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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

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* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

(c) *Repairs.* The sale or furnishing of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance ~~service~~ to exempt vehicles shall be exempt.

SECTION 73. Tax 11.16(1)(d) is renumbered 11.16(1)(d)(intro.) and amended as renumbered to read:

Tax 11.16(1)(d)(intro.) The exemption shall not apply to the following property used by common or contract carriers: ~~automobiles as defined in s. 340.01 (4), Stats., except an automobile registered as a truck, station wagons as defined in s. 340.01 (61), 1997 Stats., and self-propelled vehicles for off-highway use, such as road machinery, fork lifts and other industrial trucks.~~

SECTION 74. Tax 11.16(1)(d)1. and 2. are created to read:

Tax 11.16(1)(d)1. Automobiles as defined in s. 340.01 (4), Stats., except an automobile registered as a truck.

2. Self-propelled vehicles for off-highway use, such as road machinery, fork lifts, and other industrial trucks.

Note to LRB: Delete the note at the end of Tax 11.16(1)(d)2.

SECTION 75. Tax 11.16(1)(f) and (h), (2)(a) and (b)1. to 3., and (3)(a) and (b)3. are amended to read:

Tax 11.16(1)(f) *Conversion to private use.* If a vehicle purchased without tax is converted to private use, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) is due. The tax is measured by the sales price of the vehicle to the purchaser, ~~except that if the taxable use first occurs more than 6 months after the sale to the purchaser, the measure of the tax may be, at the purchaser's option, either the sales price or the vehicle's fair market value at the time the taxable use first occurs.~~

(h) *Occasional sales.* Motor carriers ~~shall not be~~ are not required to register as retailers with the department if ~~their gross receipts~~ the sales price from their sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services are \$1,000 or less within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services for resale without paying tax by issuing to their supplier a properly completed resale exemption certificate claiming resale or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

Note to LRB: Delete the third example at the end of Tax 11.16(1)(h), renumber the fourth and fifth examples to be the third and fourth examples, and amend the fourth example as renumbered as follows:

4) Towing of vehicles to the repair facility of a garage-wrecker operator is part of a private repair business which ~~that~~ is not exempt under par. (a).

(2)(a) Section 77.54 (12), Stats., provides a sales and use tax exemption for: "~~The gross receipts~~ the sales price from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor."

(b)1. The sale or furnishing of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance ~~service~~ to exempt rolling stock.

2. Purchases of any equipment ~~which~~ that is operated on railroad rails, including an industrial firm's switching locomotives used to switch freight cars on its own property, except vehicles ~~which~~ that may also be used on a highway.

3. Fuel used to heat a caboose, or run a compressor ~~which~~ that cools a railway car.

(3)(a) Section 77.54 (13), Stats., provides a sales and use tax exemption for: "~~The gross receipts~~ the sales price from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor."

(b)3. The sale or furnishing of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of exempt commercial vessels.

Notes to LRB: 1. Replace the first note at the end of Tax 11.16(3)(c) with the following:

Note: Section Tax 11.16 interprets ss. 77.54 (5) (b), (7) (a), (12), and (13), 77.55 (2m), and 77.57, Stats.

2. Amend the second note at the end of Tax 11.16(3)(c) as follows:

Note: The interpretations in s. Tax 11.16 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The sale of packing materials to a service provider became taxable effective September 1, 1983, pursuant to 1983 Wis. Act 27; and (b) The exemption for certain railroad crossties became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) Section 340.01(61), which defined "station wagon" was repealed pursuant to 1999 Wis. Act 80; (d) In *Freight Lime and Sand Hauling, Inc. v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, November 20, 2002 (CCH 400-646), trucks hauling property of others for hire were found to qualify for exemption, even though the property being hauled had no value; (e) Section 77.57, Stats., was amended to remove the portion of the statute that allowed a purchaser to use the lesser of the cost or fair market value of an item that was purchased exempt and whose first taxable use occurred more than 6 months after it was purchased, 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 76. Tax 11.17(1)(a) and (b), (2), (3), and (4)(a)(intro.), 1., and 2. are amended to read:

Tax 11.17(1)(a) Although professional personnel in hospitals and clinics and other members of medical professions including physicians, surgeons, oculists, optometrists, and

podiatrists regularly transfer antibiotics, bandages, splints, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to their patients in the performance of professional services, the transfer of that property, item or good is an incident of a service rather than a retail sale of the property, item or good. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics, and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., or and taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for ~~medicines~~ drugs furnished by a licensed physician, surgeon, or podiatrist to that person's patient for medical treatment. Section 77.54 ~~(22)~~ (22b), Stats., provides an exemption for durable medical appliances equipment for home use, mobility-enhancing equipment and prosthetic devices, and repair and replacement parts and accessories for such equipment or devices, if such equipment or devices are used by a human being. The scope of these exemptions is set forth in ss. Tax 11.08, 11.09, and 11.45.

(2) Purchases by hospitals, except hospital service insurance corporations under s. 613.80 (2), Stats., are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a ~~certificate~~ Certificate of exempt status Exempt Status, "CES", by the department. When purchasing property, items, goods and services, a hospital shall furnish its CES number to its supplier, and the supplier may then make sales of every type of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats., ~~or and~~ services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) Purchases made by physicians and medical clinics and physicians that do not hold a Certificate of Exempt Status, "CES," are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list shall be furnished to patients at the direction of a physician, surgeon, or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of the health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	*Antiembolism elastic hose and stockings, including parts and accessories
Alcoholic beverages	* Apparatus and equipment for treatment of diabetes
<u>Apparatus and equipment for treatment of diabetes</u>	*Artificial eyes and limbs, including parts and accessories
Bandages, gauze and cotton	*Blood sugar level testing supplies
Bed pans	Bone pins and plates, including parts and

	accessories
Beds and linens	*Crutches and wheel chairs, including motorized wheelchairs and scooters, including parts and accessories
Blankets	Diaphragms
Cold packs and hot packs	*Dietary feeds
Compresses and dressings	*Disposable syringes containing insulin
Cosmetics	Drugs
Deodorants and disinfectants	Dye
Distilled water	*Hearing aids and parts, including parts and accessories
Enema kits	Medical oxygen and equipment to administer oxygen
Instruments	Medicines
	*Needles and syringes used by diabetics
Laboratory equipment and supplies	Oral contraceptives
Medical equipment	Pacemakers, including parts and accessories
Needles and syringes	Prescription drugs
Office equipment and supplies	Prophylactics
Oxygen delivery equipment	Rubbing alcohol
Paper products	Suppositories
Printed material	Sutures
Rib belts and supports	Vaccines
Soda water beverages	Vaginal creams and jellies
Soap	Vitamins
Splints and cast materials	
Uniforms and gowns	
X-ray film and machines	

(4)(a)(intro.) The gross receipts sales price from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for rooms, medical services, and other items including charges for anesthesia and anesthesia supplies, bandages applied in the hospital, blood and blood plasma, dressings applied in the hospital, intravenous solutions, laboratory tests, oxygen, radiation, and x-ray treatment.

2. Hospitals' sales of ~~meals, food, food products and beverages~~ food and food ingredients, except soft drinks, to patients, staff or visitors ~~served on the hospitals' premises~~.

SECTION 77. Tax 11.17(4)(a)3. is created to read:

Tax 11.17(4)(a)3. Prepared food sold to the elderly or handicapped by persons providing mobile meals on wheels.

SECTION 78. Tax 11.17(4)(b)(intro.) and 3. to 6. are amended to read:

Tax 11.17(4)(b)(intro.) The ~~gross receipts~~ sales price from the sales of the following are taxable:

3. Sales of tangible personal property, ~~items, property, and goods~~ under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable service services by a clinic, which sales are not directly related to the rendition of medical services.

4. Sales of ~~meals prepared food~~ and other tangible personal property, ~~items, property, and goods~~ under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services by an organization affiliated with a hospital, except as provided in par. (a) 3.

Note to LRB: Amend the examples at the end of Tax 11.17(4)(b)4. as follows:

Examples: 1) If a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, and holds or is required to hold a seller's permit, ~~gross receipts from the sales by~~ this business are taxable.

2) Sales by a hospital auxiliary, which holds or is required to hold a seller's permit, of an emergency response system that links an individual to medical attention by pushing a button which transmits to a communicator connected to a telephone and sends an automatic call for help are taxable telecommunications message services.

5. Sales of ~~meals, food, food products and beverages~~ soft drinks by hospitals ~~off the hospitals' premises, except when sold to the elderly or handicapped by persons providing "mobile meals on wheels."~~

6. An optometrist's sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses, and other types of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., ordinarily taxable when sold at retail, unless the ~~gross receipts~~ sales price from those sales are less than \$1,000 ~~within a~~ during the calendar year. Optometrists whose receipts from taxable property, items, and goods equal or exceed \$1,000 annually in a calendar year shall register with the department and obtain a seller's permit. Those whose receipts from taxable property, items, and goods are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable property, items, or goods.

Notes to LRB: 1) Replace the first note at the end of Tax 11.17(5) with the following:

Note: Section Tax 11.17 interprets ss. 77.51 (3pj), (3pm), (7m), and (11m), 77.52 (1) and (2) (a) 1. and 9., and 77.54 (9a), (14), (14m), (14r), (20n), (22b), and (28), Stats.

2) Amend the third note at the end of Tax 11.17(5) as follows:

Note: The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for needles and syringes used by diabetics became effective November 19, 1975, pursuant to Ch. 102, Laws of 1975; (b) The exemption for oxygen equipment became effective September 1, 1983, pursuant to 1983 Wis. Act 27; (c) The exemption for motorized scooters became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for diabetic apparatus and equipment and supplies for determining blood sugar levels became effective March 1, 1989, pursuant to 1987 Wis. Act 399; (e) The exemption for antiembolism elastic hose and stockings prescribed by a physician became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The purchases by a hospital service insurance corporation under s. 613.80 (2), Stats., became taxable effective September 1, 1985, pursuant to 1985 Wis. Act 29; (g) The exemption for parts and accessories for certain medical equipment became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (h) The sales of meals by hospitals off the hospital's premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemptions for durable medical equipment for home use, mobility-enhancing equipment and prosthetic devices became exempt October 1, 2009 pursuant to 2009 Wis. Act 2; and (j) 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 79. Tax 11.18(2)(a)(intro.) and 1. to 3. are amended to read:

Tax 11.18(2)(a)(intro.) The ~~gross receipts~~ sales price from the following sales to dentists are exempt under s. 77.54 (14) or ~~(22)~~ (22b), Stats., when used for a human being:

1. Medicines Drugs, including nitrous oxide, oxygen, novocaine, toothpaste, and bone regeneration materials.

2. Gold, silver, amalgam, and other alloys used to fill teeth and cement and bonding agents used in conjunction with fillings.

