b)(intro.) and 1. are amended to read:

Tax 11.56(5) EXEMPT PRINTING MACHINERY AND EQUIPMENT. Section 77.54 (6) (a), Stats., provides that "~~Machines~~ machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property ~~.... or items or property under s. 77.52 (1) (b) or (c), Stats., and safety attachments for those machines and equipment~~" are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements of the machinery and equipment used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(6)(a)(intro.) Persons engaged in manufacturing printed matter for sale may purchase the following property and items without tax under the statutes indicated:

1. Section 77.54 (2), Stats. Property and items, such as paper stock or printing ink, used exclusively and directly in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that is destined for sale and that becoming becomes an ingredient or component part of an item article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale, such as paper stock or printing ink.

2. Section 77.54 (2), Stats. Property and items such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate-ready film, other positives and negatives, flats, and similar items, used exclusively and directly in manufacturing an article of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and which are consumed, destroyed, or lose their identity in the manufacture of tangible personal property to be sold and items and property under s. 77.52 (1) (b) and (c), Stats., destined for sale.

Note to LRB: Amend the example at the end of Tax 11.56(6)(a)2. as follows:

Example: A printer's purchases of positives and negatives which are used exclusively and directly to produce catalogs and shoppers guides it sells to other persons are exempt from the tax.

3. Section 77.54 (6) (b), Stats. Containers and packaging and shipping materials for use in packing, packaging, or shipping printed matter to their customers.

(b) The exemption under s. 77.54 (2), Stats., described in par. (a) 1. and 2., applies to property and items purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer exclusively and directly in manufacturing tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., to be sold. The exemption under s. 77.54 (2), Stats., does not apply if the manufactured tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., is not to be sold by the manufacturer to its customer or by the customer.

Note to LRB: Amend the examples at the end of Tax 11.56(6)(b) as follows: