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👉 Details: Miscellaneous reports

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

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(Assembly, Senate or Joint)

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- Miscellaneous ... **Misc**

SECTION 218. Tax 11.71(1)(o) and (p) are renumbered 11.71(1)(n) and (o)

SECTION 219. Tax 11.71(1)(q) is renumbered 11.71(1)(p) and amended as renumbered to read:

Tax 11.71(1)(p) "Source document" means a document from which basic data are extracted, such as a sales invoice.

SECTION 220. Tax 11.71(2)(intro.), (a)(intro.) and 1., and (b)(intro.) and 1. to 3. are amended to read:

Tax 11.71(2)(intro.) ~~The Receipts from the~~ following transactions involving automatic data processing equipment, ~~programs~~ computer software, output, and services are taxable:

(a)(intro.) The retail sale, license, lease, or rental of new or used automatic data processing equipment and charges for the installation, service, and maintenance of this equipment. In this subsection, the following applies to licenses, leases, and rentals:

1. ~~Lease~~ License, lease, or rental includes a contract by which a licensee or lessee, for a consideration, obtains the full or partial use of equipment if the licensee's or lessee's employees are located on the premises where the equipment is located or operate the equipment. ~~A lease~~ License, lease, or rental does not include obtaining remote access to equipment by telephone or other means when that person's employees are not located on the premises where the equipment is located and they do not operate the equipment or control its operations. License, lease, or rental also does not include any transaction in which the licensor or lessor of the equipment provides the operator of the equipment and the operator does more than maintain, inspect, or set up the equipment.

(b)(intro.) The retail sale, lease, rental, or license to use prewritten computer programs, ~~except custom programs~~ software, including the maintenance and enhancement of those programs, whether transferred in a machine readable form such as cards, tapes or discs, or transferred in any other manner to the lessee or purchaser such as by telecommunications, or written instructions on coding sheets regardless of how it is delivered to the purchaser. The tax applies to the total charge for these programs prewritten computer software, including:

1. The consideration received for the temporary transfer of possession of a prewritten or ~~basic operational program~~ computer software for the purpose of direct use or to be recorded by the customer.

2. The consideration received for a ~~program~~ prewritten computer software in the form of license fees or royalty payments, present or future, whether for a minimum use or for extended periods.

3. The consideration received for designing, producing, implementing, testing, ~~or~~ and installing the ~~program~~ prewritten computer software.

SECTION 221. Tax 11.71(2)(bm) is created to read:

Tax 11.71(2)(bm) The sale of computer software maintenance contracts for prewritten computer software, unless the sale, license, lease, or rental in Wisconsin of the software to which the maintenance contract relates is or was exempt from tax to the purchaser of the contract.

SECTION 222. Tax 11.71(2)(c) and (d) and (3)(intro.), (b), (c), (d), (e)(intro.), and (f)1. and 2. are amended to read:

Tax 11.71(2)(c) The sale of training materials, such as books and manuals, including digital books and manuals furnished to trainees for a specific charge. However, separately stated training services are not taxable, unless they are a service necessary to complete the sale of a taxable product.

Note to LRB: Insert the following examples at the end of Tax 11.71(2)(c):

Examples: 1) Company A sells prewritten computer software to Customer B for \$1,000. Company A also offers optional training on how to use the prewritten computer software for an additional \$100. Customer B chooses to purchase the training service. The \$1,000 sale of the prewritten computer software is subject to Wisconsin sales tax but the \$100 charge for the training is not subject to tax since the training was not required by the seller or the purchaser as a service necessary to complete the sale.

2) Company C sells prewritten computer software to Customer D for \$1,000. In addition, Company C also requires that any customer that purchases the prewritten computer software, must also purchase the training service on how to use the software for \$100. Since Company C requires that Customer D purchase the training services, the training services are a service necessary to complete the sale and Company C must charge Wisconsin sales tax on the entire \$1,100 it charges Customer D.

(d) The charge for additional copies of records, reports, or tabulations, including copies produced by means of photocopying, multi-lithing, or by other means. "Additional copies" means all the copies in excess of copies produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program so that a program is run continuously, by using different programs to produce the same output product, or by other means.

(3)(intro.) The ~~gross receipts~~ sales price from the following computer or data processing services are not taxable:

Note to LRB: Amend the notes at the end of Tax 11.71(3)(a) as follows:

Note: A contract to process a client's data by the use of a computer ~~program~~ software or through an electrical accounting machine programmed by a wired plugboard will usually include receiving the client's source documents, recording data in machine readable form such as in punch cards or on magnetic media, making corrections, rearranging or creating new information as the result of the processing, and then providing tabulated listings or recording output on other media. This service is not taxable, even though the total charge is broken down into specific charges for each step.

Note: If a client furnishes data and computer ~~programs~~ software for processing the data and the processing is under the direction and control of the person providing the service, the processing service is not taxable, even though charges for the service may be based on computer time. The true object of this arrangement is considered to be a service, even though some tangible personal property may be incidentally transferred to the client.

(b) Providing ~~custom programs~~ computer software that is not prewritten computer software.

(c) Providing program technical support, error correction services, and maintenance and enhancement to ~~custom programs~~ computer software that is not prewritten computer software.

(d) Providing time-sharing services which permit persons at different locations to access the same computer through remote access by telephone lines, microwave, or other means. Nontaxable time-sharing exists when a person or that person's employees, who have access to the equipment, are not located on the premises where the equipment is located and do not operate the equipment or control its operation.

(e)(intro.) Miscellaneous services which are not part of the sale of a taxable program including prewritten computer software or other tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., including:

(f)1. Key punching only, key punching and keystroke verification, or key punching and providing a proof list or verification data, or both. Charges for these services are not taxable, whether the cards or tapes are furnished by the customer or by a service bureau.

2. Recording data from source documents directly on magnetic tape, off-line. This operation may include keystroke verifying or proof listing of data, or both, and is comparable to the punch card operation.

Note to LRB: Replace the first and second notes at the end of Tax 11.71(3)(f)4. with the following:

Note: Section Tax 11.71 interprets ss. 77.51 (1n), (1p), (1pd), (7), (7g), (10r), (14) (h) and (j), and (20) and 77.52 (1) and (2) (a) 10. and 13m., Stats.

Note: The interpretations in s. Tax 11.71 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) Computer and data processing services were taxable under s. 77.52 (2) (a) 13., Stats., Laws of 1977, from August 1, 1977, through June 30, 1978; (b) The definition of prewritten computer software became effective March 6, 2009, pursuant to 2009 Wis. Act 2; (c) The definitions of computer, computer software, computer software maintenance contract and load and leave became effective October 1, 2009, pursuant to 2009 Wis. Act 2; 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., 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 223. Tax 11.72(1)(a) and (b)(intro.), (2), and (3)(a) and (b) are amended to read:

Tax 11.72(1)(a) The ~~gross receipts~~ sales price received from selling, performing, or furnishing laundry, dry cleaning, pressing, and dyeing services ~~are~~ is taxable, except as provided in par. (b).

(b)(intro.) The ~~gross receipts~~ sales price from selling, performing, or furnishing laundry, dry cleaning, pressing, and dyeing services ~~are~~ is exempt from tax when:

(2) LINEN AND CLOTHING SUPPLIERS. The ~~gross receipts of sales price received by~~ lessors from leasing, licensing, or renting clothing, including uniforms, towels, linens, or similar items, ~~not~~ including cloth diapers, to commercial establishments or household users under

agreements which provide for furnishing items and cleaning the items when they become soiled are is subject to the tax. However, the items furnished to customers under these agreements may be purchased by the lessor without paying sales or use tax and the charge for cleaning cloth diapers by a diaper service is not subject to tax.

(3)(a) Laundries, dry cleaners, and linen or clothing suppliers are the consumers of and shall pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds, and marking tags they use for identification purposes. They also shall pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters, and pins. The tax applies to the ~~gross receipts~~ sales price on the sale of these items to laundries, dry cleaners, and linen and clothing suppliers.

(b) The tax applies to ~~gross receipts~~ the sales price from sales, licenses, leases, or rentals of machinery and equipment to persons engaged in performing or furnishing laundry, dry cleaning, pressing, and dyeing services, and to persons leasing, licensing, or renting linens, towels, and clothing to industrial, commercial, or household users.

Note to LRB: Replace the notes at the end of Tax 11.72(3)(b) with the following:

Note: Section Tax 11.72 interprets ss. 77.51 (1m), (3m), (13) (e) and (f), and (15a) and 77.52 (2) (a) 6. and (2m) (a), Stats.

Note: The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wis. Act 335; (c) The repeal of the exemption for cloth diapers became effective October 1, 2002, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 224. Subchapter IX of ch. Tax 11 (title) is amended to read:

Subchapter IX — Types of Tangible Personal Property and Items, Property, and Goods Under s. 77.52 (1) (b), (c), and (d), Stats.

SECTION 225. Tax 11.78(1)(intro.), (d), and (g) and (2)(intro.) and (c) are amended to read:

Tax 11.78(1)(intro.) Retail sales of the following tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., are subject to the sales and use tax:

(d) Postage charges which are billed by the seller of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to the purchaser in connection with the sale and delivery of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., if the sale of the property, item, or good is subject to the tax.

(g) Silver bullion and gold bullion ~~which is physically located in Wisconsin~~ if the sale is sourced to a location in Wisconsin under s. 77.522, Stats., is subject to the sales tax whether

the sales contract is entered into in or outside of Wisconsin. Such Sales of silver and gold bullion purchased and delivered to the purchaser sourced to a location outside Wisconsin is are subject to the use tax when the bullion is brought into the state Wisconsin.

(2)(intro.) Retail sales of the following tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., are not subject to the sales and use tax:

(c) Sales of bullion to persons in Wisconsin ~~when the purchaser takes a document of ownership covering bullion remaining outside the state~~ if the sale is sourced to a location outside Wisconsin under s. 77.522, Stats.

Note to LRB: Replace the notes at the end of Tax 11.78(2)(e) with the following:

Note: Section Tax 11.78 interprets ss. 77.51 (15b) and (20) and 77.522, Stats.

Note: The interpretations in s. Tax 11.78 are effective under the general sales and use tax law on and after September 1, 1969, except that 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 226. Tax 11.79(1) and (2)(title), (intro.), and (a) are amended to read:

Tax 11.79(1) GENERAL RULE. Gross receipts The sales price received from the license, lease, or rental of motor vehicles and mobile equipment used on a highway are is subject to the sales and use tax.

Note to LRB: Insert the following note at the end of Tax 11.79 (1):

Note: See s. Tax 11.32 for additional information explaining what is included in the "sales price."

(2)(title) DEDUCTIONS FROM GROSS RECEIPTS SALES PRICE.

(intro.) ~~If the lease or rental agreement is for a long term, in~~ In determining a lessor's taxable gross receipts under sub. (1), the cost of the following items may be deducted if they meet the conditions in sub. (3):

(a) Motor vehicle fuel.

SECTION 227. Tax 11.79(3)(intro.) and (a) are renumbered 11.79(3)(a)(intro.) and 1.

SECTION 228. Tax 11.79(3)(b) is renumbered 11.79(3)(a)2. and amended as renumbered to read:

Tax 11.79(3)(a)2. The charge is separately stated in the lease agreement, billing, or invoice.

SECTION 229. Tax 11.79(3)(c) and (d) are renumbered 11.79(3)(a)3. and (b)

SECTION 230. Tax 11.79(4)(intro.) is amended to read:

Tax 11.79(4)(intro.) In determining a lessor's taxable ~~gross receipts~~ sales price under sub. (1), the cost of the following may not be deducted:

SECTION 231. Tax 11.79(5) is repealed and recreated to read:

Tax 11.79(5) **MULTISTATE USE.** (a) The sales price received from the license, lease, or rental of motor vehicles and mobile equipment used on a highway is taxable in Wisconsin if the license, lease, or rental payments are sourced to Wisconsin under s. 77.522, Stats., as described in pars. (b) and (c).

(b) A license, lease, or rental of a motor vehicle, trailer, semitrailer, or aircraft that only requires one payment, is sourced as follows:

1. If the motor vehicle, trailer, semitrailer, or aircraft, is received by the lessee or licensee at the lessor's or licensor's business location, the payment is sourced to the lessor's or licensor's business location.

2. If the motor vehicle, trailer, semitrailer, or aircraft is not received by the lessee or licensee at the lessor's or licensor's business location, the payment is sourced to the location where the lessee or licensee or the lessee's or licensee's designated donee receives the product. This would include the location indicated by instructions known to the lessor or licensor for delivery to the lessee or licensee or the lessee's or licensee's designated donee. The delivery may be made by the lessor or licensor or by a shipping company hired by the lessee or licensee.

3. If the location cannot be determined under subds. 1. and 2., the payment is sourced to the lessee's or licensee's address as indicated by the lessor's or licensor's business records, if the records are maintained in the ordinary course of the lessor's or licensor's business and if using that address to establish the location of the lease, license, or rental is not in bad faith.

4. If the location cannot be determined under subd. 1., 2., or 3., the payment is sourced to the lessee's or licensee's address as obtained during the consummation of the license, lease, or rental, including the address indicated on the lessee's or licensee's payment instrument, if no other address is available and if using that address to determine the location of the lease, license, or rental is not in bad faith.

5. If the location cannot be determined under subd. 1., 2., 3., or 4., the payment is sourced to the location from which the motor vehicle, trailer, semitrailer, or aircraft was shipped.

(c) Except as provided in par. (b), licenses, leases, and rentals of motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment, as defined in s. 77.522 (1) (a) 2., Stats., are sourced to the primary location of such property as indicated by an address for the property that is provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith.

SECTION 232. Tax 11.79(6)(intro.) and (c) are amended to read:

Tax 11.79(6)(intro.) ~~Gross receipts~~ The sales price from the ~~rental or lease~~ license, lease, or rental of the following property shall be exempt from sales and use tax provided the lessor receives a properly completed exemption certificate as described in s. Tax 11.14:

(c) Mobile units used for mixing and processing, including the motor vehicle or trailer on which the unit is mounted. Accessories, attachments, parts, supplies, and materials for the mobile unit, vehicle, and trailer are also exempt.

Note to LRB: Replace the notes at the end of Tax 11.79(6)(d) with the following:

Note: Section Tax 11.79 interprets ss. 77.51 (13) (k) and (14) (intro.) and (j), 77.522, 77.54 (5) (c) and (d) and (26m), and 77.58 (6), Stats.

Note: The interpretations in s. Tax 11.79 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for vehicles and equipment used in waste reduction or recycling activities became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (b) The exemption for mobile mixing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The sourcing provisions under s. 77.522, Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 233. Tax 11.80(1), (2)(a) and (b), and (3)(a) and (b) are amended to read:

Tax 11.80(1) Ice, including dry ice, is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale.

(2)(a) Sales of ice blocks through vending machines.

(b) Sales of ice blocks to restaurants, taverns, grocery stores, and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(3)(a) Sales of ice cubes to restaurants, taverns, and soda fountains to be used exclusively in drinks. The sales are exempt as sales for resale.

(b) Sales to manufacturers, producers, or food processors for use inside the shipping cases of merchandise being transferred to a customer. The sales are exempt as "shipping material" under s. 77.54 (6) (b), Stats.

SECTION 234. Tax 11.80(3)(bm) is created to read:

Tax 11.80(3)(bm) Sales of ice for use inside shipping cases for meat or meat products, regardless of whether such items are used to transfer merchandise to customers. The sales are exempt as "shipping materials" under s. 77.54 (6) (bm), Stats.

SECTION 235. Tax 11.80(3)(c) is amended to read:

Tax 11.80(3)(c) Ice sold to manufacturers which is used exclusively and directly by the manufacturer in manufacturing an article of tangible personal property or an 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 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.

SECTION 236. Tax 11.80(4)(a) is repealed and recreated to read:

Tax 11.80(4)(a) If ice is sold to a person who will use it both for a taxable purpose and nontaxable purpose, such as for refrigeration and for resale, the purchaser may either purchase the ice without tax by providing a properly completed exemption certificate and then pay the applicable use tax on the ice used in a taxable manner or pay tax on the entire purchase price of the ice and then claim a credit on its sales and use tax return for that portion of the ice that is used in a manner that is not subject to tax.

Note to LRB: Replace the notes at the end of Tax 11.80(4)(b) with the following:

Note: Section Tax 11.80 interprets ss. 77.52 (1), 77.53 (1), and 77.54 (2) and (6) (bm), Stats.

Note: The interpretations in s. Tax 11.80 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The clarification that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; 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 237. Tax 11.81(title) and (1)(intro.), (a), and (b) are amended to read:

Tax 11.81(title) **Industrial gases, welding rods, and fluxing materials, and fuels.**

(1)(intro.) The tax status of retail sales of industrial gases, welding rods, and fluxing materials depends upon the use of the property by the purchaser. Section 77.54 (2), Stats., exempts from the sales tax ~~"The gross receipts~~ the sales price from the sales of and the storage, use or other consumption of tangible personal property or item under s. 77.52(1) (b), Stats., becoming that is 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 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 or item or property under s. 77.52(1) (b) or (c), Stats., in any form destined for sale, but this exemption shall not include fuel or electricity except as provided in s. 77.54 (30) (a) 6., Stats." Section 77.54 (30) (a) 6., Stats., exempts from sales and use tax 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. Therefore, the sale of industrial gases, welding rods, ~~or fluxing materials, or fuels~~ shall be:

(a) Exempt if they are used exclusively and directly by a manufacturer in manufacturing and become ingredients or components component parts of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale; or,

(b) Exempt if they are used exclusively and directly by a manufacturer in manufacturing and are consumed, destroyed, or lose their identity in the manufacture of manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or,

SECTION 238. Tax 11.81(1)(bm) is created to read:

Tax 11.81(1)(bm) Exempt under s. 77.54 (30) (a) 6., Stats., if they are a fuel consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin. A fuel is a material used to produce heat or power by burning, or is something that feeds a fire.

SECTION 239. Tax 11.81(2)(intro.), (a)(intro.) and 2., and (b)(intro.), 1., and 2., (3), and (4) are amended to read:

Tax 11.81(2)(intro.) Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide, and oxygen.

(a)(intro.) Sales of industrial gases which are exempt because if they are used exclusively and directly by a manufacturer in manufacturing and become an ingredient or 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 by the purchaser include:

2. Gases such as neon, helium, or argon used as a filler in the production of light bulbs and tubes.

(b)(intro.) Taxable Exempt sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces that are used in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in Wisconsin.

2. Acetylene or other gases used in torches that are used in the manufacture of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(3) WELDING RODS. Since welding rods, such as stick electrode and filler rods, are physically transferred and become a part of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale or in repairing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of these rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) FLUXING MATERIALS. Fluxing materials sold to a manufacturer for use exclusively and directly in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own production machinery or equipment, a nonmanufacturing activity, they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

Note to LRB: Replace the notes at the end of Tax 11.81(4) with the following:

Note: Section Tax 11.81 interprets s. 77.54 (2) and (30) (a) 6., Stats.

Note: The interpretations in s. Tax 11.81 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for fuel and electricity consumed in manufacturing became exempt January 1, 2006, pursuant to 2003 Wis. Act 99; (b)

The clarification that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; 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 240. Tax 11.82(1)(a) to (c) and (2)(a) to (c) are amended to read:

Tax 11.82(1)(a) In this subsection, "mailing list" means a written or printed list, series, set, group, or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards, or other similar means of identification.

(b) A mailing list is tangible personal property, except for written, typed, or printed lists of names and addresses and lists stored in machine-readable form, such as microfilm and computer tapes and disks, and the sales and use tax shall apply to the ~~gross receipts~~ sales price from the sale of and the storage, use, or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use those lists. Taxable mailing lists include, ~~but are not limited to~~ mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels, and heat transfers.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., they purchase and use in producing these lists. However, any tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., becoming a component part of mailing lists when the mailing lists are physically transferred to a customer by either sale, rental, lease, or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed ~~resale~~ exemption certificate.

(2)(a) In this subsection, "addressing" means the preparation of property, items, and goods to be mailed by writing, typewriting, printing, imprinting, or affixing addresses or names and addresses to the property, items, or goods. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels, or similar items which are to be affixed to, or enclosed in, property, items, or goods to be mailed for the purpose of serving as addresses for the property, item, or good. However, addressing does not include these tapes, cards, or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax does not apply to charges for services rendered in preparing material for mailing, including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying, and sacking in compliance with postal rules and regulations, if the charges are stated separately on invoices and in accounting records. ~~Gross receipts~~ The sales price from charges for envelopes are is taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., they purchase and use in performing these services. Consequently, they shall pay the tax when purchasing the property.

Note to LRB: Replace the notes at the end of Tax 11.82(2)(c) with the following:

Note: Section Tax 11.82 interprets ss. 77.51 (20), 77.52 (1), and 77.53 (1), Stats.

Note: The interpretations in s. Tax 11.82 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Written or typed lists of names and addresses are not tangible personal property effective January 1, 1979, pursuant to the Minnesota Supreme Court's decision in *Fingerhut Products Company et al. vs. Commissioner of Revenue*, 258 N.W. 2d 606 (1977); (b) Mailing lists stored in machine-readable form are not tangible personal property, pursuant to the Wisconsin Tax Appeals Commission decision in *A-K Corporation and Profile Publishing Co. dba Miles Kimball vs. Wisconsin Department of Revenue* (1/15/87); (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 241. Tax 11.83(1)(a) is amended to read:

Tax 11.83(1)(a) "Actively participates" means the person performs services for the motor vehicle dealership, including selling, accounting, managing, and consulting, for more than 500 hours in a taxable year for which the person receives compensation. "Actively participates" does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use, or monitoring the finances or operations of the activity in a nonmanagerial capacity.

SECTION 242. Tax 11.83(1)(am) is created to read:

Tax 11.83(1)(am) "Mobility-enhancing equipment" means 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.

SECTION 243. Tax 11.83(1)(b) and (2)(title) and (intro.) are amended to read:

Tax 11.83(1)(b) "Motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor, or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck, or road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

(2)(title) ~~RETAILERS' TAXABLE GROSS RECEIPTS~~ SALES PRICE.

(intro.) ~~Gross receipts from the~~ The following sales in Wisconsin are taxable:

Note to LRB: Amend the examples at the end of Tax 11.83(2)(a) as follows:

Examples: 1) Dealer A sells a motor vehicle to Individual B and accepts the trade-in of two motor vehicles owned by Individual B. The selling price of the new vehicle is \$20,000. The

values of the two motor vehicles traded in by Individual B are \$8,000 and \$9,000. ~~Gross receipts~~ The sales price subject to sales tax ~~are~~ is \$3,000, the \$20,000 selling price less the \$8,000 and \$9,000 trade-ins.

2) Dealer A sells two motor vehicles to Individual C and accepts the trade-in of a motor vehicle owned by Individual C. The selling prices of the new vehicles are \$10,000 and \$12,000. The value of the motor vehicle traded in is \$15,000. ~~Gross receipts~~ The sales price subject to sales tax ~~are~~ is \$7,000, the \$22,000 selling price less the \$15,000 trade-in.

SECTION 244. Tax 11.83(2)(am) is created to read:

Tax 11.83(2)(am) The sale of motor vehicles by any retailer registered or required to be registered to collect Wisconsin sales or use tax, regardless of whether the retailer is a motor vehicle dealer.

Example: Landscaper A is registered to collect and remit Wisconsin sales and use tax on its landscaping services. Landscaper A sells a motor vehicle that it had used in its landscaping business. Landscaper A must collect Wisconsin sales tax on its sale of the motor vehicle and remit the tax to the Department of Revenue on its Wisconsin sales and use tax return.

SECTION 245. Tax 11.83(2)(b) to (d), (3)(title) and (a) to (c), (4)(a) to (c), (5), (6), (7)(title), (a), and (c), and (8)(a), (b)(intro.), 1., 2., 3.(intro.), and 4., and (c)(intro.) and 1. are amended to read:

Tax 11.83(2)(b) The delivery, handling, and preparation of a motor vehicle being sold and the sale of a warranty, relating to the sale of a motor vehicle that is taxable.

(c) The sale of equipment and accessories with a motor vehicle. However, ~~adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as defined in s. 27.01 (7) (a) 2., Stats., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting directly on behalf of the handicapped person or a nonprofit organization~~ equipment that is not generally provided by a motor vehicle manufacturer, but which is added to a motor vehicle may qualify for exemption under s. 77.54 (22b), Stats., as mobility-enhancing equipment, as defined in sub. (1)(am).

(d) Sales of parts and labor for repair, service, and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for ~~adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle~~ mobility-enhancing equipment, as described in par. (c).

Note to LRB: Delete the note at the end of Tax 11.83(2)(d)

(3)(title) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS NON-RETAILERS.

(a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered in

Wisconsin in the name of the transferor; and the transferor is not a ~~motor vehicle dealer engaged in the business of selling motor vehicles.~~

(b) ~~The purchaser of a motor vehicle from a non-dealer shall pay~~ No motor vehicle shall be registered or titled in Wisconsin unless the registrant presents proof that the sales or use taxes imposed by this subchapter have been paid or the registrant pays the tax due to the department of transportation before at the time the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales purchase price," as defined in s. 77.51 (12m), Stats., of the vehicle.

(4)(a) ~~The gross receipts sales price~~ from the sales of motor vehicles or truck bodies to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than in their removal from Wisconsin are is exempt. Truck bodies include semi-trailers. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in the sale is sourced to Wisconsin as provided s. 77.522, Stats.

(b) ~~Gross receipts~~ The sales price from charges for the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body are is subject to tax.

(c) A motor vehicle, trailer, semi-trailer, all-terrain vehicle, ~~or mobile home recreational vehicle as defined in s. 340.01 (48r), Stats.,~~ purchased outside Wisconsin by a nonresident of Wisconsin 90 days or more before bringing the unit into Wisconsin, in connection with a change of residence to Wisconsin by the individual, is not subject to the Wisconsin use tax.

(5) TEMPORARY USE IN WISCONSIN. Motor vehicles purchased outside Wisconsin, which are not registered or titled or required to be registered or titled in Wisconsin, brought into Wisconsin by a nondomiciliary for that person's own storage, use, or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used, or otherwise consumed in Wisconsin in the conduct of a trade, occupation, business, or profession or in the performance of personal services for wages or fees.

(6) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside Wisconsin and registered in Wisconsin is subject to Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or, the District of Columbia, or the Commonwealth of Puerto Rico, in which the purchase was made, sales or use tax paid to the other state or, the District of Columbia, or the Commonwealth of Puerto Rico may be applied as a credit against and deducted from the Wisconsin use tax. This credit does not apply to taxes paid to another country ~~or to municipalities in other states,~~ or to motor vehicle registration fees.

(7)(title) TRANSFER BY INHERITANCE, GIFT, OR PRIZE.

(a) The distribution of a motor vehicle to the heir or heirs of an estate is not a ~~taxable~~ transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser shall pay the tax to the department of transportation at the time of registration.

(c) A motor vehicle donated to an organization described in s. 77.54 (9a), Stats., is not subject to Wisconsin use tax if the motor vehicle has been purchased by the donor tax-free for

resale or upon the presentation of a valid exemption certificate, and if the donor has made no other use of the motor vehicle.

(8)(a) *General.* Motor vehicles purchased without tax for resale by a Wisconsin motor vehicle dealer licensed under ~~s.~~ ss. 218.0101 to 218.0163, Stats., and used for a purpose in addition to retention, demonstration, or display, except motor vehicles loaned to any school or school district for a driver training educational program conducted by the school or school district, are subject to Wisconsin use tax. Motor vehicles used by the dealership solely for retention, demonstration, and display, while holding them for sale in the regular course of business, or solely for leasing to others, such as customers and employees, are not subject to Wisconsin use tax.

(b)(intro.) The amount subject to use tax on a motor vehicle used by a licensed motor vehicle dealer for a purpose in addition to retention, demonstration, or display is one of the following:

1. Motor vehicles held for sale which are assigned to and used by a specific dealer employee subject to withholding from federal income tax on wages are subject to Wisconsin use tax on ~~\$104~~ \$140 per motor vehicle registration plate per month. The ~~\$104~~ \$140 amount is effective January 1, ~~1999~~ 2009 and is subject to change annually as explained in the notes following sub. (8) (b).

2. Motor vehicles held for sale which are assigned to and used by persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, are subject to Wisconsin use tax on ~~\$104~~ \$140 per motor vehicle registration plate per month. The ~~\$104~~ \$140 amount is effective January 1, ~~1999~~ 2009 and is subject to change annually as explained in the notes ~~below~~ following this subdivision.

Note to LRB: Amend the first note at the end of Tax 11.83(8)(b)2. as follows:

Note: As provided in s. 77.53 (1m), Stats., the department will annually adjust the amount per plate to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the *Wisconsin Tax Bulletin and Sales and Use Tax Report* prior to the January 1, that the change becomes effective.

3.(intro.) Motor vehicles used by the dealer or any person other than an employee of the dealer and which are held for sale and not assigned to and used by a specific dealer employee subject to federal withholding on wages are subject to Wisconsin use tax on the lease value of the motor vehicle computed on a calendar month basis. If a motor vehicle is used by the dealer for a period of less than one calendar month, the amount subject to use tax is the daily lease value calculated by multiplying the applicable monthly lease value by a fraction, the numerator of which is the number of days used by the dealer for a purpose in addition to retention, demonstration, or display and the denominator of which is the number of days in the calendar month. Lease value is computed using the internal revenue service lease value table contained in 26 CFR 1.61-21 (d) (2). In the lease value table, the "automobile fair market value" is one of the following:

4. Motor vehicles not held for sale, including motor vehicles properly capitalized for Wisconsin income or franchise tax purposes, are subject to use tax based on the sales

~~purchase price of the motor vehicle as defined in s. 77.51 (15) (12m), Stats. However, if the motor vehicles were purchased without tax using a resale or other exemption certificate and the first use, in addition to retention, demonstration or display, occurs more than 6 months after the purchase by the dealer, the dealer may use the fair market value of the motor vehicle at the time of first use as the amount subject to tax.~~

(c)(intro.) It is presumed that all dealer plates issued by the department of transportation to a licensed motor vehicle dealer are used each month on motor vehicles assigned to employees subject to withholding for federal income tax purposes or owners who actively participate in the day-to-day operations of the dealership for a purpose in addition to retention, demonstration, or display and are subject to use tax as provided in par. (b) 1. and 2., unless one of the following applies:

1. The motor vehicle dealer keeps adequate records showing that the dealer plates were not used during the month on motor vehicles for a purpose in addition to retention, demonstration, or display.

SECTION 246. Tax 11.83(8)(d) is repealed

SECTION 247. Tax 11.83(10) and (11)(a) and (b) are amended to read:

Tax 11.83(10) HEAVY EQUIPMENT DEALERS. Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration ~~may not, but who are retailers that hold a Wisconsin seller's permit, must charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with Wisconsin.~~ The heavy equipment dealers may purchase motor vehicles for resale they are going to resell without tax for resale by providing a properly completed exemption certificate.

(11)(a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which is are physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. The property includes paints, paint hardeners, plastic fillers, welding rods, and auto parts.

(b) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., not physically transferred to a customer's motor vehicle is are subject to tax. The property includes tools, equipment, and supplies used or consumed in performing motor vehicle repair service. Taxable supplies include sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive, and all other items not physically transferred to the customer's vehicle even though a separate charge may be made to the customer for these supplies.

SECTION 248. Tax 11.83(11)(c) is repealed

SECTION 249. Tax 11.83(12) and (13) are amended to read:

Tax 11.83(12) EXEMPTION FOR MIXING AND PROCESSING UNITS. Sales, licenses, leases, and rentals of mobile units used for mixing and processing, and the motor vehicles or trailers on

which the units are mounted, including accessories, attachments, parts, supplies, and materials for those vehicles, trailers, and units, are exempt from sales and use tax.

(13) EXEMPTION FOR VEHICLES USED IN WASTE REDUCTION OR RECYCLING. ~~Gross receipts~~ The sales price from the sale, license, lease, or rental of vehicles which are not required to be licensed for highway use and which are used exclusively and directly in waste reduction or recycling activities are is exempt from sales and use tax.

Note to LRB: Replace the notes at the end of Tax 11.83(14) with the following:

Note: Section Tax 11.83 interprets ss. 77.51 (7m), (13) (am), (14) (j), and (15b) (b) 6., 77.52 (1), (2) (a) 10. and 13m., and (15), 77.53 (1), (1m), (16), (17), and (18), 77.54 (5) (a), (c) and (d), (7) and (22b), 77.56 (2) and (3), 77.61 (1), 77.71 (2) and (4), and 77.73, Stats.

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for adaptive equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemption for parts and accessories for adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (h) The measure of use tax on motor vehicles as described in sub. (8) (b) 1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (i) The use of the amount per plate rather than the lease value, as described in sub. (8) (b) 2., as the measure of use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (j) The trade-in provisions related to lemon law refunds became effective June 1, 2002, pursuant to 2001 Wis. Act 45; (k) The exemption for mobility-enhancing equipment became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (L) The requirement to collect the tax by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; 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 250. Tax 11.84(1)(a), (b)1., (c), and (e)1. and 3.a. and b. are amended to read:

Tax 11.84(1)(a) The sales and use tax applies to the ~~gross receipts~~ sales price from the sale, license, lease, or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies, and materials for aircraft.

(b)1. The transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law of the transferor.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was

claimed. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of motor vehicles registrant does not present proof that the tax has been paid, the registrant shall pay the tax to the department of transportation at the time the aircraft is registered or titled in Wisconsin. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state.

(e)1. The aircraft is purchased in another state, as determined under s. 77.522, Stats.

3.a. A corporation, and that corporation and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or other tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel, and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

b. A partnership, and all the corporate partners fulfill the requirements in subd. 3. a., none of the general partners or limited partners who have management or control responsibilities is domiciled in Wisconsin and the partnership has no other ~~real property or~~ tangible personal property and no real property, except aircraft and property such as hangars, accessories, attachments, fuel, and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

SECTION 251. Tax 11.84(1)(e)3.bm. is created to read:

Tax 11.84(1)(e)3.bm. A limited liability company and all of the corporate members fulfill the requirements under subd. 3. a., and none of the managers and none of the members who has management or control responsibilities is domiciled in Wisconsin and the limited liability company has no other tangible personal property and no real property, except aircraft and property such as hangars, accessories, attachments, fuel, and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

SECTION 252. Tax 11.84(1)(e)3.d. and 4., (2)(a)(intro.) and 1. to 3. and (c)(intro.), (3)(a) and (b), and (4)(intro.) and (c) to (e) are amended to read:

Tax 11.84(1)(e)3.d. An estate, trust, ~~or~~ cooperative, or unincorporated cooperative association, and that estate, that trust and its grantor or that cooperative or association does not have real property or other tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel, and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

4. The department has not determined that the owner, if the owner is a corporation, trust ~~or~~ partnership, or limited liability company, was formed to qualify for the exemption from Wisconsin use tax.

(2)(a)(intro.) ~~Gross receipts~~ The sales price received from the following shall be taxable:

1. The sale, license, lease, or rental of aircraft by any retailer registered or required to be registered to collect Wisconsin sales or use tax, regardless of whether the retailer is an aircraft dealer.

2. The sale and delivery in Wisconsin of oil, equipment, parts, and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.

3. Charges for air frame and engine inspection, maintenance, and repair.

(c)(intro.) The ~~gross receipts~~ sales price from charges for the following are taxable:

(3)(a) Section 77.54 (5) (a), Stats., provides that the tax does not apply to ~~gross receipts~~ the sales price from aircraft, including accessories, attachments, parts, and fuel therefor, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use the aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(b) The tax does not apply to charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of aircraft used by a certified or licensed carrier of persons or property in interstate or foreign commerce under the laws of the United States or any foreign government.

(4)(intro.) ~~Gross receipts~~ Amounts received from the following services or fees are not taxable:

(c) Advertising promotions such as skywriting and banner towing if the person towing the banner also provides it, except when the aircraft is leased to a person who provides a the person's own pilot.

(d) Emergency rescue service, forest fire spotting, and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing, and seeding a farmer's crops. A person in the business of crop dusting, spraying, fertilizing, and seeding for farmers may purchase weed killers, fertilizer, and seed without tax for resale, if these items are used in conjunction with but not incidental to providing the service.

Note to LRB: Replace the second note at the end of Tax 11.84(4)(f) with the following:

Note: The interpretations in s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the exemption for federal aviation fuel is effective January 1, 1982, pursuant to Chapter 20, Laws of 1981; (b) The exemption for aircraft brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for certain nonresidents' aircraft became effective May 15, 1988, pursuant to 1987 Wis. Act 399; (d) The exemption for transfers of aircraft to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (e) The requirement to collect the tax on sales of aircraft by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (f) 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 253. Tax 11.85(title), (1)(intro.), (a), and (c), and (2)(a) to (d) and (f) are amended to read:

Tax 11.85(title) **Boats, vessels, and barges.**

(1)(intro.) Taxable gross receipts involving boats include the following:

(a) Gross The receipts from the sale, license, lease, or rental of boats and boat accessories, and of attachments, parts, supplies, and materials therefor, by any retailer registered or required to be registered to collect Wisconsin sales or use tax, regardless of whether the retailer is a boat dealer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting, and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

Note to LRB: Insert the following example at the end of Tax 11.85(1)(c):

Example: Individual A, a resident of Wisconsin, takes his boat to Illinois to have it repaired. No Illinois tax is charged to Individual A on the repair services. Individual A brings the boat back to Wisconsin where it is used. Individual A owes Wisconsin use tax on the purchase of the repair services performed in Illinois.

(2)(a) The sale of a boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may qualify as an exempt occasional sale if the transferor does not hold ~~or~~ and is not required to hold a seller's permit.

(b) Sales of boats to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law of the transferor ~~shall be~~ are exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor is not engaged in the business of selling boats.

(c) Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more are exempt from the tax. Accessories, attachments, and parts attached to the vessel or barge and fuel for the vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business, or profession or in the performance of personal services for wages or fees. The use tax does not apply to a boat for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the boat into Wisconsin in connection with a change of domicile to this state.

(f) Section 77.53 (17m), Stats., exempts: "...a boat purchased in a state contiguous to this state, as determined under s. 77.522, Stats., by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made."

SECTION 254. Tax 11.85(2)(g) is created to read:

Tax 11.85(2)(g) Section 77.54 (30) (a) 7., Stats., exempts fuel sold for use in motorboats that are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in s. 29.001 (63), Stats., and the rivers and tributaries specified in s. 29.2285 (2) (a) 1. and 2., Stats., if the owner and all operators are licensed under s. 29.514, Stats., to operate the boat for that purpose.

SECTION 255. Tax 11.85(3)(a) and (d) and (5) are amended to read:

Tax 11.85(3)(a) No boat may be registered in ~~this state~~ Wisconsin unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. ~~If the boat is purchased from a person other than a person with a seller's permit, the purchaser~~ registrant does not present proof that the tax has been paid, the registrant shall pay the tax with the boat registration, mailed to Wisconsin Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, WI 53707 at the time the boat is registered or titled in Wisconsin, even though the boat may also be used out-of-state.

(d) The "boat" subject to the use tax at the time the boat is registered in this state includes all accessories affixed or attached to the boat when in use. Anchors, boat cushions, marine radios, radar equipment, and other similar accessories are included in the measure of the tax.

Notes to LRB: 1. Amend the note at the end of Tax 11.85(3)(d) as follows:

Note: In a decision dated July 25, 1983, in the case of *Alan G. Dwyer vs. Wisconsin Department of Revenue*, the Wisconsin Tax Appeals Commission held that the tax applies to boat accessories, including the anchor, boat cushions, and marine radio, in addition to the bare hull of the boat.

2. Amend the note at the end of Tax 11.85(4) as follows:

Note: Sales of bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, paper towels, etc., used on commercial ~~barges~~ vessels or barges of 50 ton burden or over engaged primarily in interstate or foreign commerce or commercial fishing are subject to sales and use tax.

(5) SALES TO SHIPS. Sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., ~~or~~ and taxable services delivered to operators of foreign flag ships or ships under the U.S. flag in a Wisconsin harbor are subject to tax, unless the retailer receives a properly completed ~~resale or other~~ exemption certificate from the purchaser.

Note to LRB: Replace the notes at the end of Tax 11.85(5) with the following:

Note: Section Tax 11.85 interprets ss. 77.51 (13) (am), 77.52 (2) (a) 9. and 10., 77.53 (17), (17m), and (18), 77.54 (7), (13), and (30) (a) 7., and 77.61 (1), Stats.

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Boats documented under laws of the United States do not qualify for the occasional sale exemption effective February 28, 1979, pursuant to Chapter 1, Laws of 1979; (b) Charges by governmental units for docking and storing boats became taxable effective June 1, 1980, pursuant to Chapter 221, Laws of 1979; (c) The

exemption for boats of nonresidents kept in waters contiguous to the nonresident's state of domicile became effective September 1, 1985, pursuant to 1985 Wis. Act 29, later amended effective June 1, 1988, pursuant to 1987 Wis. Act 268; (d) The exemption for boats brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (e) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (f) The exemption for fuel used in motorboats by persons regularly employed in carrying persons for hire for sport fishing became effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (g) The requirement to collect the tax on sales of boats by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (h) 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 256. Tax 11.86(1)(a) and (b), (2)(a), (3), (4)(a) and (b), (5)(a) to (c), and (6)(intro.), (b), and (d) are amended to read:

Tax 11.86(1)(a) "Utility facilities" include telephone, telegraph, and television lines; electrical, water, and gas transmission and distribution lines; and poles, transformers, and towers, including pipes, conduits, sleeves, risers for cable television lines, or other property by which lines are supported or in which they are contained or connected.

(b) "Real property" includes underground utility facilities; lines, poles, foundations, towers, gravel, and any buildings of a substation located on a utility's own land; and concrete foundations, anchors, crushed rock, and backfill whether or not on land owned by the utility.

(2)(a) ~~Gross receipts~~ The sales price from the installation, license, lease, rental, repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are is subject to sales tax.

Note to LRB: Amend the examples at the end of Tax 11.86(2)(b) as follows:

Examples: 1) ~~The gross receipts of charges by~~ a contractor ~~from~~ for the construction and installation of an overhead utility facility, or a portion of an overhead utility facility, and from a sale "in place" of the facility, if installed under an easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of the property may be purchased without tax for resale.

2) ~~The gross receipts of charges by~~ a utility ~~from~~ for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of an overhead utility facility, or a portion of an overhead facility of another utility are taxable. Materials used in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, maintenance, or installation may be purchased without tax for resale.

3) ~~Gross receipts from~~ Charges for the installation, sale, license, lease, rental, repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance and removal of underground utility facilities are not subject to sales or use tax. However, the materials used in the construction or installation of the underground utility facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

4) X-ray testing of weld joints in the pipe as part of the construction of an underground utility pipeline is part of the construction process and the ~~gross receipts~~ charges are not subject to sales or use tax. However, materials used in the X-ray testing of the underground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) RELATED EXPENSES. The gross taxable receipts from the performance of a lump sum contract for the construction of an overhead utility facility, which is tangible personal property, may not be reduced by expenses in performing the contract, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way, and unloading and hauling materials.

Note to LRB: Amend the note at the end of Tax 11.86(3) as follows:

Note: The related expenses described in sub. (3) are costs of performing the contract and do not affect the amount of taxable gross receipts.

(4)(a) The gross taxable receipts from a contract to construct or repair an overhead utility facility which is tangible personal property may not be reduced by the amount of hourly charges for the use of equipment.

(b) ~~The gross receipts from charges for the rental of equipment, including any charge for an operator of the equipment, for used in the construction or repair of a utility line to a utility are taxable, unless the utility employs all of the crew to construct or repair the utility line, in which case only the charge for the equipment is taxable.~~

Note to LRB: Amend the note at the end of Tax 11.86(4)(b) as follows:

Note: See s. Tax 11.29 (4) (5) for more information.

(5)(a) ~~Gross receipts~~ The sales price received from tree and shrub trimming services for a utility for the purpose of keeping the overhead transmission and distribution lines free from interference from nearby trees and shrubs or inaccessible to children ~~are~~ is not ~~services which~~ are taxable under s. 77.52 (2) (a) 20., Stats.

(b) ~~Gross receipts from~~ The sales price received under a separate contract for tree trimming and line clearing in connection with the construction of a new utility line ~~are~~ is not taxable.

(c) ~~Gross receipts~~ The sales price received from a separate charge for removing an existing utility line ~~are~~ is not taxable.

(6)(intro.) ~~Gross receipts~~ The sales price received from landscaping and lawn maintenance services ~~are~~ is taxable. Except as provided in sub. (5) (a) and (b), landscaping and lawn maintenance services include:

(b) Lawn and garden services, such as planting, mowing, spraying, and fertilizing.

(d) Spreading topsoil and installing sod or planting seed where trenches have been dug or sump pump, transmission, and distribution lines have been buried in residential, business, commercial, and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots, and other areas, and along highways, streets, and walkways.

Note to LRB: Replace the second note at the end of Tax 11.86(6)(d) with the following:

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except: (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (c) The Wisconsin Tax Appeals Commission decision in *Capital City Tree Experts, Inc.*, dated June 19, 1987, later modified by stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service; 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., 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 257. Tax 11.87(title) and (1)(b) and (e) are amended to read:

Tax 11.87(title) **Meals, Prepared food, food products and beverages food ingredients, and soft drinks.**

(1)(b) "Exempt food" means food, food products and beverages not subject to and food ingredients that are exempt from the sales and use tax as provided in s. 77.54 (20) and (20m) (20n), Stats.

(e) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing, and ambulation.

SECTION 258. Tax 11.87(1)(em) is created to read:

Tax 11.87(1)(em) "Prepared food" has the meaning provided in s. Tax 11.51 (4).

SECTION 259. Tax 11.87(1)(h) and (2)(a) and (b) are amended to read:

Tax 11.87(1)(h) "Taxable food" means food, food products and beverages and food ingredients, including candy, dietary supplements, prepared food, soft drinks, and alcoholic beverages subject to the sales and use tax.

(2)(a) *General.* Generally, the ~~gross receipts~~ sales price from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs, young men's christian associations, young women's christian associations, and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking, or other methods shall be taxable ~~food~~ as "prepared food" even though the seller is principally engaged in the sale of exempt food. Heated food or beverages mean those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

Note to LRB: Replace the example at the end of Tax 11.87(2)(b) with the following:

Example: When a supermarket roasts chickens on a rotisserie and sells them in a heated condition, the roasted chickens are taxable because they are prepared food.

SECTION 260. Tax 11.87(2)(c) is repealed and recreated to read:

Tax 11.87(2)(c) *Prepared Food.* Sales of prepared food, as provided in s. Tax 11.51 (4), are taxable.

Note to LRB: Replace the example and note at the end of Tax 11.87(2)(c) with the following:

Examples: 1) Retailer A sells heated food and heated beverages. Heated foods and heated beverages are prepared food and Retailer A's sales of the heated foods and heated beverages are subject to tax.

2) Restaurant B sells prepared foods and also other foods and food ingredients, including cartons of milk, cookies, and candy. Restaurant B's sales of prepared foods, based on Restaurant B's prior tax year, are *more* than 75% of its total sales of food and food ingredients. Restaurant B makes napkins and straws available to the purchaser. Restaurant B's sales of the food and beverages, including the cartons of milk are subject to tax since (a) Restaurant B's sales of prepared foods are more than 75% of Restaurant B's total sales of food and food ingredients, based on Restaurant B's prior tax year; and (b) napkins and straws are available to the purchaser.