3. Crowns, bridges, bridgework, dentures, inlays, fillings, and other items ~~fabricated by a dental laboratory~~, including parts and accessories for those items, which the dentist installs in the human patient's mouth.

SECTION 80. Tax 11.18(2)(a)4. is created to read:

Tax 11.18(2)(a)4. Bands, brackets, wire, space maintainers, positioners, and other items installed in a patient's mouth to prevent or correct a physical deformity or to support a weak or deformed portion of the body.

SECTION 81. Tax 11.18(2)(b) and (3)(a)(intro.) are amended to read:

Tax 11.18(2)(b) The items described in par. (a) include braces and other corrective and supporting devices individually designed or constructed for a particular patient, such as braces made by dental laboratories at the prescription of the orthodontist or dentist, and teeth, mouth and jaw braces and supports which are not fitted until the dentist puts them in a patient's mouth, but which are recognizable as fabricated supports at the time the dentist buys them.

(3)(a)(intro.) The ~~gross receipts~~ sales price from the following sales to dentists are taxable:

SECTION 82. Tax 11.18(3)(a)1. is repealed and recreated to read:

Tax 11.18(3)(a)1. Dental equipment and surgical instruments.

SECTION 83. Tax 11.18(3)(a)2. and (b) are amended to read:

Tax 11.18(3)(a)2. ~~Dental equipment, surgical instruments, office~~ Office equipment, office supplies, and consumable supplies used by dentists to conduct their business.

(b) Items included in par. (a) include tongue depressors, bandages, ~~cleaning paste,~~ tooth brushes, dental floss, and cotton.

Note to LRB: Replace the notes at the end of Tax 11.18(3)(b) with the following:

Note: Section Tax 11.18 interprets ss. 77.51 (3pj), (11m), (13) (e) and (f), and (15a), 77.52 (2m), and 77.54 (14) and (22b), Stats.

Note: The interpretations in s. Tax 11.18 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for parts and accessories for certain items became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (b) The term "gross receipts" was changed to "sales price" effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 84. Tax 11.19(1) and (2)(a) to (c) are amended to read:

Tax 11.19(1) GENERAL. All retail sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats., including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This section describes exemptions which commonly apply to sales of printed material.

(2)(a) Section 77.52 (2) (a) 11., Stats., imposes the sales and use tax on certain services. However, an exemption is provided for the printing or imprinting of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished by customers, which property will be subsequently transported outside Wisconsin by the consumer for advertising purposes that results in printed materials, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

(b) Section 77.54 (15), Stats., provides an exemption for the sale of newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats., of controlled circulation publications sold to commercial publishers for distribution without charge or mainly without charge or regularly distributed by or on behalf of publishers without charge or mainly without

charge to the recipient and of shoppers guides which distribute no less than 48 issues in a 12-month period.

(c) Section 77.54 (25), Stats., provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. This exemption does not include catalogs or the envelopes in which the catalogs are mailed.

SECTION 85. Tax 11.19(2)(cm) is created to read:

Tax 11.19(2)(cm) Section 77.54 (25m), Stats., provides an exemption for catalogs, as defined in s. 77.51 (1fr), Stats., and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

SECTION 86. Tax 11.19(2)(d), (e)2. and 4., and (f), (3)(c), and (4)(a) are amended to read:

Tax 11.19(2)(d) Section 77.54 (2m), Stats., provides an exemption for the "gross receipts sales price from the sales of and the storage, use or other consumption of tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred with charge to the recipient." This exemption applies to newspapers, shoppers guides and periodicals which are issued at average intervals not exceeding 3 months or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (8), Stats.

(e)2. The purchase from a printer of printing services or ~~tangible personal property of~~ printed materials in Wisconsin for the publisher.

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

(f) Section 77.54 (43), Stats., provides a sales and use tax exemption for raw materials used for the processing, fabricating, or manufacturing of, attaching to or incorporating into, printed materials that are transported and used solely outside Wisconsin.

(3)(c) The exemption for periodicals is limited to publications which are sold by subscription and which are regularly issued at average intervals not exceeding 3 months, or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats., each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To qualify for the exemption, the

publication must qualify for the ~~second-class mail~~ periodicals rate under U.S. postal laws and regulations or as a controlled circulation publication under ~~U.S. postal laws and regulations~~.

(4)(a) Printed advertising materials, ~~including catalogs and their mailing envelopes~~, may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54 (25), Stats., when those materials are purchased and stored for the purpose of subsequently transporting the same outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. ~~The~~ This exemption applies does not apply to catalogs designed to be used by a retailer's seller's potential customers. See sub. (5m) for information relating to an exemption for catalogs and the envelopes in which the catalogs are mailed.

SECTION 87. Tax 11.19(4)(b) is repealed and recreated to read:

Tax 11.19(4)(b) The exemption does not apply to printed advertising materials shipped to Wisconsin addresses, except for catalogs and the envelopes in which they are mailed, as provided in s. 77.54 (25m), Stats., parts stock order books, order forms, stocking and purchasing guides, stockholders' annual reports or proxy statements, display racks, 3-dimensional plastic items designed to be used by wholesalers and retailers, matchbooks, desk pads, golf balls, binders, and playing cards. It also does not apply to the following items if they are not designed to advertise or promote the sale of merchandise:

1. Calendars.
2. Calendar pads.
3. Envelopes.
4. Folders.
5. Parts price lists.

SECTION 88. Tax 11.19(5)(intro) and (a) are amended to read:

Tax 11.19(5)(intro.) Pursuant to s. 77.54 (43), Stats., Wisconsin sales and use tax is not imposed on raw materials if both of the following conditions are met:

(a) The raw materials are processed, fabricated, or manufactured into, attached to, or incorporated into printed materials.

SECTION 89. Tax 11.19(5m) is created to read:

Tax 11.19(5m) CATALOGS AND THEIR MAILING ENVELOPES. (a) Section 77.54 (25m), Stats., provides an exemption from Wisconsin sales and use tax for the sales price from the sale of and the storage, use, or other consumption of catalogs, and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

(b) "Catalog" is defined in s. 77.51 (1fr), Stats., to mean a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

SECTION 90. Tax 11.19(6) is amended to read:

Tax 11.19(6) **EXEMPT PURCHASERS.** Sales of printed material to federal and Wisconsin governmental units and any federally recognized American Indian tribe or band in Wisconsin, Wisconsin public schools, and certain nonprofit religious, charitable, educational, or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to federal and Wisconsin governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained or the governmental unit's certificate of exempt status number is recorded on the bill of sale. Sales to nonprofit organizations holding a certificate of exempt status can be shown to be exempt by recording the certificate of exempt status number on the bill of sale.

Note to LRB: Replace the notes at the end of Tax 11.19(6) with the following:

Note: Section Tax 11.19 interprets ss. 77.51 (1fr), (8) and (13h), 77.52 (1), (2) (a) 11., 77.54 (2m), (9a), (15), (25), (25m) and (43) and 77.55 (1), Stats.

Note: The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state in sub. (2) (a) became effective March 1, 1970; (b) The exemption for advertising materials used out-of-state in sub. (4) (a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1985 Wis. Act 149; (h) The provision for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336; (i) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (k) The exemption for periodicals sold by subscription by educational associations and corporations which are exempt under s. 77.54 (9a) (f), Stats., became effective December 1, 1997 pursuant to 1997 Wis. Act 27; (l) The exemption for catalogs became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (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 91. Subchapter IV of ch. Tax 11 (title) is amended to read:

Subchapter IV — Gross Receipts Sales Price

SECTION 92. Tax 11.26(title) and (1)(a) are amended to read:

Tax 11.26(title) **Other taxes in taxable gross receipts and sales price and purchase price.**

(1)(a) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats. sold at retail ~~often is~~ are subjected to many direct and indirect taxes prior to reaching a retailer. The taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. The tax may be imposed by Wisconsin, the federal government or a municipality.

SECTION 93. Tax 11.26(1)(b) is repealed and recreated to read:

Tax 11.26(1)(b) In determining the sales price or purchase price used to compute Wisconsin sales or use taxes, the treatment of a tax for sales tax purposes is identical to the treatment that applies for use tax purposes. The same taxes that are included or excluded from the sales price are also included or excluded from the purchase price.

SECTION 94. Tax 11.26(2)(title), (intro.), and (c), and (3)(title) are amended to read:

(2)(title) TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE AND PURCHASE PRICE.

(intro.) The following taxes are included in ~~a retailer's gross receipts and~~ the sales price and the purchase price, except as provided in sub. (3):

(c) Any federal stamp tax and manufacturer's or importer's excise tax not imposed directly on the purchaser. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel except motor fuel taxes refunded, tires, firearms, sporting goods and air or ship transportation.

Note to LRB: Amend the example at the end of Tax 11.26(2)(d) as follows:

Example: Fuel taxes are included in the price of fuel used in aircraft, boats and for other nonhighway use. The taxes are included in ~~gross receipts~~ the sales price.

(3)(title) TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE OR PURCHASE PRICE.

SECTION 95. Tax 11.26(3)(intro.) is repealed and recreated to read:

Tax 11.26(3)(intro.) Sections 77.51 (12m) (b) 3. and 77.51 (15b) (b) 3., Stats., exclude from the sales price and purchase price any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser. Therefore, the following taxes are excluded from the sales price or the purchase price if they are separately stated on the invoice, bill of sale, or similar document given to the purchaser:

SECTION 96. Tax 11.26(3)(b) is amended to read:

Tax 11.26(3)(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, ~~whether imposed upon the retailer or consumer, if that federal, state or municipal tax is measured by a percentage of sales price or gross~~

receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax.

Notes to LRB: 1. Amend the introduction to the examples at the end of Tax 11.26(3)(b) as follows:

Examples: Taxes which are not included in a retailer's ~~gross receipts~~ sales price, if they are separately stated on the invoice, bill of sale, or similar document given to the purchaser, include:

2. Amend the third example at the end of Tax 11.26(3)(b) as follows:

3) The county and, stadium and regional transit authority sales and use taxes imposed under s. 77.71, Stats.

3. Replace the notes at the end of Tax 11.26(3)(c) with the following:

Note: Section Tax 11.26 interprets s. 77.51 (12m) and (15b), Stats.

Note: The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (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; and (c) the regional transit authority taxes were authorized by 2009 Wis. Act 28.

SECTION 97. Tax 11.27(title) is amended to read:

Tax 11.27(title) ~~Insurance~~ Maintenance contracts, insurance, and warranties.

SECTION 98. Tax 11.27(1)(a) and (b) are renumbered 11.27(1)(b) and (c) and amended as renumbered to read:

Tax 11.27(1)(b) "Insurance" means a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(c) "Warranty" means a contract or agreement which promises indemnity against defects in tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sold.

SECTION 99. Tax 11.27(1)(a) is created to read:

Tax 11.27(1)(a) "Computer software maintenance contract" means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, computer software support services, or both.

SECTION 100. Tax 11.27(2) is amended to read:

Tax 11.27(2) RECEIPTS FROM INSURANCE. ~~Gross receipts~~ The sales price from the sale of insurance, except contracts under s. 77.52 (2) (a) 13m., Stats., are not subject to Wisconsin sales or use tax when separately stated on the invoice provided to the purchaser.

Note to LRB: Amend the second example at the end of Tax 11.27(2) as follows:

2) Company A rents a vehicle to Customer B for \$200. On the invoice, Company A shows a charge for vehicle rental of \$175 and a charge for insurance of \$25. The charge of \$175 is subject to Wisconsin sales or use tax. The \$25 charge for the insurance is not subject to tax since it is separately stated on the invoice provided to the purchaser.

SECTION 101. Tax 11.27(3) is repealed and recreated to read:

Tax 11.27(3) RECEIPTS FROM MAINTENANCE CONTRACTS AND WARRANTIES. Section 77.52 (2) (a) 13m., Stats., imposes Wisconsin sales tax on the sale of contracts, including service contracts, maintenance agreements, computer software maintenance contracts for prewritten computer software, and warranties, that provide, in whole or in part, for the future performance of or payment for the 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., unless the sale, license, lease, or rental in this state of the property, items, or goods to which the contract relates is or was exempt, to the purchaser of the contract, from taxation under subch. III of ch. 77, Stats.

Note to LRB: Amend the first 3 examples at the end of Tax 11.27(3) as follows:

1) Company A sells a machine to Customer C which will be used exclusively and directly in manufacturing. Customer C purchases an extended warranty with the machine. Customer C provides Company A with a properly completed ~~manufacturer's~~ exemption certificate. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the machine to which it relates is ~~not subject to~~ exempt from Wisconsin sales or use tax.

2) Customer D, a resident of Minnesota, purchases an automobile from a dealership in Wisconsin. Customer D makes no use of the automobile in Wisconsin other than to drive it to his home in Minnesota. Customer D purchases an extended warranty with the automobile. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the sale of the automobile is ~~not subject to~~ exempt from Wisconsin sales or use tax.

3) Assume the same facts as in Example 2, except that Customer D does not purchase the extended warranty at the time of sale of the automobile. Instead, six weeks after the sale, Customer D purchases the extended warranty from the dealer. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the automobile to which the sale relates was ~~not subject to~~ exempt from Wisconsin sales or use tax.

SECTION 102. Tax 11.27(4)(a) and (b)1. and 2., (5)(title), (a), and (c)1. and 2., (6), and (7) are amended to read:

Tax 11.27(4)(a) ~~Gross receipts~~ The sales price from charges by a retailer to a customer or an insurer for taxable repair parts or taxable services performed under an insurance plan are subject to Wisconsin sales or use tax.

(b)1. A retailer who provides parts or performs taxable repair services to tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under an insurance plan may purchase the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., in repairing real property under an insurance plan is the consumer of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred.

(5)(title) REPAIRS BY RETAILERS UNDER MAINTENANCE CONTRACTS AND WARRANTIES.

(a) ~~Gross receipts~~ The sales price from charges by a retailer to a customer for taxable repair parts or taxable services performed under a maintenance contract or warranty and that are not reimbursed by the seller of the maintenance contract or warranty are subject to Wisconsin sales or use tax.

(c) 1. A retailer who provides parts or performs taxable repair services to tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under a maintenance contract or warranty may purchase the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to the customer as part of the repair without Wisconsin sales or use tax as property, items, or goods for resale.

2. A person who provides tangible personal property or items or property, under s. 77.52 (1) (b) or (c), Stats., in repairing real property under a maintenance contract or warranty is the consumer of the tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property or items or property, under s. 77.52 (1) (b) or (c), Stats., transferred.

Note to LRB: Amend the note at the end of Tax 11.27(5)(c)2. as follows:

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.

(6) REPAIRS NOT BY RETAILERS. If a retailer does not repair tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under a maintenance contract, warranty, or insurance plan, but instead has another person perform the repairs covered under the maintenance contract, warranty, or insurance plan, the person's ~~gross receipts~~ sales price from the sale of the repair to the retailer ~~are is~~ not subject to Wisconsin sales or use tax provided the retailer gives the person a properly completed ~~resale exemption~~ certificate. The charge for repairs by the other person is exempt as a sale for resale whether or not the original sale of the property, item, or good to which the maintenance contract, warranty, or insurance plan relates occurred in Wisconsin. The sales and use tax treatment of the charge by the retailer to the customer or plan provider is the same as provided in subs. (4) and (5).

Note to LRB: Amend the note at the end of Tax 11.27(6) as follows:

Note: Refer to s. Tax 11.14 for information regarding exemption certificates, ~~including resale certificates.~~

(7) GOODWILL WORK. A retailer who provides free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, maintenance agreement, express warranty, or

insurance plan may purchase the parts without Wisconsin sales or use tax as property for resale.

Note to LRB: Replace the notes at the end of Tax 11.27(7) with the following:

Note: Section Tax 11.27 interprets ss. 77.51 (14) (intro.), (15b), 77.52 (2) (a) 10. and 13m., and 77.54 (8), Stats.

Note: The interpretations in s. Tax 11.27 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) the definitions in sub. (1) and the provisions in subs. (4) (b) 2. and (5) (c) 2. became effective on February 1, 1994; (b) The definition of computer software maintenance contract became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (c) The specific imposition of tax on maintenance contracts and extended warranties 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 103. Tax 11.28(1)(a) and (b) and (2)(a) and (b) are amended to read:

Tax 11.28(1)(a) Section 77.51(14) ~~(k)~~ (15a) (b) 2., Stats., provides that "sale," "sale sales, lease, or rental, for resale, sublease, or subrent" "retail sale," "sale at retail" or equivalent terms includes the does not include any sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a purchaser even though the property, items, or goods may be used or consumed by another person to whom the purchaser transfers the property, items, or goods without valuable consideration, such as gifts and other advertising specialties distributed gratis at no charge and apart from the sale of other tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services.

(b) Section 77.51 ~~(4)~~ (15b) (a), Stats., provides that "gross receipts sales price" means the total amount of the sale, lease or rental price from sales at retail of consideration, including cash, credit, property, and services, for which tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services are sold, licensed, leased or rented, valued in money, whether received in money or otherwise.

(2)(a) *General.* Persons who make gifts of taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or distribute tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., gratis at no charge to others are the consumers of the property, items, or goods and the tax shall apply to the gross receipts sales price from the sale of the property, items, or goods to persons making gifts. Taxable sales include sales of samples, advertising material, display cases, racks, and other similar marketing aids to manufacturers, distributors, jobbers, and wholesalers acquiring the property, items, or goods for the purpose of giving it to retailers for use in selling merchandise to customers.

(b) *Grand opening gifts.* A person who sells tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to a retailer who uses the property, items, or goods as gifts at a grand opening or similar event, such as an open house, celebrity appearance, or farm days, cannot accept a resale certificate in good faith if the seller is aware, or should be aware, of how the property will be used should charge the retailer the applicable Wisconsin sales or use tax, unless the retailer provides the seller with a fully completed exemption certificate at the time of the sale. In cases where a seller furnishes free property to a

retailer for use as gifts at a grand opening or similar event, the seller furnishing the property to the retailer without charge is subject to the sales or use tax on the property donated, unless the property is exempt from use tax under s. 77.56 (3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54 (9a), Stats.

SECTION 104. Tax 11.28(2)(c) is renumbered 11.28(2)(c)1. and amended as renumbered to read:

Tax 11.28(2)(c)1. The ~~gross receipts~~ sales price from the sale of a gift certificate ~~are is~~ not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, the transaction is completed and the retailer's tax liability accrues at that time.

Note to LRB: Insert the following example at the end of Tax 11.28(2)(c)1.:

Example: Retailer A sells Customer B a gift certificate that is valued at \$50. The gift certificate can be used to purchase any items that Retailer A sells. The sale of the gift certificate is not subject to Wisconsin sales tax.

SECTION 105. Tax 11.28(2)(c)2. is created to read:

Tax 11.28(2)(c)2. The sale of a certificate that entitles the holder of the certificate to redeem the certificate for a specific product follows the tax treatment of the product for which the certificate can be redeemed.

Note to LRB: Insert the following examples at the end of Tax 11.28(2)(c)2.:

Examples: 1) Retailer A sells Customer B a certificate that can be redeemed for a free radio. The sale of the certificate is subject to Wisconsin sales tax since a radio is subject to tax under s. 77.52 (1) (a), Stats.

2) Retailer X sells Customer Y a certificate that can be redeemed for 10 pounds of fresh fruit for human consumption. The sale of the certificate is not subject to Wisconsin sales tax since the sale of fresh fruit for human consumption is not subject to tax.

SECTION 106. Tax 11.28(2)(d) and (e) and (3)(a)(title) are amended to read:

Tax 11.28(2)(d) *Gifts shipped out-of-state.* When taxable property, items, or goods to be given as a gift ~~is are~~ purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to ~~an out-of-state person~~ a location outside Wisconsin, ~~gross receipts from the sale are the sales price is~~ not subject to the Wisconsin sales tax.

(e) *Awards.* Persons transferring tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to salespersons or distributors or both in redemption of awards, such as points, given under a sales incentive plan shall pay the tax on their purchases of the property, items, or goods.