3) Same as Example 2, except that the seller is a convenience store instead of a restaurant. The answer is the same as in Example 2.

4) Convenience Store C sells prepared foods and other foods and food ingredients, including cartons of milk, cookies, soft drinks, and candy. Convenience Store C's sales of prepared foods, based on its prior tax year, are *less* than 75% of its total sales of food and food ingredients. Convenience Store C makes napkins and straws available to the purchaser, but does not physically hand or give the straws or napkins to the purchaser. Convenience Store C's sales of heated food, heated beverages, soft drinks, and candy are subject to tax, but Convenience Store C's sales of milk and cookies are not subject to tax since (a) Convenience Store C's sales of prepared foods are less than 75% of Convenience Store C's total sales of food and food ingredients, based on its prior tax year; and (b) Convenience Store C makes the napkins and straws available to the purchaser, rather than physically giving or handing the napkins or straws to the purchaser.

5) Same as Example 4, except that Convenience Store C's customary practice is to physically give or hand the napkins and straws to the purchaser. Convenience Store C's sales of heated food, heated beverages, soft drinks, candy, cookies, and cartons of milk are subject to tax since Convenience Store C's customary practice is to physically give or hand the napkins and straws to the purchaser. The tax applies to these sales even though Convenience Store C's sales of prepared foods are less than 75% of its total sales of food and food ingredients.

6) Grocery Store A has a self-service salad bar. Grocery Store A's sales of prepared foods, based on its prior tax year, are less than 75% of its total sales of food and food ingredients. The plates necessary to receive the food items at the salad bar, along with the

forks, knives, and napkins are made available to the purchaser. Grocery Store A's sales of the self-service salad bar items are subject to tax since the plates necessary to receive the food items at the salad bar are made available to the purchaser.

SECTION 261. Tax 11.87(2)(d)(intro.) and 1. to 3. are amended to read:

Tax 11.87(2)(d)(intro.) ~~Meals, food, Food and food products and beverages ingredients,~~ sold by caterers shall ~~be~~ are generally taxable as prepared foods. For purposes of this paragraph:

1. "Caterer" means a person engaged in the business of preparing meals, food, and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food "prepared foods" either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute taxable gross receipts.

2. Charges made by a caterer for preparing and serving ~~meals or drinks~~ prepared foods to social clubs, service clubs, fraternal organizations, or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals prepared foods, hold a seller's permit and give ~~resale or a properly completed exemption certificates~~ certificate to the caterer.

3. The tax shall apply to items purchased by caterers, including dishes, silverware, linen napkins, tablecloths, punch fountains, coffee silver service, and glassware, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering service, unless customers are charged a separate and optional amount for their use. However In addition, items such as tents, public address systems, portable dance floors, portable bars, chairs, and tables may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers ~~pay specific taxable rental charges~~ are charged a separate and optional amount for their use. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, ~~placements~~ placemats, and toothpicks also may be purchased without tax for resale.

SECTION 262. Tax 11.87(2)(e) is repealed and recreated to read:

Tax 11.87(2)(e) *Vending machine sales.* A vending machine operator's receipts from candy, dietary supplements, prepared foods, and soft drinks are taxable.

SECTION 263. Tax 11.87(2)(f), (g)2., (h), (i)(title), (intro.), 1.(intro.) and a. to d., and 2.(intro.), a., and b., (j), and (k)1. and (3)(intro.), (a), and (b) are amended to read:

Tax 11.87(2)(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive prepared food, meals or drinks candy, dietary supplements, soft drinks, or other taxable property, items, or goods, shall be taxable. If prepared food, meals or drinks candy, dietary supplements, soft drinks, or other taxable property, items, or goods are furnished, prepared, or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for the service, the entire amount shall be taxable.

(g)2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal prepared food or other taxable food or food ingredient under a requirement of the seller or an arrangement made with the seller is a part of the selling sales price of the meals prepared food or other taxable food or food ingredient and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employees.

(h) *Huber law meals.* Meals Prepared foods, candy, dietary supplements, and soft drinks sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i)(title) Meals Food and food ingredients to employees.

(intro.) Sales of meals prepared foods, candy, dietary supplements, and soft drinks to employees by an employer for a consideration shall be taxable. For purposes of this paragraph:

1.(intro.) A consideration shall be deemed made for meals prepared foods, candy, dietary supplements, and soft drinks if any one of the following conditions is met:

a. The employee pays cash for meals the prepared foods, candy, dietary supplements, and soft drinks consumed.

b. An actual, specific charge for meals the prepared foods, candy, dietary supplements, and soft drinks is deducted from an employee's wages.

c. An employee receives meals the prepared foods, candy, dietary supplements, and soft drinks in lieu of cash to bring the employee's compensation up to the legal minimum wage.

d. An employee has the option to receive cash for meals the prepared foods, candy, dietary supplements, and soft drinks not consumed.

2.(intro.) In the absence of any of the conditions in subd. 1., a consideration is not deemed made when:

2.a. A value is assigned to meals prepared foods, candy, dietary supplements, and soft drinks only as a means of reporting the fair market value of an employee's meals prepared foods, candy, dietary supplements, and soft drinks for FICA, social security, or union contract purposes.

b. An employee who does not consume available meals prepared foods, candy, dietary supplements, and soft drinks has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals prepared foods, candy, dietary supplements, and soft drinks and liquor by transportation companies, such as airlines or railways, to a customer while operating in Wisconsin for a specific charge shall be taxable. These meals prepared foods, candy, dietary supplements, soft drinks, and alcoholic beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal prepared food, candy, dietary supplements, soft drinks, or beverage alcoholic beverages is not separately stated to the customer, the tax shall apply to purchases of these meals prepared foods, candy, dietary supplements, soft drinks, and alcoholic beverages by transportation companies.

(k)1. When members of an exempt or nonexempt organization meet at a hotel, restaurant, or other place of business where food or drinks are sold and the members pay for the items, the place of business shall be considered selling directly to the members and not to the organization except as provided in subds. 2. and 3. The sales shall, therefore, be subject to the tax, even if the organization collects from the members, pays the seller, and retains a portion of the collections for its own purposes. In these situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals prepared foods.

(3)(intro.) The following ~~meals~~ food and food ingredients shall be exempt:

(a) *Health care facilities.* ~~Meals, food, Food and food products or beverages ingredients, except soda water beverages soft drinks,~~ fermented malt beverages, and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., or day care centers registered under ch. 48, Stats., ~~and served on their premises.~~ However, if an affiliated organization sells the items, the exemption does not apply.

Note to LRB: Amend the example at the end of Tax 11.87(3)(a) as follows:

Example: If a ladies' auxiliary of a hospital, separate from the hospital, operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the prepared food and drinks sold at the coffee shop are taxable.

(b) "*Meals on wheels*". ~~Meals, food, food products or beverages~~ Prepared food sold to the elderly or handicapped by persons providing "mobile meals on wheels."

SECTION 264. Tax 11.87(3)(c)(intro.) is repealed and recreated to read:

Tax 11.87(3)(c)(intro.) Food and food ingredients furnished in accordance with any contract or agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to any of the following:

SECTION 265. Tax 11.87(3)(c)1. and 2., (d), and (e) are amended to read:

Tax 11.87(3)(c)1. ~~The meals, food, food products or beverages are furnished to an~~ An undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that the public or private institution, provided the items of higher education and if the food and food ingredients are consumed by that the student.

2. ~~The meals, food, food products or beverages are furnished to a~~ A national football league team.

(d) *Groceries.* Sales of food, and ~~and~~ food products and beverages for human consumption ingredients, except candy, dietary supplements, prepared foods, and soft drinks are exempt from tax under s. 77.54 ~~(20)~~ (20n), Stats. This includes sales of prepackaged ice cream, ice milk, or sherbet in pint or larger sizes, ~~whether prepackaged by the vendor or a supplier.~~ Sales of smaller sized containers of these products are taxable. any size container and also Sales of ice cream, ice milk, sherbet, or yogurt as cones, sundaes, sodas, and shakes and frozen chocolate bars made from these products are taxable.

(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social

security, supplemental security income, veterans administration, or other disability and retirement benefits reflecting the value of meals prepared foods provided.

SECTION 266. Tax 11.87(3)(f) is created to read:

Tax 11.87(3)(f) *Food and food ingredients to employees.* Purchases by restaurants of candy, soft drinks, dietary supplements, prepared foods, and disposable products that are transferred with such items, are exempt from sales and use tax if the restaurant transfers such items to its employees during the employee's work hours for no consideration.

SECTION 267. Tax 11.87(4)(b) is amended to read:

Tax 11.87(4)(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of ~~meals, food, food products~~ taxable food and food ingredients and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the taxable food and food ingredients and other tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services received by the customer.

Note to LRB: Replace the notes at the end of Tax 11.87(4)(b) with the following:

Note: Section Tax 11.87 interprets ss. 77.51 (10m), (12m), (14) (b) and (f), and (15b), and 77.54 (20n) and (20r), Stats.

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt April 25, 1978, pursuant to Chapter 250, Laws of 1977; (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (c) Sales of meals by community-based residential facilities on their premises became exempt June 1, 1994, pursuant to 1993 Wis. Act. 332; (d) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237; (f) The exemption for food and food ingredients was revised to exempt all food and food ingredients except candy, dietary supplements, prepared food and soft drinks 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 268. Tax 11.88 is repealed and recreated to read:

Tax 11.88 Manufactured homes, mobile homes, and recreational vehicles. (1)
DEFINITIONS. For purposes of this section:

(a) 1. "Manufactured home," as defined in s. 101.91 (2), Stats., means either of the following:

a. A structure that is designed to be used as a dwelling with or without a permanent foundation and that is certified by the federal department of housing and urban development as complying with the standards established under 42 USC 5401 to 5425.

b. A mobile home, unless a mobile home is specifically excluded under the applicable statute.

2. As provided in 42 USC 5402 (6), "manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.

(b) "Mobile home," as defined in s. 101.91 (10), Stats., means a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet. "Mobile home" includes the mobile home structure, its plumbing, heating, air conditioning and electrical systems, and all appliances and all other equipment carrying a manufacturer's warranty.

(c) "New manufactured home," as defined in s. 101.91 (11), Stats., means a manufactured home that has never been occupied, used or sold for personal or business use.

(d) "New recreational vehicle," as defined in s. 218.10 (7), Stats., means a recreational vehicle which has never been occupied, used or sold for personal or business use.

(e) "Recreational vehicle," as defined in s. 340.01 (48r), Stats., means a vehicle that is designed to be towed upon a highway by a motor vehicle, that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length.

(f) "Recreational vehicle dealer" has the meaning given in s. 218.10 (1g), Stats.

(g) "Retailer" is a person who has or is required to have a certificate under s. 77.52 (7), Stats., or s. 77.53 (9), Stats., and who holds or is required to hold a permit issued under s. 77.52 (9), Stats., or s. 77.53 (9m), Stats.

(h) "Used manufactured home," as defined in s. 101.91 (12), Stats., means a manufactured home that has previously been occupied, used or sold for personal or business use.

(i) "Used recreational vehicle" has the meaning given in s. 218.10 (9), Stats.

(2) MANUFACTURED AND MOBILE HOMES AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT. A manufactured or mobile home is personal property if it is located in a manufactured home community, a mobile home park, or other place where the land on which the manufactured or mobile home is located is not owned by the manufactured or mobile home owner. A manufactured or mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the manufactured or mobile home. It is permanently affixed to the land for sales tax purposes if the manufactured or mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(3) SALES OF MANUFACTURED AND MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS. (a) The sale of a manufactured or mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a manufactured or mobile home which is a realty improvement on the land of the seller, and which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a manufactured or mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of manufactured or mobile homes to the contractor-consumer are subject to the tax, but the sales price from the subsequent sale by the contractor-consumer to the purchaser of the home are not taxable.

(4) SALES AND RENTALS OF MANUFACTURED AND MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) Under s. 77.54 (31), Stats., the total sales price from the sale of a used mobile home or a used manufactured home is exempt from the sales and use tax.