Note to LRB: Amend the note at the end of Tax 11.28(2)(f) as follows:

Note: The amount subject to tax is the sales purchase price as described in s. Tax 11.32, ~~except that the fair market value may be used if the requirements of s. 77.57, Stats., are met.~~

(3)(a)(title) Coupons for free property, items, or goods issued and redeemable by a manufacturer or other third party.

SECTION 107. Tax 11.28(3)(a) is renumbered 11.28(3)(a)(intro.) and is amended as renumbered to read:

Tax 11.28(3)(a)(intro.) When a manufacturer's or other third party's coupons are distributed to consumers and subsequently are redeemed by a retailer for tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., without charge, the transfer of the property, items, or goods by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based, if taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is transferred, is the amount the manufacturer or other third party reimburses the retailer for the coupon, less any coupon handling fees ~~paid by the manufacturer.~~ , if the following conditions are met:

SECTION 108. Tax 11.28(3)(a)1. to 4. are created to read:

Tax 11.28(3)(a)1. The retailer receives consideration from a third party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

2. The retailer is obligated to pass the price reduction or discount on to the purchaser.

3. The amount of the consideration attributable to the sale is a fixed amount and the retailer is able to determine the amount at the time of the sale.

4. One of the following also applies:

a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim the price reduction or discount, if the coupon, certificate, or other documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse the retailer for the amount of the price reduction or discount.

b. The purchaser identifies himself or herself to the retailer as a member of a group or organization that may claim the price reduction or discount.

c. The retailer provides an invoice to the purchaser, or the purchaser presents a coupon, certificate, or other documentation to the retailer that identifies the price reduction or discount as a third party price reduction or discount.

SECTION 109. Tax 11.28(3)(b) and (c)1. and 2., (4)(b) and (c), (5)(b), (6), and (7) are amended to read:

Tax 11.28(3)(b) Cents-off coupons redeemable reimbursed by manufacturers and other third parties. A common arrangement between manufacturers or other third parties and retailers involves the use of cents-off coupons. The coupons are ~~distributed as part of a retailer's advertisements issued by manufacturers or other third parties~~ and are used by consumers toward the purchase of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. The retailer then is reimbursed by the manufacturer or other third party. In this situation, a the retailer's taxable ~~gross receipts include~~ sales price includes the amount ~~which the retailer is reimbursed and the amount paid by~~ receives from the customer presenting the coupon. The retailer's taxable sales price also includes the amount the retailer receives from

the manufacturer, less any coupon handling fees paid by the manufacturer to the retailer, if the conditions in par. (a) 1. to 4. are met.

(c)1. When a retailer distributes coupons which its customer may use to obtain free tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the following shall apply:

a. When purchasing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which will be given away to customers who must purchase other property, items, or goods to obtain the free property, item, or good, a retailer may not use a resale an exemption certificate to purchase the free property, item, or good without payment of the sales tax, ~~since the transaction is deemed a sale of both the free property and the other property. The sale of the free property and other property by the retailer is subject to Wisconsin sales or use tax, unless an exemption applies. The retailer is deemed the consumer of the free property as provided in s. 77.52 (21), Stats. If the free property, item, or good was acquired without tax for resale, the retailer shall report the tax on their purchase price of the property, item, or good.~~

Note to LRB: Insert the following note at the end of Tax 11.28 (3) (c) 1. a.:

Note: See s. Tax 11.985 for additional information concerning bundled transactions.

b. A retailer may not use ~~a resale an exemption~~ certificate when purchasing taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property, items, or goods to receive the free property, item, or good. If the property, item, or good that is given away was acquired without tax for resale, the retailer shall report the tax on the property, item, or good.

Note to LRB: Amend the examples at the end of Tax 11.28(3)(c)1.b. as follows:

Examples: 1) A retailer knows key chains it purchases will be given away to customers when those customers purchase gasoline, food items, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. The retailer may not purchase the key chains without Wisconsin sales tax ~~by giving a resale certificate to its supplier even though the retailer will only provide the key chain to those persons who also make some other required purchase.~~

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

2. The taxable ~~gross receipts~~ sales price of retailers, who issue cents-off coupons which reduce the price of merchandise they sell, and who receive no reimbursement from a manufacturer or other third party, are is the reduced ~~amounts~~ amount charged the customer.

(4)(b) A sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales

promotional agency are subject to the sales tax, if taxable property, items, goods, or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

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

Note to LRB: Amend the example at the end of Tax 11.28(4)(c) as follows:

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

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

(5)(b) A retailer's taxable ~~gross receipts~~ sales price may not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of the stamps.

(6) MANUFACTURER REBATES. A manufacturer's rebate to a person who purchases tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services from a retailer is not a reduction of the retailer's ~~gross receipts or sales price~~ or purchase price for the item for sales or use tax purposes.

Note to LRB: Amend the examples at the end of Tax 11.28(6) as follows:

Examples: 1) An automobile manufacturer gives an automobile dealer's customer a cash rebate of \$1,500 for an automobile purchased by a customer for \$15,000. ~~Taxable gross receipts~~ The taxable sales price of the dealer from the sale of the automobile ~~are~~ is \$15,000.

2) An automobile manufacturer gives an automobile dealer's customer the option of receiving a \$1,500 cash rebate or allowing the \$1,500 rebate to be applied against the price of the automobile (\$15,000) by assigning the right to the rebate to the dealer. The customer chooses to assign the rebate to the dealer and apply the rebate against the price paid for the automobile and pays the dealer \$13,500 (\$15,000 - \$1,500) for the automobile. The manufacturer subsequently reimburses the dealer \$1,500. ~~Taxable gross receipts of the dealer~~ The taxable sales price from the sale of the automobile ~~are~~ is \$15,000.

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

Notes to LRB: 1) Amend the example at the end of Tax 11.28(7) as follows:

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

2) Replace the notes at the end of Tax 11.28(7) with the following:

Note: Section Tax 11.28 interprets ss. 77.51 (1f), (3pf), (11d), (15a), and (15b), 77.52 (20) and (21), 77.54 (14) (f), 77.56 (3), and 77.57, Stats.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (c) Section 77.57, Stats., was amended to remove the portion of the statute that allowed a purchaser to use the lesser of the cost or fair market value of an item that was purchased exempt and whose first taxable use occurred more than 6 months after it was purchased, pursuant to 2009 Wis. Act 2; (d) The requirements for a third party reimbursement to be considered part of the sales price or purchase price of a product are effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (e) 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 110. Tax 11.29 is repealed and recreated to read:

Tax 11.29 Leases, licenses and rentals of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c), and (d), Stats. (1) DEFINITIONS. (a) "Lease or rental," as defined in s. 77.51 (7) (a), Stats., means any transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for a fixed or indeterminate term and for consideration and includes:

1. A transfer that includes future options to purchase or extend.
2. Agreements related to the transfer of possession or control of motor vehicles or trailers, if the amount of any consideration may be increased or decreased by reference to the amount realized on the sale or other disposition of such motor vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

(b) "Lease or rental," as defined in s. 77.51 (7) (a), Stats., does not include:

1. A transfer of possession or control of tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., after making all required payments.
2. A transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., under any agreement that requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or

(d), Stats., after making all required payments and after paying an option price that does not exceed the greater of \$100 or 1 percent of the total amount of the required payments.

3. Providing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., along with an operator, if the operator is necessary for the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(c) The definition of "lease or rental" provided in pars. (a) and (b) first applies to lease and rental contracts entered into on October 1, 2009 and has no effect on lease or rental contracts entered into prior to October 1, 2009 until such lease or rental contract is renewed, extended, or modified on or after October 1, 2009.

(d) "Receive" as provided 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., 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.

(e) "Transportation equipment" as provided 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, Stats., 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) GENERAL RULES. (a) The sales price from the lease, license, or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall be subject to the sales and use taxes to the same extent that the sales price from the sale of the same property, item, or good would be subject to the tax. A lease is a continuing sale in Wisconsin under s. 77.51 (14) (j), Stats., and a lessor or licensor shall pay tax on the lease, license, or rental receipts sourced to Wisconsin under s. 77.522, Stats., even though the property, item, or good may have been acquired, used, or both previously by the lessee or licensee in another state.

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

(b) 1. Transfers described in sub. (1) (a) are leases, licenses, or rentals regardless of whether such transfer is considered a lease, license, or rental under generally accepted accounting principles, or any other provision of federal, state, or local law.

2. Transfers described in sub. (1) (b) are not leases, licenses, or rentals, regardless of whether such transfer is considered a lease, license, or rental under generally accepted accounting principles, or any other provision of federal, state, or local law.

(c) 1. If a transaction does not meet the definition of "lease or rental" because title to the property, item, or good transfers to the lessor or licensor under a security or deferred payment plan upon completion of the required payments, the transaction shall be treated as a sale of the property, item, or good and the retailer is liable for the tax on the sales price at the time the property, item, or good is received by the purchaser.

2. The retailer may exclude from the sales price, as provided in s. 77.51 (15b) (b) 2., Stats., the interest and financing charges if they are separately stated on the invoice, bill of sale, or similar document that the retailer gives to the purchaser.

Example: Company A purchases a piece of equipment for \$10,000. On October 1, 2009, Company A enters into an agreement with Company B, whereas Company B will make 24 monthly payments of \$625 each, for a total of \$15,000, relating to the equipment. Company B receives the equipment on November 10, 2009. Once Company B makes the last payment, title to the equipment will transfer from Company A to Company B. Since title to the equipment transfers as soon as Company B makes the last payment, the transaction is not treated as a lease, but instead is treated as a sale. Therefore, Company A's purchase of the equipment may be made without any Wisconsin sales or use tax because it is for resale. Company A's charges to Company B (\$15,000) are subject to Wisconsin sales or use tax at the time Company B first receives the piece of equipment (November 10, 2009). Company A may exclude from tax that portion of the \$15,000 that is related to interest or financing charges if the amount of the interest or financing charges are separately stated on the invoice, bill of sale, or similar document provided by Company A to Company B.

3. If the retailer in a transaction described under subd. 1., has properly reported and paid to Wisconsin the tax due on its sales price from the transaction and the retailer has not excluded from the sales price an amount for interest or financing as described in subd. 2, if the retailer subsequently allows a reduction in the payments that must be made because the purchaser pays off the balance early, the retailer may claim a deduction on its sales and use tax return for this reduction in the sales price. The deduction is limited to the amount of the sales price that the retailer previously remitted tax on to Wisconsin.

Example: Company X enters into an agreement with Company Y that is not a lease or rental because it meets the requirements provided in subd. 1. The agreement provides that Company Y will provide 12 monthly payments of \$1,000. Based on this agreement, Company X reported and paid the 5% Wisconsin sales tax on the \$12,000. Company X did not separately state any amounts for interest or financing to Company Y and did not claim a deduction from the sales price related to that. After seven payments of \$1,000 have been made to Company X, Company Y decides that it is going to pay off the remaining amounts due. Company X indicates to Company Y that if it pays off the entire balance by a particular date, Company Y only needs to pay an additional \$4,700, instead of the full \$5,000 that is still due based on the agreement. Company Y pays the \$4,700 by the date required. Since Company X had previously reported the tax due based on the full \$12,000 at the time the agreement was entered into, Company X may claim the \$300 difference between the amount it previously reported as the taxable sales price on this transaction (\$12,000) and the discounted sales price of the transaction (\$11,700, made up of the \$7,000 in monthly payments and the \$4,700 early payoff amount). Company X would claim the deduction as a discount allowed.

4. If the property, item, or good to which subd. 1 applies is stored, used, or otherwise consumed in Wisconsin and then relocated to a location outside Wisconsin, no refund or partial refund of the Wisconsin tax paid is allowed since the transaction is treated as a "sale" and the property was first stored, used, or otherwise consumed in Wisconsin.

(d) 1. If a transaction does not meet the definition of "lease or rental" because title to the property, item, or good transfers to the lessor or licensor under an agreement that requires transferring title to the property, item, or good after all required payments have been made and after paying an option price that does not exceed the greater of \$100 or 1% of the total amount of the payments, the transaction shall be treated as a sale of the property, item, or good and the retailer is liable for the tax on the sales price at the time the property, item, or good is received by the purchaser.

2. The retailer may exclude from the sales price, as provided in s. 77.51 (15b) (b) 2., Stats., the interest and financing charges if they are separately stated on the invoice, bill of sale, or similar document that the retailer gives to the purchaser.

Example: Company C purchases a piece of equipment for \$20,000. On October 25, 2009, Company C enters into an agreement with Company D, whereas Company D will make 12 monthly payments of \$2,000 each, for a total of \$24,000, relating to the equipment. In addition, the agreement provides that after all of the \$2,000 payments have been made, Company D may pay an option price of \$200 and title to the equipment will be transferred to Company D. Company D receives the equipment on November 10, 2009. Since the agreement provides that title to the equipment will transfer to Company D if company D makes all the required payments and then pays an option price of \$200 (which is less than 1% of the total amount of the payments), the transaction is not treated as a lease, but instead is treated as a sale. Therefore, Company C's purchase of the equipment may be made without any Wisconsin sales or use tax because it is for resale. Company C's charges to Company D (\$24,200) are subject to Wisconsin sales or use tax at the time Company D first receives the piece of equipment (November 10, 2009). Company C may exclude from tax that portion of the \$24,200 that is related to interest or financing charges if the amount of the interest or financing charges are separately stated on the invoice, bill of sale, or similar document provided by Company C to Company D.

3. If the retailer in a transaction described under subd. 1., has properly reported and paid to Wisconsin the tax due on its sales price from the transaction and the retailer has not excluded from the sales price an amount for interest or financing as described in subd. 2, if the retailer subsequently allows a reduction in the payments that must be made because the purchaser pays off the balance early, the retailer may claim a deduction on its sales and use tax return for this reduction in the sales price. The deduction is limited to the amount of the sales price that the retailer previously remitted tax on to Wisconsin.

4. If the property, item, or good to which subd. 1 applies is stored, used, or otherwise consumed in Wisconsin and then relocated to a location outside Wisconsin, no refund or partial refund of the Wisconsin tax paid is allowed since the transaction is treated as a "sale" and the property was first stored, used, or otherwise consumed in Wisconsin.

(e) If a transaction constitutes a sale-leaseback transaction, the original sale of the property, item, or good to a purchaser may be made without tax for resale if that purchaser makes no taxable storage, use, or other consumption in Wisconsin of the property, item, or good prior to selling it. The sale of the property, item, or good from the first purchaser to a second purchaser (i.e., the person who will lease the equipment back to the first purchaser), may also be made without tax for resale if the second purchaser makes no taxable storage, use,

or other consumption in Wisconsin of the property, item, or good prior to selling, leasing, licensing, or renting the property, item, or good back to the first purchaser. If the transfer of that property, item, or good from the second purchaser back to the first purchaser meets the definition of lease or rental in s. 77.51 (7) (a), Stats., the tax will be due on each payment as described in par. (a). If the transfer of that property, item, or good from the second purchaser back to the first purchaser does not meet the definition of lease or rental in s. 77.51 (7) (a), Stats., the tax will be due on the sales price from the sale of the property, item, or good from the second purchaser back to the first purchaser, as described in pars. (b) to (d).

Example: Company F purchases a piece of equipment for \$20,000 from Company X. Prior to making any other use of the equipment, Company F sells the piece of equipment to Company G for \$20,000 and immediately enters into an agreement to "lease" it back from Company G based on 12 monthly payments of \$2,000 each. Based on the agreement, the "leasing back" of the equipment does not meet the definition of lease or rental contained in s. 77.51(7)(a), Stats., because title to the piece of equipment will transfer to Company F once Company F has made all of the required payments under the agreement to Company G. In this example, Company F may purchase the piece of equipment from Company X without tax because it is for resale. Company G may also purchase the piece of equipment from Company F without tax because it is for resale. However, since the agreement relating to the leaseback of the piece of equipment to Company F does not meet the definition of lease or rental contained in s. 77.51(7)(a), Stats., Company G is required to charge Wisconsin sales or use tax on the sales price of the piece of equipment (that is, the \$24,000 required under the agreement), to Company F. Company G may exclude from tax that portion of the \$24,000 required under the agreement that is related to interest or financing charges if the amount of the interest or financing charges are separately stated on the invoice, bill of sale, or similar document provided by Company G to Company F.

(3) PURCHASES FOR LEASE, LICENSE, OR RENTAL. (a) A lessor's or licensor's purchase of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., to be used solely for lease, license, or rental shall be exempt as a purchase for resale.

(b) A lessor's or licensor's purchase of lubricants, repair parts, and repair services for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., used solely for leasing, licensing, or renting shall also be exempt as a purchase for resale. However, if the same property, items, or goods are purchased by a lessee, licensee, or renter, the purchases shall be taxable.

(c) Charges by a lessor or licensor to a lessee, licensee, or renter under a maintenance contract on leased tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall be taxable.

(4) PROPERTY BOTH RENTED AND USED PERSONALLY. If tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are purchased by a person who uses them part of the time and leases, licenses, or rents them out part of the time, the sale of the property, item, or good to the person shall be taxable. The lessor's or licensor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(5) SERVICE VS. RENTAL OF EQUIPMENT. (a) 1. If an item of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is provided along with an operator that is necessary for the tangible personal property or item, property, or good to operate in the manner for which it is designed and does more than maintain, inspect, or set up the tangible personal property or item, property, or good, the transaction is considered a service

and not a lease, license, or rental of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats.

Example: A backhoe and operator are provided to dig a trench. This transaction is the sale of a service and not a rental of the backhoe.

2. The purchaser of tangible personal property or items, property, or goods that are used in a transaction described in subd. 1 to provide a service is the consumer of that property, item, or good.

3. The charge by the person providing the service described in subd. 1 is subject to Wisconsin sales and use tax if the service is specifically identified as a taxable service in s. 77.52, Stats.

Example: Company A provides a tractor with a rototiller attachment and an operator to till up the lawn area around Customer B's new home to prepare the seedbed for planting. Company A charges Customer B \$50 per hour for the use of the tractor and rototiller attachment and \$25 per hour for the operator. Since Company A is providing the tractor and rototiller along with the operator, this is not a lease or rental of the equipment, but instead is deemed to be a service. The charge by Company A to Customer B is subject to Wisconsin sales tax, since Company A is providing a landscaping service. Company A is also required to pay Wisconsin sales or use tax on its purchase of the tractor and rototiller used in providing the service.

(b) If an item of tangible personal property or item, property or good under s. 77.52 (1) (b), (c), or (d), Stats., is provided along with an operator that only maintains, inspects, or sets up the tangible personal property or item, property, or good, the transaction is considered a lease, license, or rental of the tangible personal property or item, property, or good.

Example: Company A rents scaffolding from Company B. Company B provides a person to set up the scaffolding as requested by Company A and to make sure none of the nuts and bolts holding the scaffolding together have loosened up. The entire charge by Company B to Company A is for the lease or rental of the scaffolding.

(c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks, this shall be considered a service and not a lease or rental of the trucks.

(d) The sales price from the lease, license, or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., incidental to the providing of a nontaxable service shall not be taxable. If the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is incidental to the providing of a nontaxable service, the tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., is consumed by the service provider and the service provider is required to pay any applicable sales or use tax.

(6) CREDIT FOR SALES TAX PAID. If a lessor of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., paid a Wisconsin sales tax on the acquisition of the property, item, or good used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or the department or may claim a credit against the tax due on rental receipts from the property, item, or good involved, under s. 77.585 (2), Stats. If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the vendor paid sales tax to Wisconsin.

(7) SOURCING LEASE, LICENSE AND RENTAL PAYMENTS. (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 subd. 1., 2., or 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 subd. 1., 2., 3. or 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 prewritten computer software, 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.

(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), (b), and (c) shall not be altered by any intermittent use of the property, item, or good at different locations.

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).

(6) SPECIAL RENTAL SITUATIONS. (a) *Demurrage.* The charge a gas supplier makes to a customer-consumer, because a gas cylinder is retained beyond a 30-day or other period, shall be taxable. The "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softeners.* The sales price from the rental of a cylinder type water softener which is periodically removed from a customer's premises for recharging and replaced by another unit shall be taxable.

(c) *Chemical toilets.* A lessor's entire charge for the use of chemical toilets used at fairs and other similar events shall be taxable, including cleaning services provided as part of the total charge.