(b) Under s. 77.51 (15b) (b) 7. and (12m) (b) 7., Stats., 35% of the total sales price from the sale of a new manufactured home is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of these new manufactured homes.

(c) Under s. 77.54 (36), Stats., the rental of a mobile home or a manufactured home used for residence for a continuous period of one month or more is exempt from the sales and use tax, whether the manufactured or mobile home is classified as real or personal property.

(d) Under s. 77.54 (7), Stats., recreational vehicles, as defined in s. 340.01 (48r), Stats., registered or titled or required to be registered or titled in this state that are transferred to the child, spouse, parent, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the transferor are exempt occasional sales if the recreational vehicle, as defined in s. 340.01 (48r), Stats., has been previously registered or titled in Wisconsin in the name of the transferor and the transferor is not engaged in the business of selling recreational vehicles, as defined in s. 340.01 (48r), Stats.

(e) Under s. 77.53 (18), Stats., the use tax does not apply to a manufactured home or mobile home purchased by a nonresident outside Wisconsin 90 days or more before bringing the manufactured or mobile home into Wisconsin in connection with a change of domicile to Wisconsin.

(5) PAYMENT OF TAX. (a) No recreational vehicle may be registered in Wisconsin unless the registrant presents proof that the sales or use tax has been paid or that the registrant's

acquisition of the recreational vehicle was exempt from the tax. If the recreational vehicle registrant does not present proof that the tax has been paid, the registrant shall pay the tax at the time the recreational vehicle is registered with the department of transportation even though the recreational vehicle may also be used out-of-state.

(b) If a recreational vehicle purchased outside Wisconsin is subject to the Wisconsin use tax, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the recreational vehicle was purchased.

(6) CONSIGNMENT SALES. When a recreational vehicle dealer has possession of a recreational vehicle owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the recreational vehicle and the tax on the transaction shall be paid under sub. (4) (a), provided the recreational vehicle dealer does not take title to the recreational vehicle. If the dealer does take title, the dealer is the seller.

Note: For information regarding principals, see s. Tax 11.55.

Note: Section Tax 11.88 interprets ss. 77.51 (2), (12m) (b) 7., (13) (am), and (15b) (b) 7., 77.52 (2) (a) 1., 77.53 (17) and (18), 77.54 (7), (31), and (36), 77.61 (1) (a) and (c), 101.91 (2), (10), (11), and (12), 218.10 (1g), (7), and (9), and 340.01 (29) and (48r), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (g) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The changes in terminology related to "mobile homes," "manufactured homes," and "recreational vehicles," became effective January 1, 2008, pursuant to 2007 Wis. Act 11; and (j) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 269. Tax 11.91(1)(a), (2)(b)1., and (3)(b) are amended to read:

Tax 11.91(1)(a) A purchaser or assignee of the business or stock of goods, including furniture, fixtures, equipment, and inventory, of any retailer liable for sales or use tax shall be personally liable for the payment of the sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(2)(b)1. Consideration paid for tangible property and items, property, and goods, under s. 77.52 (1) (b), (c), and (d), Stats., and for intangibles such as leases, licenses, and good will.

(3)(b) The purchaser shall submit a written request to the department for a clearance certificate. An oral request for a clearance certificate shall not be accepted. The letter requesting the certificate shall include the real name, business name, and seller's permit number, if known, of the prior operator. All sales tax returns for all periods during which the predecessor operated shall be filed with the department before it may issue the certificate.

Note to LRB: Replace the second note at the end of Tax 11.91(4)(c) with the following:

Note: The interpretations in s. Tax 11.91 are effective under the general sales and use tax law on and after September 1, 1969, except that 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 270. Tax 11.92(1)(intro.) and (a) to (c) are amended to read:

Tax 11.92(1)(intro.) All persons selling, licensing, leasing, or renting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services and every person storing, using, or otherwise consuming in Wisconsin tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices which shall contain a posting reference, cash register tapes, credit memoranda which shall carry a reference to the document evidencing the original transaction or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. These records shall show:

(a) The gross receipts sales price from sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services, or licenses, rentals, or leases of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including any services that are a part of the sale or, license, lease, made within or rental sourced to Wisconsin under s. 77.522, Stats., even if the seller, licensor, or lessor regards the receipts as taxable or nontaxable. Taxable ~~gross~~ receipts shall be reported on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) The basis for all deductions claimed in filing returns, including ~~resale and~~ exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order and the supplier's invoice or billing document. Sales to organizations holding a certificate of exempt status, CES, including religious or charitable organizations, can be shown to be exempt by recording the CES number on the seller's copy of the bill of sale. All other Except as provided in this paragraph, s. 77.52 (13), Stats., and s. 77.53 (10), Stats., exempt sales shall be supported by an exemption certificate signed by the purchaser and retained by the seller, ~~unless the merchandise sold is specifically exempted by statute regardless of use, such as groceries.~~ Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

(c) Total purchase price of all tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services purchased for sale, license, lease, rental, storage, use, or other consumption or lease in Wisconsin.

SECTION 271. Tax 11.92(1)(d) is renumbered 11.92(1)(d)(intro.) and amended as renumbered to read:

Tax 11.92(1)(d)(intro.) Every person subject to the county, stadium, or regional transit authority sales and use tax shall keep a record of sales that the person completes in makes that are sourced under s. 77.522, Stats., to each county enacting an ordinance under s. 77.70, Stats., imposing a county tax, separately from sales made elsewhere in the state. Every person shall also keep a record of the sales price of items on which the person is subject to county use or excise tax in each enacting county.

SECTION 272. Tax 11.92(1)(d)1. to 3. and (e) are created to read:

Tax 11.92(1)(d) 1. County that has in effect an ordinance imposing a county tax under s. 77.70, Stats.

2. Stadium district that has in effect a resolution imposing the tax under s. 77.705 or 77.706, Stats.

3. Jurisdictional area of each regional transit authority that has in effect a resolution imposing the tax under s. 77.708, Stats.

(e) Every person shall keep a record of the purchase price of property, items, and goods on which the person is subject to county, stadium, and regional transit authority use or excise tax in each enacting county, stadium district or transit authority's jurisdiction.

SECTION 273. Tax 11.92(2)(b), (3)(c), and (6) are amended to read:

Tax 11.92(2)(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included, and are systematically filed.

(3)(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda, shall be readily available.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law, including the disallowance of deductions, credits, and exemptions and the inclusion of additional taxable sales or additional taxable purchases to which the requested records relate.

Note to LRB: Replace the notes at the end of Tax 11.92(7) with the following:

Note: Section Tax 11.92 interprets ss. 77.52 (13), 77.58 (6m), 77.60 (8), 77.61 (4) (a) and (9), and 77.75, Stats.

Note: The interpretations in this s. Tax 11.92 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 25% penalty in sub. (7) became effective July 20, 1985, pursuant to 1985 Wis. Act 29; 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 274. Tax 11.925(1) is renumbered 11.925(1)(a) and amended as renumbered to read:

Tax 11.925(1)(a) Under s. 77.61 (2) (a), Stats., the department may require a person liable for sales and use taxes to make a security deposit before or after a seller's permit is issued. The amount of the security deposit determined by the department may not exceed \$15,000. If a person fails or refuses to make a security deposit as requested, the department may refuse to issue a permit or revoke the permit.

SECTION 275. Tax 11.925(1)(b) is created to read:

Tax 11.925(1)(b) As provided in s. 77.61 (2) (b), Stats., a certified service provider who has contracted with a seller and filed an application to collect and remit sales and use taxes on behalf of the seller shall submit a surety bond within 60 days after the department notifies the certified service provider that the certified service provider is registered to collect Wisconsin sales and use taxes, to guarantee the payment of such sales and use taxes. However, the secretary or revenue or the secretary's designee may waive this requirement or release the liability with respect to any certified service provider.

SECTION 276. Tax 11.925(2)(a)1., (3)(a)1., and (5)(a) and (d)3. and 5. are amended to read:

Tax 11.925(2)(a)1. Evidence of adequate financial responsibility. Evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures, and potential sales tax liability.

(3)(a)1. Cash, certified check, or money order.

(5)(a) Section 77.61 (2) (a), Stats., provides: "Any any security deposited under this subsection s. 77.61 (2), Stats., shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of ~~this subchapter~~ subch. III of ch. 77, Stats."

(d)3. No delinquencies of sales or use tax, interest, or other charges existed.

5. No assessment of additional tax, interest, or other charges for filing periods within the 24-month compliance period is unpaid at the end of the 24-month compliance period.

Note to LRB: Replace the second note at the end of Tax 11.925(5)(e) with the following:

Note: The interpretations in s. Tax 11.925 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The return of deposit provisions in sub. (5) became effective March 13, 1980, pursuant to Chapter 125, Laws of 1979; (b) The \$15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wis. Act 29; and (c) The provision to require certified service providers to submit surety bonds and the provision to

allow the secretary of revenue to waive the requirement became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 277. Tax 11.93(1) is amended to read:

Tax 11.93(1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department ~~of the option of filing that it must only file one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election. If the retailer wants to continue to file returns on a quarterly basis, it must contact the department.~~

SECTION 278. Tax 11.94 is repealed and recreated to read:

Tax 11.94 Delivery Charges. (1) DEFINITION. "Delivery charges" is defined in s. 77.51 (2m), Stats., to mean charges by a seller to prepare and deliver tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services to a location designated by the purchaser of the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services, including charges for transportation, shipping, postage, handling, crating, and packing.

(2) TAXABILITY OF DELIVERY CHARGES. (a) When a seller charges a purchaser for the delivery of taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the seller's total charge, including any delivery charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

Example: Retailer A sells clothing to Customer B for \$100. Retailer A also charges Customer B \$10 for delivery of the clothing. Retailer A delivers the clothing to Customer B at a Wisconsin address for which the total applicable sales and use tax rate is 5%. The correct computation of the tax due is as follows:

Selling price of clothing	\$100.00
Delivery charge	10.00
Subtotal	\$110.00
Tax at 5% (\$110 \times 5%)	5.50
Total	\$115.50

(b) When a seller charges a purchaser for the delivery of nontaxable or exempt tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the seller's total charge, including any delivery charge, is not subject to the sales or use tax.

(c) 1. If a shipment includes both taxable and nontaxable property and items the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property and items. The portion allocated to nontaxable property and items is not taxable. If no allocation is made, the total delivery charge shall be taxable.

2. The allocation in subd. 1. is computed based on either:

a. The total sales price of all of the property and items subject to tax as compared to the total sales price of all of the property and items included in the shipment.

b. The total weight of all of the property and items subject to tax as compared to the total weight of all of the property and items included in the shipment.

(d) A Wisconsin purchaser who purchases taxable property and items without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) based on the "purchase price" of the property and items to the purchaser. The "purchase price" shall include delivery charges paid by the Wisconsin purchaser to the seller for shipment of the property and items to the purchaser. The "purchase price" does not include delivery charges paid by the Wisconsin purchaser to a carrier independent of the seller when the purchaser arranges for the transportation.

Example: If the "delivered price" of a carload of lumber is \$6,000, including delivery charges, and the purchaser pays the delivery charges directly to the common carrier and deducts the payment from the amount due the seller, the delivery charges are borne by the seller and are included in the seller's measure of the tax.

(3) DIRECT MAIL. (a) Delivery charges for direct mail are not subject to sales or use tax if the delivery charges are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

(b) "Direct mail" is defined in s. 77.51 (3pd), Stats., to mean printed material that is delivered or distributed by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" includes any tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., provided directly or indirectly by the purchaser of the printed material to the seller of the printed material for inclusion in any package containing the printed material, including billing invoices, return envelopes, and additional marketing materials. "Direct mail" does not include multiple items of printed material delivered to a single address.

Note: Section Tax 11.94 interprets ss. 77.51 (2m), (3pd), (12m) (a) 4. and (b) 4., (14) (intro.), and (15b) (a) 4. and (b) 4., 77.52 (1), and 77.585 (8), Stats.

Note: The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969, except that the definitions of "delivery charges" and "direct mail," 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 279. Tax 11.945 is created to read:

Tax 11.945 Sourcing Transactions. (1) DEFINITIONS.