(d) *Mobile homes and manufactured homes.* Rental of a mobile home as defined in s. 101.91 (10), Stats., and manufactured homes as defined in s. 101.91 (2), Stats., shall be taxable unless:

1. The mobile home or manufactured home is converted to real property by hooking it up to utilities and placing it on a foundation on land owned by the lessor. However, even if it is placed on a foundation and hooked up to utilities, a mobile home or manufactured home shall remain tangible personal property if the lessor does not own the realty on which it is located.

2. The mobile home as defined in s. 101.91 (10), Stats., or manufactured home as defined in s. 101.91 (2), Stats., is rented or leased for a continuous period of one month or more and is used as a residence by the renter or lessee.

(e) *Lease cancellation charge.* A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats., shall be taxable. The payment shall be deemed consideration arising from the original lease since it effectively decreases the term of the lease and thereby increases the rental payments for the actual period the property, item, or good was used.

(f) *Delivery and erection.* Lessors of scaffolding or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., who set forth separate charges for transportation, assembly, and disassembly shall pay tax on their total sales price. A lessee rents property, items, or goods when it is assembled and in place and the charges for transportation, assembly, and disassembly shall be deemed part of a lessor's rental receipts.

(g) *Funeral coaches.* The sales price that the owner of a hearse receives when the owner furnishes it without a driver, to a funeral director is subject to tax. However, the sales price the owner of a hearse receives when the owner furnishes it with a driver that does more than maintain, inspect, or set up the hearse is not subject to tax.

(h) *Waste reduction and recycling equipment.* The lease or rental of waste reduction or recycling machinery and equipment shall not be taxable if used exclusively and directly for waste reduction or recycling activities described in s. 77.54 (26m), Stats.

Note: For information regarding the lease or rental of highway vehicles and mobile mixing units, see s. Tax 11.79.

Note: Section Tax 11.29 interprets ss. 77.51(7), (13) (k), (14) (j), (15a), (15b), 77.52 (1), 77.522 (1) and (3), 77.54 (5) (b) and (d), (8), (26m) and (36), 77.58 (6), and 77.585 (2), Stats.

Note: The interpretations in s. Tax 11.29 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for mobile homes used for lodging for a continuous period of 1 month or more became effective July 1, 1984, pursuant to 1983 Wis. Act 341; (b) The exemption for the lease or rental of incidental property transferred in providing a nontaxable service became effective as a result of *Dept. of Revenue vs. Dow Jones & Company, Inc.*, (COA-District IV, 1/26/89); (c) The exemption for waste reduction and recycling equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (d) The definitions of "lease," "receive," and "transportation equipment" became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (e) The sourcing rules related to leases 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 111. Tax 11.30(1)(a) and (b) are amended to read:

Tax 11.30(1)(a) *Sales.* If taxable personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is are sold on credit, the entire amount of the retailer's gross receipts sales price from the sale shall be taxable and shall be reported in on the tax return for the period in which the sale is made, without any reduction in the amount of tax payable by the retailer by reason of the retailer's transfer at a discount of any open account, note, conditional sales contract, lease contract or other evidence of indebtedness. A sale involving the transfer of ownership of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., is completed at the time and place where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The location to which the sale is sourced is based on s. 77.522, Stats. The tax shall be reported ~~on taxable gross receipts~~ on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) *Repossessions.* No deduction from ~~gross receipts~~ the sales price shall be made if property, items, or goods sold on credit ~~is are~~ is repossessed unless the entire consideration paid

by the purchaser is refunded to the purchaser or a deduction for worthless accounts is allowable as a bad debt under s. ~~77.51 (4) (b) 4.~~ 77.585 (1), Stats.

SECTION 112. Tax 11.30(2) is repealed and recreated to read:

Tax 11.30(2) BAD DEBTS. (a) *Definition of Bad Debt.* "Bad debt" is defined in s. 77.585 (1) (a), Stats., to mean the portion of the sales price or purchase price that the seller has reported as taxable under this subchapter and that the seller may claim as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges, or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debts, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

(b) *Deduction from measure of tax.* A seller may claim as a deduction on a return under s. 77.58, Stats., the amount of any bad debt the seller writes off as uncollectible in the seller's books and records and that is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the seller is required to file a federal income tax return. Only a seller who has previously paid sales or use tax to this state on the accounts may claim the bad debt deduction. However, if a seller uses a certified service provider to file the returns and report the taxes due, the certified service provider may claim the bad debt deduction on the seller's behalf if the seller has not and will not claim the same deduction. In either case, the deduction shall be claimed on the return for the period in which the seller writes off the amount of the deduction as uncollectible and the amount is eligible to be deducted as a bad debt for federal income tax purposes. That period is defined as any time within the seller's fiscal or calendar year in which the account is written off. If the seller is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes, which later become worthless, received on the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., shall be treated in the same manner as other worthless accounts.

(c) *Recovery of bad debts charged off.* If any accounts found worthless and charged off as bad debts are thereafter in whole or in part collected by the seller, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return. The amounts recovered are first applied to the price of the property, item, good, or service and the proportionate share of the sales tax on that property, item, good, or service and then to interest, service charges and other charges related to the sale.

(d) *Amount deductible.* 1. 'Nontaxable receipts.' If an account found worthless and charged off as a bad debt is comprised in part of nontaxable receipts, such as interest, financing or insurance, and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied proportionately against the various charges comprising the amount the purchaser contracted to pay.

2. 'Expenses of collection'. No deduction is allowable for expenses incurred by the seller in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(e) *Special situations.* 1. A purchaser of receivables is not entitled to a bad debt deduction for the receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

3. A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., used to fulfill the construction contract.

4. A retailer permitted to report the sales price on the cash receipts basis may not claim a bad debt deduction.

(f) *Repossessions.* When property, items, or goods on which a receivable exists are repossessed, a bad debt deduction is allowable only to the extent that the seller sustains a net loss of the sales price upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, item, or good attributable to the cash sales price of the property, item, or good, is less than the cash sales price upon which sales or use tax was paid.

Example: At the time when the tax rate is 5%, a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$750. A down payment of \$2,150 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totaling \$6,800, the motor home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession due to rather extensive damage to the motor home. The deductible bad debt loss upon repossession of the motor home is computed as follows:

	Cash Sales Price	Sales Tax	Finance Charge	Total
1. Sales price and tax	\$15,000.00	\$750.00	-	\$15,750.00
2. Down payment allocation (1)	<u>2,047.62</u>	<u>102.38</u>	-	<u>2,150.00</u>
3. Balance to finance	\$12,952.38	\$647.62	-	\$13,600.00
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$12,952.38	\$647.62	\$1,360.00	\$14,960.00
6. Payments on contract (2)	<u>5,887.45</u>	<u>294.37</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance - date of repossession	\$7,064.93	\$353.25	\$741.82	\$8,160.00
8. Wholesale value of repossession (2)	<u>5,194.81</u>	<u>259.74</u>	<u>545.45</u>	<u>6,000.00</u>
9. Deductible loss	<u>\$1,870.12</u>			\$1,870.12
10. Nondeductible loss		<u>\$93.51</u>	<u>\$196.37</u>	289.88
11. Total loss				<u>\$2,160.00</u>
12. Percentage of sales price and tax (Line 1)	95.2381%	4.7619%		100%
13. Percentage of contract balance (Line 5)	86.5801%	4.3290%	9.0909%	100%

(1) The down payment on line 2 is allocated between the total cash sales price of the motor home and the sales tax thereon on the basis of the percentage of each to their total. The percentages are shown on line 12.

(2) The payments on the contract on line 6 and the wholesale value on the date of repossession of the property repossessed on line 8 are allocated on the basis of the contract balances on line 5. The percentages thereof are shown on line 13.

Note to LRB: Replace the notes at the end of Tax 11.30(3) with the following:

Note: Section Tax 11.30 interprets ss. 77.51 (14) (c), (15b), 77.52 (6), 77.522, 77.58 (6m), 77.585 (1), (4) and (8), Stats.

Note: The interpretations in s. Tax 11.30 are effective under the general sales and use tax law on and after September 1, 1969, except that (a) the 4% tax rate was increased to 5% on May 1, 1982; (b) The deduction for bad debts was revised effective October 1, 2009 pursuant to 2009 Wis. Act 2; 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 113. Tax 11.32(title), (1), (2), and (3)(a) to (c) are amended to read:

Tax 11.32(title) ~~"Gross receipts" and "sales price"~~ "Sales price" and "purchase price".

(1) GENERAL. The amount to which the sales and use tax rate is applied is ~~"gross receipts"~~ the "sales price" for sales tax and ~~"sales price"~~ the "purchase price" for use tax. Both ~~"gross receipts"~~ and ~~"sales price"~~ and ~~"purchase price"~~ mean the total amount of the consideration for the sale, license, lease or rental from retail sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, valued in money, whether received in money or otherwise.

(2) DELIVERY, HANDLING AND SERVICE CHARGES. A retailer's ~~gross receipts~~ from charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments, shipping, postage, crating, packing and similar charges for services related to retail sales, are included in ~~gross receipts~~ the sales price derived from the sale of taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services. Cancelled order charges are not taxable if there is no transfer of merchandise to a customer. For orders that include property and items that are subject to tax and property and items that are not subject to tax, the amount of the delivery charge that the seller allocates to the property and items subject to tax shall be based either upon the total sales price of property and items that are subject to tax as compared to the total sales price of all of the property and items included in the shipment or on the weight of the property and items subject to tax compared to the total weight of all of the property and items included in the shipment.

(3)(a) Cash discounts, term discounts and coupons that are not reimbursed by a third party and which are allowed by a retailer directly to customers reduce the gross receipts sales price subject to the tax. The customer must receive the discount for the retailer to exclude it from ~~gross receipts~~ the sales price.

(b) A retail cooperative's rebates to members, which are made after the net profit is determined at the end of a year, are patronage dividends rather than cash discounts, and are not deductible from the cooperative's ~~gross receipts~~ sales price.

(c) A manufacturer's cash rebate to a person who purchases tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services from a retailer is not a reduction in the retailer's ~~gross receipts or sales price~~ or purchase price for the item, regardless of whether the rebate is paid in cash or is used to reduce the selling price.

Note to LRB: Amend the example at the end of Tax 11.32(3)(c) as follows:

Example: An automobile is sold for a sticker price of \$18,000. The manufacturer offers a \$1,500 rebate with the purchase. Regardless of whether the customer pays the retailer \$18,000 and later receives \$1,500 from the manufacturer or the customer pays the retailer \$16,500 (\$18,000 sticker price less \$1,500 rebate), the retailer shall report a taxable gross receipts sales price of \$18,000 from the sale.

SECTION 114. Tax 11.32(3)(d) and (3m) are created to read:

Tax 11.32(3)(d) "Sales price" and "purchase price" include consideration paid by third parties if all of the following apply:

1. The seller actually receives consideration from a third party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.
2. The seller is obligated to pass the price reduction or discount to the purchaser.
3. The amount of the consideration that is attributable to the sale is a fixed amount and the seller is able to determine that amount at the time of the sale to the purchaser.
4. One of the following applies:
 - a. The purchaser presents a coupon, certificate or other documentation to the seller to claim the price reduction or discount, if the coupon, certificate or other documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse the seller for the amount of the price reduction or discount.
 - b. The purchaser identifies himself or herself to the seller as a member of a group or organization that may claim the price reduction or discount.
 - c. The seller provides an invoice to the purchaser, or the purchaser presents a coupon, certificate or other documentation to the seller that identifies the price reduction or discount as a third party price reduction or discount.

(3m) LEASE, LICENSE, AND RENTAL RECEIPTS. (a) The following charges related to the lease, license, or rental of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are also included in the "sales price" or "purchase price":

1. Personal property taxes, including any personal property tax administration fee, imposed on the lessor or licensor that are passed on to the lessee or licensee.

Example: Company A leases a piece of equipment to Company B. Taxing Authority C imposes property tax of \$125 on Company A on the piece of equipment that Company A is

leasing to Company B. The lease agreement provides that Company B is required to pay Company A the amount of property taxes imposed on Company A on that piece of equipment. Therefore, the \$125 payment that Company B is required to make to Company A for the property taxes imposed on the piece of equipment is part of the sales price subject to tax.

2. Contract documentation or administration fees.

3. Disposal and return fees.

Examples 1) Lessor X leases a motor vehicle to Company Y. As part of the lease agreement, Company Y agrees to pay Lessor X, at the end of the lease term, a fee to prepare the vehicle for sale. This disposition fee is to cover costs incurred by Lessor X for cleaning the motor vehicle, tuning up the vehicle and performing final maintenance on the vehicle before it is sold. The disposition fee is part of the "sales price" of the lease of the motor vehicle.

2) Lessor A leases laptop computers to Company B. As part of the lease agreement, Company B agrees to pay Lessor A a fee to remove all data from the hard drive of the laptop computer at the end of the lease term after Company B returns the computer to Lessor A. The fee charged by Lessor A to Company B for removing all of the data from the hard drive is part of the "sales price" of the lease of the laptop computer.

4. Service contract charges, warranty charges, and maintenance agreement charges.

(b) The following charges related to the lease, license, or rental of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are not included in the "sales price" or "purchase price" if they are separately stated on the invoice, bill of sale, or similar document provided to the lessee or licensee:

1. Personal property taxes imposed directly on the lessee or licensee.

Example: Company A leases a piece of equipment to Company B. Taxing Authority C imposes property tax of \$100 on Company B on that piece of equipment. The lease agreement provides that Company B is responsible for any property taxes imposed on that piece of equipment. Since the \$100 of property taxes are imposed directly on Company B, as opposed to being imposed on Company A, the property taxes imposed on the piece of equipment are not part of the sales price and are not subject to tax.

2. Title and registration fees.

3. Late payment fees that do not extend the term of the lease, license, or rental.

4. Returned check fees.

5. Insurance charges, including credit life and accident, casualty, theft, and loss, and gap insurance, as provided in s. 77.54 (8), Stats.

SECTION 115. Tax 11.32(4)(a)(intro.), (b), and (c) are amended to read:

Tax 11.32(4)(a)(intro.) Section ~~77.51 (4) (a) 4.~~ 77.585 (7), Stats., provides in part that "if a retailer establishes to the department's satisfaction ~~of the department~~ that the sales tax... has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of

the tax collected is not included in the base to which the tax applies. The notification may be by any one of the following methods:

Note to LRB: Amend the example at the end of Tax 11.32(4)(a)3. as follows:

Example: A tavern, located in a county which has a combined 5.5% Wisconsin state and county sales and use tax rate in effect, conspicuously posts a sign stating "Prices Include Sales Tax." The tavern's ~~gross receipts~~ sales price from sales of food and beverages are \$10,000 for the month. When filing its sales and use tax return, form ST-12, the tavern may deduct \$521.33 of sales tax to arrive at taxable receipts of \$9,478.67 ($\$10,000 \div 1.055 = \$9,478.67$). The tax payable by the tavern is determined by multiplying its taxable receipts times the tax rate ($\$9,478.67 \times .055 = \521.33 tax payable).

(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible using the straight mathematical computation described in sub. (5) (a) or under the bracket systems set forth in ~~sub. sub. (5) and (6) (b)~~, no part of the retailer's ~~gross receipts~~ sales price may be treated as tax collected from customers.

Note to LRB: Amend the example at the end of Tax 11.32(4)(b) as follows:

Example: A vending machine retailer whose only receipts are from sales of 5¢ items is unable to collect any sales tax from customers, and the tax applies to the total ~~gross receipts~~ sales price.

(c) If a vending machine retailer sells taxable property at a price such that a sales tax is collectible using either the straight mathematical computation described in sub. (5) (a) or under the bracket systems set forth in ~~sub. sub. (5) and (6) (b)~~, part of the ~~gross receipts~~ sales price from these sales shall include sales tax if customers are advised that the vending machine prices include sales tax.

SECTION 116. Tax 11.32(5) is repealed and recreated to read:

Tax 11.32(5) STRAIGHT MATHEMATICAL COMPUTATION. (a) A retailer shall determine the amount of tax due on a transaction by combining the applicable tax rates under subchs. III and V, Stats., and multiplying the combined rate times the sales price or purchase price of each item or the total invoice amount. The tax collectible from the customer shall be rounded to the nearest \$.01 by using the following rounding procedures:

1. For amounts less than \$.005, the amount shall be rounded down to the next lowest penny.

Examples: 1) Tax computed at \$.0849999 would be rounded down to \$.08.

2) Tax computed at \$3.2549 would be rounded down to \$3.25.

2. For amounts equal to or greater than \$.005, the amount shall be rounded up to the next highest penny.

Examples: 1) Tax computed at \$.085000 would be rounded up to \$.09.

2) Tax computed at \$6.455001 would be rounded up to \$6.46.

3) Retailer A sells Customer B three different taxable items in one transaction: Item 1's selling price is \$14.70, item 2's selling price is \$8.30, and item 3's selling price is \$7.10. The aggregate selling price of the taxable items is \$30.10. The tax on the invoice provided to the customer may either be calculated by multiplying the 5% tax rate by the selling price of each item individually $((\$14.70 \times 5\% = \$0.74) + (\$8.30 \times 5\% = \$0.42) + (\$7.10 \times 5\% = \$0.36) = \$1.52)$ or by multiplying the 5% tax rate by the aggregate selling price $(\$30.10 \times 5\% = \$1.51)$.

(b) The following bracket systems represent straight mathematical computations that comply with s. 77.61 (3m), Stats., and may be used by a retailer to determine the amount of tax due on a transaction. When using the bracket system, a retailer shall determine the amount of tax due on a transaction using either the sales price of each item or the total invoice amount.

1. In locations with no county or stadium district taxes the following bracket system may be used.

<u>Amount of Taxable Sale</u>			<u>5% Tax Collectible</u>
\$.01	to	\$.09	0¢
.10	to	.29	1¢
.30	to	.49	2¢
.50	to	.69	3¢
.70	to	.89	4¢
.90	to	1.09	5¢

On sales exceeding \$1.00, the state tax equals 5¢ for each full dollar of sales, plus the tax shown above for the applicable fractional part of a dollar.

2. In counties having a county tax, but no stadium tax, the following bracket system may be used.

<u>Amount of Taxable Sale</u>			<u>Combined State and County Tax of 5.5%</u>
\$.01	To	\$.09	0¢
.10	To	.27	1¢
.28	To	.45	2¢
.46	To	.63	3¢
.64	To	.81	4¢
.82	To	.99	5¢
1.00	To	1.18	6¢
1.19	To	1.36	7¢
1.37	To	1.54	8¢
1.55	To	1.72	9¢
1.73	To	1.90	10¢
1.91	To	2.09	11¢

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2.00.

Example: For a sale of \$11.50, the 5.5% tax is 63¢, consisting of 55¢ for \$10.00 of sales plus 8¢ for \$1.50 of sales.

3. In counties having a stadium tax, but no county tax, the following bracket system may be used.

<u>Amount of Taxable Sale</u>	<u>Combined State and</u>
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Stadium Tax of 5.1%

\$.01	to	\$.09	0¢
.10	to	.29	1¢
.30	to	.49	2¢
.50	to	.68	3¢
.69	to	.88	4¢
.89	to	1.07	5¢
1.08	to	1.27	6¢
1.28	to	1.47	7¢
1.48	to	1.66	8¢
1.67	to	1.86	9¢
1.87	to	2.05	10¢
2.06	to	2.25	11¢
2.26	to	2.45	12¢
2.46	to	2.64	13¢
2.65	to	2.84	14¢
2.85	to	3.03	15¢
3.04	to	3.23	16¢
3.24	to	3.43	17¢
3.44	to	3.62	18¢
3.63	to	3.82	19¢
3.83	to	4.01	20¢
4.02	to	4.21	21¢
4.22	to	4.41	22¢
4.42	to	4.60	23¢
4.61	to	4.80	24¢
4.81	to	4.99	25¢
5.00	to	5.19	26¢
5.20	to	5.39	27¢
5.40	to	5.58	28¢
5.59	to	5.78	29¢

Amount of Taxable Sale

Combined State and
Stadium Tax of 5.1%

5.79	to	5.98	30¢
5.99	to	6.17	31¢
6.18	to	6.37	32¢
6.38	to	6.56	33¢
6.57	to	6.76	34¢
6.77	to	6.96	35¢
6.97	to	7.15	36¢
7.16	to	7.35	37¢
7.36	to	7.54	38¢
7.55	to	7.74	39¢
7.75	to	7.94	40¢
7.95	to	8.13	41¢
8.14	to	8.33	42¢
8.34	to	8.52	43¢
8.53	to	8.72	44¢
8.73	to	8.92	45¢
8.93	to	9.11	46¢
9.12	to	9.31	47¢
9.32	to	9.50	48¢
9.51	to	9.70	49¢

9.71	to	9.90	50¢
9.91	to	10.09	51¢

The state and stadium tax equals 51¢ for each \$10.00 of sales, plus the tax shown above for the fractional part of \$10.00.