(a) "Product," as provided in s. 77.51 (11d), Stats., includes tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services.

(b) "Receive," as defined in s. 77.522 (1) (a) 1., Stats., means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.; making first use of services; or taking possession or making first use of digital goods under s. 77.52 (1) (d),

Stats., whichever comes first. "Receive" does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., on a purchaser's behalf.

(c) "Transportation equipment," as defined in s. 77.522 (1) (a) 2., Stats., means any of the following:

1. Locomotives and railcars that are used to carry persons or property in interstate commerce.

2. Trucks and truck tractors that have a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are registered under the international registration plan under s. 341.405 and operated under the authority of a carrier that is authorized by the federal government to carry persons or property in interstate commerce.

3. Aircraft that are operated by air carriers that are authorized by the federal government or a foreign authority to carry persons or property in interstate or foreign commerce.

4. Containers that are designed for use on the vehicles described in subds. 1. to 3. and component parts attached to or secured on such vehicles.

(2) SOURCING – GENERAL. Except as provided in subs. (3), (4), and (5), and except as provided in s. Tax 11.66 (3) relating to the sourcing of telecommunications services, ancillary services, Internet access services, and telecommunications message services, a sale is sourced to a location based on the following:

(a) If a purchaser receives the product at a seller's business location, the sale is sourced to that business location.

(b) If a purchaser does not receive the product at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee receives the product. This would include the location indicated by instructions known to the seller for delivery to the purchaser or the purchaser's designated donee. The delivery may be made by the seller or by a shipping company hired by the seller.

(c) If the location of a sale cannot be determined under pars. (a) and (b), the sale is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of the sale is not in bad faith.

(d) If the location of a sale cannot be determined under pars. (a), (b), and (c), the sale is sourced to the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address to determine the location of the sale is not in bad faith.

(e) If the location of a sale cannot be determined under pars. (a), (b), (c), and (d), including the circumstance in which the seller has insufficient information to determine the locations under pars. (a), (b), (c), and (d), the location of the sale is sourced as follows:

1. If the item sold is tangible personal property or an item or property under s. 77.52 (1) (b) or (c), Stats., the sale is sourced to the location from which the tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., is shipped.

2. If the item sold is a digital good or computer software delivered electronically, the sale is sourced to the location from which the digital good or computer software was first available for transmission by the seller, not including any location that merely provided the digital transfer of the product sold.

3. If a service is sold, the sale is sourced to the location from which the service was provided.

(3) DIRECT MAIL. (a) A sale of direct mail is sourced to the location from which the direct mail was shipped if the purchaser does not provide to the seller any of the following:

1. The purchaser's direct pay permit.

2. An exemption certificate claiming direct mail.

3. Other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients.

(b) If the purchaser provides one of the items indicated in par. (a) 1. or 2., to the seller, the purchaser shall pay or remit to the department the tax imposed under s. 77.53, Stats., on all its purchases of direct mail for which the tax is due and the seller is relieved from liability for collecting the tax.

(c) If the purchaser provides delivery information as provided in par. (a) 3., the seller shall collect the tax according to that information, and in the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.

(d) An exemption certificate provided by the purchaser under par. (a) 2. remains in effect for all sales by the seller who received the exemption certificate to the purchaser who provided the exemption certificate, unless the purchaser revokes the exemption certificate in writing and provides such revocation to the seller.

(4) SOURCING LEASES, LICENSES, AND RENTALS. (a) *First or only payment.* Except as provided in pars. (c) and (e), for lease, license, and rental agreements that only require one payment and for the first payment on lease, license, and rental agreements that require more than one payment, the lease, license, or rental is sourced to the location where the purchaser receives the product, as follows:

1. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is received by the lessee or licensee at the lessor's or licensor's business location, the first or only payment is sourced to the lessor's or licensor's business location.

2. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is not received by the lessee or licensee at the lessor's or licensor's business location, the first or only payment is sourced to the location where the lessee or licensee or the lessee's or licensee's designated donee receives the product. This would include the location indicated by instructions known to the lessor or licensor for delivery to the lessee or licensee or the lessee's or licensee's designated donee. The delivery may be made by the lessor or licensor or by a shipping company hired by the lessee or licensee.

3. If the location cannot be determined under subds. 1. and 2., the first or only payment is sourced to the lessee's or licensee's address as indicated by the lessor's or licensor's business records, if the records are maintained in the ordinary course of the lessor's or licensor's business and if using that address to establish the location of the lease, license, or rental is not in bad faith.

4. If the location cannot be determined under subds. 1., 2., and 3., the first or only payment is sourced to the lessee's or licensee's address as obtained during the consummation of the lease, license, or rental, including the address indicated on the lessee's or licensee's payment instrument, if no other address is available and if using that address to determine the location of the lease, license, or rental is not in bad faith.

5. If the location cannot be determined under subds. 1., 2., 3., and 4., the first or only payment is sourced as follows:

a. For tangible personal property and items and property under s. 77.52 (1) (b) or (c), Stats., except for computer software delivered electronically, the first or only payment is sourced to the location from which the property or item was shipped.

b. For prewritten computer software delivered electronically and digital goods under s. 77.52 (1) (d), Stats., the first or only payment is sourced to the location from which the computer software or digital good was first available for transmission by the seller, but not including any location that merely provided the digital transfer of the product sold.

Example: Company A sells digital goods that it develops at its location in Wisconsin. Company A also has a server located outside Wisconsin from which Company A merely provides the digital transfer of the digital goods. The digital goods are first available for transmission from its Wisconsin location. Company A does not know the location to source the sale of digital goods under subds. 1. to 4. and therefore will source the sale under subd. 5. to the Wisconsin location. The sale cannot be sourced to the location of the server outside Wisconsin, because at that location, Company A merely provides the digital transfer of the digital good.

(b) *Subsequent periodic payments.* Except as provided in pars. (d) and (e), subsequent periodic payments on the lease, license, or rental of tangible personal property and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are sourced to the property's, item's, or good's primary location. The primary location is the address of the property, item, or good provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith.

(c) *Motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment.* Leases, licenses, and rentals of motor vehicles, trailers, semitrailers, and aircraft that are not transportation equipment are sourced to the primary location of such property as indicated by an address for the property that is provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith, and except that a lease, license, or rental that only requires one payment shall be sourced as provided in par. (a).

(d) *Intermittent use.* The sourcing of the lease, license, and rental payments as described in pars. (a) and (b), shall not be altered by any intermittent use of the property, item, or good at a different location.

Example: Company A leases laptop computers that are normally kept in State A and the lease payments are sourced to State A. However, when an employee is travelling and consulting with clients in other states, the employee brings the laptop computer to these other states. The intermittent use of the laptop computer in the other states does not affect the sourcing of these lease payments.

(e) *Transportation equipment.* Leases, licenses, and rentals of transportation equipment are sourced to the location determined in par. (a).

(5) FLORISTS. (a) 1. "Retail florist" is defined in s. 77.522 (5), Stats., to mean a person engaged in the business of selling cut flowers, floral arrangements, and potted plants and who prepares such flowers, floral arrangements, and potted plants. "Retail florist" does not include a person who sells cut flowers, floral arrangements, and potted plants primarily by mail or via the Internet.

2. A retailer who does not prepare and sell cut flowers, floral arrangements, and potted plants, such as a person who only takes orders for cut flowers, floral arrangements, and potted plants and then transmits those orders to a retail florist, is not a "retail florist."

(b) Except as provided in par. (c), sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services by florists are sourced the same as provided in sub. (2).

(c) Sales by a retail florist in which the retail florist receives an order from a customer and then transmits that order to a second retail florist who will prepare and deliver the order at the customer's direction are sourced to the location where the first retail florist received the order from the customer. The first retail florist that received the order from the customer must collect and remit the applicable Wisconsin sales or use taxes based on the location where that retail florist received the order from the customer. The sale from the second retail florist to the first retail florist is not subject to Wisconsin sales or use tax if the first retail florist provides the second retail florist an exemption certificate claiming resale.

Example: Retail Florist A located in Wisconsin receives an order from a customer, who wants the flowers delivered to a location in Kentucky. Retail Florist A contacts Retail Florist B, located in Kentucky, and has Retail Florist B prepare the order and deliver it to the location in Kentucky. This sale is sourced to Retail Florist A's location in Wisconsin.

(d) Sales by persons who are not retail florists but who take orders for cut flowers, floral arrangements, and potted plants from customers and transmit those orders to a person who is a retail florist are sourced as provided in sub. (2).

Note: Section Tax 11.945 interprets ss. 77.51 (11d) and 77.522, Stats.

Note: The interpretations under s. Tax 11.945 are effective beginning October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28.

SECTION 280. Tax 11.95(1)(a) is amended to read:

Tax 11.95(1)(a) Effective for Wisconsin sales and use tax returns filed for periods ending on or after January 1, 1997, for timely reporting state, county and stadium, and transit authority sales or use tax collected on their retail sales, ~~except as provided in par. (b)~~, retailers may deduct 0.5% of the sales and use tax payable on retail sales, except as provided in pars. (am), (b), and (c).

SECTION 281. Tax 11.95(1)(am) and (c) and (3)(d) are created to read:

Tax 11.95(1)(am) Effective for taxes payable on October 1, 2009 and thereafter, the retailer's discount that may be deducted on a sales and use tax return is limited to \$1,000 per reporting period.

(c) Certified service providers that receive compensation under s. 73.03 (61) (h), Stats., for the taxes reported on a return are not entitled to the retailer's discount on that return.

(3)(d) The certified service provider that is filing the sales and use tax return is receiving compensation under s. 73.03 (61) (h), Stats., with respect to the taxes reported on that return.

Note to LRB: Replace the notes at the end of Tax 11.95(3)(c) with the following:

Note: Section Tax 11.95 interprets ss. 77.61 (4) (c), 77.76 (3), (3m), (3p), and (3r), and 77.79, Stats.

Note: (a) The amount of retailer's discount on or after January 1, 1983 until December 31, 1992 was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use tax payable and 0.5% of the sales and use tax payable in excess of \$20,000 each year; (b) The requirement that county tax be remitted by dealers to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wis. Act 141; (c) The amount of retailer's discount for returns filed for periods ending on or after January 1, 1993 and before January 1, 1997, was 0.5% of sales and use tax payable on retail sales, pursuant to 1991 Wis. Act 269; (d) The amount of retailer's discount in sub. (1) became effective for returns filed for periods ending on or after January 1, 1997, pursuant to 1995 Wis. Act 280; (e) The limitation of the retailer's discount to \$1,000 per reporting period became effective for taxes payable on and after October 1, 2009, pursuant to 2009 Wis. Act 28; and (f) The provision prohibiting the retailer's discount on those returns filed by a certified service provider who receives other compensation became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 282. Tax 11.96(title), (1), and (2)(a) and (b) are amended to read:

Tax 11.96(title) Delivery of ordinance or resolution; county, stadium, transit authority, and premier resort area tax.

(1) **PURPOSE.** This section clarifies requirements for the timely delivery of county, stadium, and transit authority sales and use tax and premier resort area tax ordinances or resolutions to the secretary of revenue.

(2)(a) **Adoption of county tax ordinance.** Any Wisconsin county may impose county sales and use taxes and ~~any Wisconsin municipality or county wholly within a premier resort area under s. 66.1113, Stats., may impose a premier resort area tax,~~ by adopting an ordinance. Under ~~ss. s. 77.70 and 77.9941 (1),~~ Stats., a certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the ordinance may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(b) **Repeal of county tax ordinance.** Under ~~ss. s. 77.70 and 77.9941 (3),~~ Stats., a county ~~or municipality~~ described in par. (a) may repeal a county sales and use tax ~~or a premier resort area tax~~ by delivering a certified copy of the repeal ordinance to the secretary of revenue at least ~~60~~ 120 days before the effective date of the repeal. The effective date of the repeal may only be December 31.

SECTION 283. Tax 11.96(2)(c) to (h) are created to read:

(c) **Adoption of premier resort area tax ordinance.** Any Wisconsin municipality or county wholly within a premier resort area under s. 66.1113, Stats., may impose a premier resort area tax, by adopting an ordinance. Under s. 77.9941 (1), Stats., a certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the ordinance may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(d) **Repeal of premier resort area tax ordinance.** Under s. 77.9941 (3), Stats., a county or municipality described in par. (c) may repeal a premier resort area tax by delivering a certified copy of the repeal ordinance to the secretary of revenue at least 60 days before the effective date of the repeal. The effective date of the repeal may only be December 31.

(e) **Adoption of stadium tax resolution.** A baseball park district created under subch. III of ch. 229, Stats., or a football stadium district created under subch. IV of ch. 229, Stats., may impose a stadium district sales and use tax, by adopting a resolution. Under ss. 229.68 (15) and 229.824 (15), Stats., a certified copy of that resolution shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the ordinance may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(f) **Repeal of stadium tax resolution.** A baseball park district and a football stadium district described in par. (e) may repeal a baseball or football stadium district tax by delivering a certified copy of the repeal resolution to the secretary of revenue at least 120 days before the effective date of the repeal. The effective date of the repeal may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(g) *Adoption of transit authority resolution.* A transit authority created under s. 66.1039, Stats., may impose a transit authority sales and use tax, by adopting a resolution under s. 66.1039 (4) (s), Stats. Under s. 66.1039 (4) (s) 1., Stats., a certified copy of the resolution shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The effective date of the resolution may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

(h) *Repeal of transit authority resolution.* A transit authority described in par. (g) may repeal a transit authority tax by delivering a certified copy of the repeal resolution to the secretary of revenue at least 120 days before the effective date of the repeal. The effective date of the repeal may only be on the first day of January, the first day of April, the first day of July, or the first day of October.

SECTION 284. Tax 11.96(3) is amended to read:

Tax 11.96(3) DELIVERY OF ORDINANCE OR RESOLUTION. An ordinance or resolution referred to in s. 77.70 or 77.9941 (1) or (3), 229.68 (15), 229.824 (15), or 66.1039 (4) (s), Stats., is timely delivered to the secretary of revenue if, by the prescribed number of days before the effective date, any of the following occur:

(a) The ordinance or resolution is hand delivered to and received by the secretary of revenue.

(b) The ordinance or resolution is mailed in a properly addressed envelope with the postage duly prepaid, if the envelope is postmarked before midnight and the ordinance or resolution is received by the secretary of revenue within 5 days after the prescribed date.

(c) The ordinance or resolution is delivered by a carrier other than the U.S. postal service and the ordinance is received by the secretary of revenue.

Note to LRB: Replace the note at the end of Tax 11.96(3)(c) with the following:

Note: Section Tax 11.96 interprets ss. 66.1039 (4) (s), 77.70, 77.705, 77.706, 77.707, 77.708, 77.9941 (1) and (3), 229.68 (15), and 229.824 (15), Stats.

SECTION 285. Tax 11.97(1)(a) is amended to read:

Tax 11.97(1)(a) Out-of-state retailers shall register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14th Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property, or transaction it seeks to tax. If this minimum connection, often called "nexus," is established, the out-of-state seller shall register and collect the state's use tax.

SECTION 286. Tax 11.97(1)(b)8. is created to read:

Tax 11.97(1)(b)8. Quill Corp. vs. North Dakota, 504 U.S. 298 (1992).

SECTION 287. Tax 11.97(2)(a) and (3)(b) to (f) are amended to read:

Tax 11.97(2)(a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., situated in sourced to this state as provided under s. 77.522, Stats., and s. 77.51 (14) (j), Stats., defines a lease as a continuing sale.

(3)(b) Any retailer leasing or renting out any tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., located in sourced to this state under s. 77.522, Stats.

(c) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent, or other person, an office, place of distribution, sales or sample room, or place, warehouse, or storage place, or other place of business in this state.

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services.

(e) Any person servicing, repairing, or installing equipment or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., in Wisconsin.

(f) Any person delivering property, items, or goods into this state in company operated vehicles.

SECTION 288. Tax 11.97(3)(h) and (i) are created to read:

Tax 11.97(3)(h) Any retailer selling tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services for storage, use, or other consumption in Wisconsin, unless otherwise limited by federal law.

(i) Any person who has an affiliate in Wisconsin, if the person is related to the affiliate and if the affiliate uses facilities or employees in Wisconsin to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in Wisconsin or for providing services to the related person's purchasers in Wisconsin, including accepting returns of purchases or resolving customer complaints. For purposes of this paragraph, two persons are "related" if any of the following apply:

1. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50% of the corporation's outstanding stock value.

2. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the other person or both persons.

3. An individual stockholder and the members of the stockholder's family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of both persons' outstanding stock value.

SECTION 289. Tax 11.97(5)(a)4. and (6) are amended to read:

Tax 11.97(5)(a)4. Maintaining, occupying, and using, directly or by means of another person, a place in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

(6) REGISTRATION. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use, or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for ~~Permit/Certificate~~ Business Tax Registration," form A-404 BTR-101.

Notes to LRB: 1. Amend the note at the end of Tax 11.97(6) as follows:

Note: Form A-404 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.

2. Replace the second note at the end of Tax 11.97(8) with the following:

Note: The interpretations in s. Tax 11.97 are effective under the general sales tax law on and after September 1, 1969, except: (a) The provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wis. Act 336; (b) The provisions in pars. (3) (h) and (i) became effective October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28; 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 290. Tax 11.98(1)(intro.) and (d), (2)(c), and (3) are amended to read:

Tax 11.98(1)(intro.) The secretary may reduce the delinquent interest rate from 18% to 12% per year effective for all determinations, assessments, or other actions for additional tax made by the department on or after August 1, 1981, when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(d) Pays the sales and use taxes, reduced amount of interest, and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2)(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization, or other institutionalization.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule section is not appealable.

SECTION 291. Tax 11.985 is created to read:

Tax 11.985 Bundled transactions. (1) DEFINITIONS. In this section:

(a) 1. "Bundled transaction" means the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price.

2. "Bundled transaction" does not include any of the following:

a. The sale of any products for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction.

Example: Retailer A enters into a contract with Customer B to provide various information technology services. Customer B selects the information technology services it wants from Retailer A. Through negotiation, Retailer A and Customer B agree on a price based on the services selected and Retailer A bills Customer B one nonitemized price for all of the services. Since the price was based on the products selected by Customer B, the transaction is not a bundled transaction.

b. The retail sale of tangible personal property and a service, if the tangible personal property is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service. The Wisconsin sales and use tax treatment of this transaction would follow the tax treatment of the service provided.

c. The retail sale of a service and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., if such items, property, or goods are essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service. The Wisconsin sales and use tax treatment of this transaction would follow the tax treatment of the service provided.

d. The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and if the true object of the transaction is the second service. The Wisconsin sales and use tax treatment of this transaction would follow the tax treatment of the second service.

e. A transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10 percent of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both, or, in the case of a service contract, the full term of the service contract.

f. The retail sale of taxable tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that is exempt from the taxes imposed under this subchapter, if the transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies and if the seller's purchase price or the sales price of the taxable tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is no greater than 50 percent of the seller's total purchase price or sales price of all the tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., included in what would otherwise be a bundled transaction, as determined by the seller using either the seller's purchase price or the sales price, but not a combination of both.

(b) "Distinct and identifiable product" does not include any of the following:

1. a. Packaging, including containers, boxes, sacks, bags, bottles, and envelopes; and other materials, including wrapping, labels, tags, and instruction guides; that accompany, and are incidental or immaterial to, the retail sale of any product.

b. Packaging that is incidental or immaterial to the retail sale of a product includes grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

2. a. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction.

b. Products that are provided free of charge include a free car wash provided by a gas station with the purchase of 15 or more gallons of gas, a free place setting of dinnerware provided by a grocery store with the purchase \$50 or more in groceries, and a free cap provided by an auto parts store with the purchase of a case of motor oil.

3. a. Any items specified in the definition of "purchase price" in s. 77.51 (12m) (a), Stats., or "sales price" in s. 77.51 (15b) (a), Stats.

b. Items that are specified in the definition of "purchase price" and "sales price" include the cost of the property sold, the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, charges by the seller for any services necessary to complete the sale, delivery charges, and installation charges.

(c) 1. "One nonitemized price" does not include:

a. A price that is separately identified by product on a binding sales document, or other sales-related document, that is made available to the customer in paper or electronic form, including an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card, or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

Example: Retailer C enters into a contract with Customer D to provide various information technology services. Customer D selects the information technology services it wants from Retailer C. Through negotiation, Retailer C and Customer D agree on a price based on the services selected and Retailer C bills Customer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from Retailer C to Customer D only contains one price for all of the services, since the price was based on the products selected by Customer D, the price is not "one nonitemized price."

c. A single price that is equal to the total of the individually priced or itemized products contained in the supporting sales related documentation such as a catalog, price list, or service agreement.

2. If a transaction includes a bundle of products that are sold for one nonitemized price and also one or more additional products that were individually priced or itemized from the bundled products in a catalog or price list, but the invoice provided to the purchaser only

included one price, the additional products that were individually priced in the catalog or price list are not part of the bundled transaction.

3. If a transaction is not sold for one nonitemized price as provided in subds. 1 and 2., and the transaction is further discounted, without itemizing the discount for each product, this will not cause the transaction to now be characterized as a bundled transaction. Unless sales related documentation or information is provided to show the allocation of the discount, the discount is to be allocated pro rata among the otherwise separately itemized products.

(d) "Product" includes tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services. For purposes of this rule, "product" does not include real property or services to real property.

(2) TAXABLE RECEIPTS. (a) Except as provided in par. (b), the entire sales price of a bundled transaction is subject to Wisconsin sales or use tax.

(b) 1. 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.

2. The option provided to the retailer under subd. 1. does not apply to a bundled transaction that contains food and food ingredients as defined in s. 77.51 (3t), Stats., drugs as defined in s. 77.51 (3pj), Stats., durable medical equipment as defined in s. 77.51 (3pm), Stats., mobility-enhancing equipment as defined in s. 77.51 (7m), Stats., prosthetic devices as defined in s. 77.51 (11m), Stats., or medical supplies.

(3) NONTAXABLE RECEIPTS. The receipts from the following types of transactions are not subject to Wisconsin sales or use tax. Although these transactions would generally be thought of as being bundled transactions, since they meet certain specific conditions, they are excluded from the definition of a bundled transaction.

(a) The sales price received from sales of taxable products sold in what would be a bundled transaction, except that the sales price of the taxable products in the transaction are 10 percent or less of the seller's total sales price of all of the products in the transaction or the seller's total purchase price of the taxable products in the transaction are 10 percent or less of the seller's total purchase price of all of the products in the transaction. However, the first person combining the products shall pay the Wisconsin sales or use tax on their purchase price of the taxable items.

(b) If the transaction includes food and food ingredients as defined in s. 77.51 (3t), Stats., drugs as defined in s. 77.51 (3pj), Stats., durable medical equipment as defined in s. 77.51 (3pm), Stats., mobility-enhancing equipment as defined in s. 77.51 (7m), Stats., prosthetic devices as defined in s. 77.51 (11m), Stats., or medical supplies, the sales price received from sales of taxable products sold in what would be a bundled transaction, except that the sales price of the taxable products in the transaction are 50 percent or less of the seller's total sales price of all of the products in the transaction or the seller's total purchase price of the taxable products in the transaction are 50 percent or less of the seller's total purchase price of all of the products in the transaction.

Note: Section Tax 11.985 interprets ss. 77.51 (1f), (3pf), and (9p) and 77.52 (1), (2), (20), (21), (22), and (23), Stats.

Note: The interpretations in s. Tax 11.985 became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

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

Initial Regulatory Flexibility Analysis

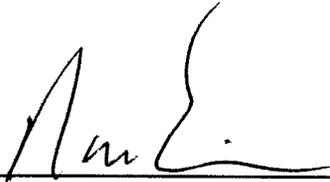
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

2/8/10

By: _____


Roger M. Ervin
Secretary of Revenue

E:Rules/Chapter 11 Proposed Order (v4)