4. In counties having a county tax and a stadium tax, the following bracket system may be used.

<u>Amount of Taxable Sale</u>		<u>Combined State, County and Stadium Tax of 5.6%</u>
\$.01	to \$.08	0¢
.09	to .26	1¢
.27	to .44	2¢
.45	to .62	3¢
.63	to .80	4¢
.81	to .98	5¢
.99	to 1.16	6¢
1.17	to 1.33	7¢
1.34	to 1.51	8¢
1.52	to 1.69	9¢
1.70	to 1.87	10¢
1.88	to 2.05	11¢
2.06	to 2.23	12¢
2.24	to 2.41	13¢
2.42	to 2.58	14¢
2.59	to 2.76	15¢
2.77	to 2.94	16¢
2.95	to 3.12	17¢
3.13	to 3.30	18¢
3.31	to 3.48	19¢
3.49	to 3.66	20¢
3.67	to 3.83	21¢
3.84	to 4.01	22¢
4.02	to 4.19	23¢
4.20	to 4.37	24¢
4.38	to 4.55	25¢
4.56	to 4.73	26¢
<u>Amount of Taxable Sale</u>		<u>Combined State, County and Stadium Tax of 5.6%</u>
4.74	to 4.91	27¢
4.92	to 5.08	28¢
5.09	to 5.26	29¢
5.27	to 5.44	30¢
5.45	to 5.62	31¢
5.63	to 5.80	32¢
5.81	to 5.98	33¢
5.99	to 6.16	34¢
6.17	to 6.33	35¢
6.34	to 6.51	36¢
6.52	to 6.69	37¢
6.70	to 6.87	38¢
6.88	to 7.05	39¢
7.06	to 7.23	40¢

7.24	to	7.41	41¢
7.42	to	7.58	42¢
7.59	to	7.76	43¢
7.77	to	7.94	44¢
7.95	to	8.12	45¢
8.13	to	8.30	46¢
8.31	to	8.48	47¢
8.49	to	8.66	48¢
8.67	to	8.83	49¢
8.84	to	9.01	50¢
9.02	to	9.19	51¢
9.20	to	9.37	52¢
9.38	to	9.55	53¢
9.56	to	9.73	54¢
9.74	to	9.91	55¢
9.92	to	10.08	56¢

The state, county and stadium tax equals 56¢ for each \$10.00 of sales, plus the tax shown above for the fractional part of \$10.00.

(c) The gross sales and use tax payable by a retailer on retail sales is the total of the applicable tax rates under ss. 77.52 (1) and (2), 77.53 (3) and (9m) and 77.71, Stats., times the retailer's taxable sales price, regardless of the amount of tax collected from customers.

SECTION 117. Tax 11.32(6) is repealed

SECTION 118. Tax 11.32(7) is renumbered 11.32(6) and amended as renumbered to read:

Tax 11.32(6) EXCHANGING TANGIBLE PERSONAL PROPERTY OR ITEMS, PROPERTY, OR GOODS UNDER S. 77.52 (1) (B), (C), OR (D), STATS. ~~Taxable gross receipts include~~ The taxable sales price includes the exchange of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for taxable or nontaxable services, realty, or intangibles if the person providing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., receives gross receipts or the sales price or purchase price valued in money, whether received in money or otherwise.

Note to LRB: Amend the example at the end of Tax 11.32(6) as follows:

Example: A restaurant operator exchanges meals having retail price of \$100 for radio or television advertising which has an established price of \$100 for this type of advertising service. The restaurant operator and the radio or television station each have to report gross receipts the sales price of \$100 as a result of the transaction.

SECTION 119. Tax 11.32(7) is created to read:

Tax 11.32(7) MANUFACTURED HOMES. The sales price and purchase price do not include 35% of the amount from the sale of a new manufactured home as defined in s. 101.91 (11), Stats., not including leases and rentals.

SECTION 120. Tax 11.32(8) is repealed

SECTION 121. Tax 11.32(9) is renumbered 11.32(8) and amended as renumbered to read:

Tax 11.32(8) ~~MANUFACTURED-BUILDINGS~~ MODULAR HOMES. (a) ~~Gross receipts and The sales price and purchase price~~ from the sale of a ~~"manufactured building,"~~ "modular home," as defined in s. 101.71 (6), Stats., that is tangible personal property when sold, may be reduced by one of the following:

1. 35% of the sales price.
2. An amount equal to the sales price minus the cost of the materials that become an ingredient or component part of the ~~manufactured building~~ modular home.

(b) No credit is allowed for trade-ins if ~~gross receipts or the sales price or purchase price~~ are is reduced under par. (a).

(c) Once a retailer reduces ~~gross receipts or the sales price or purchase price~~ by the amount in par. (a) 1. or 2., the retailer shall continue to use that method of reduction for all sales of ~~manufactured buildings~~ modular homes, that are tangible personal property when sold, until such time as the department approves in writing the use of the other method.

Notes to LRB: 1) Amend the example at the end of Tax 11.32(8)(c) as follows:

Example: Building Manufacturer sells a ~~manufactured building~~ modular home, as defined in s. 101.71 (6), Stats., in Wisconsin to Dealer. Dealer will affix the ~~manufactured building modular home~~ to real property in Wisconsin for Customer under a contract between Dealer and Customer. This is the first ~~manufactured building modular home~~, as defined in s. 101.71 (6), Stats., sold by Building Manufacturer pursuant to a contract entered into on or after December 1, 1997. Additional facts are as follows:

□ \$40,000 is the cost of materials purchased by Building Manufacturer that become an ingredient or component part of the ~~manufactured building~~ modular home.

□ \$65,000 is the sales price of the ~~manufactured building~~ modular home by Building Manufacturer to Dealer.

The amount subject to sales tax on the sale of the ~~manufactured building~~ modular home to Dealer is one of the following:

- (1) \$42,250, which is the \$65,000 sales price reduced by \$22,750 (35% of the sales price).
- (2) \$40,000, which is the \$65,000 sales price reduced by \$25,000 (the sales price minus the cost of materials).

If Building Manufacturer chooses the method under (1) for computing ~~gross receipts~~ the sales price from the sale of this ~~manufactured building~~ modular home, it must use the method under (1) for computing ~~gross receipts~~ the sales price from all future sales of ~~manufactured buildings~~ modular homes, until the department approves in writing the use of the method under (2).

2) Replace the notes at the end of Tax 11.32(8)(c) with the following:

Note: Section Tax 11.32 interprets ss. 77.51 (12m) (a) (intro.) and 2., 3. and 4., (b) 1., 5., 7. and 8. and (c), (15a), (15b) (a) (intro.), 2., 3., and 4. (b) 1., 5., 7. and 8. and (c), 77.54 (8), 77.585 (7), and 77.61 (3m), Stats.

Note: The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (d) The reduction of gross receipts and sales price for sales of manufactured buildings, as defined in s. 101.71 (6), Stats., became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The term "manufactured building" was changed to "modular home" and the term "mobile home" was changed to "manufactured home" effective January 1, 2008 pursuant to 2007 Wis. Act 11; 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 122. Tax 11.33(2), (4)(a) to (d), (f), and (g), and (5)(b) to (d) and (f) are amended to read:

Tax 11.33(2) **GENERAL.** Sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services are not taxable if they are exempt "occasional sales." However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

(4)(a) ~~Auction sales~~ Five or fewer auctions that are the sale of personal farm property or household goods which are not held at regular intervals and that are held by the same auctioneer at the same location during the year. For indoor locations, "location" means a building, except that in the case of a shopping center or shopping mall, "location" means a store.

(b) Sales by a sole proprietor, who holds or is required to hold a seller's permit, of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which has not been used in the course of the person's business and is the sales are not the type of property, items, or goods sold in the course of the person's business. However, all tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., sold by a corporation or partnership which holds or is required to hold a seller's permit shall be considered to be used or sold in the course of the organization's business activities and is are taxable.

Note to LRB: Amend the example at the end of Tax 11.33(4)(b) as follows:

Example: A taxpayer operates a service station as a sole proprietor and holds a seller's permit for the purpose of selling cigarettes and repairing motor vehicles. The gross receipts sales price from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the gross receipts sales price from the sale of a desk and refrigerator which were used in the service station's business activities are subject to the sales tax.

(c) The transfer of a motor vehicle, boat, snowmobile, ~~mobile home not exceeding 45 feet in length~~ recreational vehicle, as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle or aircraft to a spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law, of the transferor provided the property has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property.

(d) The transfer of a motor vehicle from the transferor's individual ownership to a corporation owned solely by the transferor or the transferor's spouse, provided the motor vehicle has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property. Transferor for purposes of this paragraph means a natural person.

(f) The sale of a business or business assets, not including inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services as provided in s. 77.51 (9) (a) and (am), Stats.

(g) The sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services by a person who does not otherwise hold and is not required to hold a seller's permit, if the total taxable ~~gross receipts~~ sales price from sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services are less than \$1,000 during the calendar year. However, purchases of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person. This paragraph does not apply to nonprofit organizations.

Note to LRB: Amend the examples at the end of Tax 11.33(4)(g) as follows:

Examples: 1) If the ~~gross receipts~~ sales price from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (g). However, purchases by the seller of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which are sold are taxable.

2) Sales of soft drinks by employee groups are not taxable if the ~~gross receipts~~ sales price from soft drink sales ~~do~~ does not exceed \$1,000 per year. These groups are deemed consumers and a the supplier's sales to them are taxable retail sales.

(5)(b) ~~The sale~~ Sales of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the ~~gross receipts~~ sales price reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

(c) ~~The sale~~ Sales of motor vehicles, aircraft, boats, ~~mobile homes not exceeding 45 feet in length~~ recreational vehicles as defined in s. 340.01 (48r), Stats., snowmobiles, trailers, semitrailers and all-terrain vehicles. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, ~~mobile home not exceeding 45 feet in length~~ recreational vehicle as defined in s. 340.01 (48r), Stats., snowmobile, trailer, semitrailer or all-terrain vehicle is registered or titled within Wisconsin.

(d) ~~A sale~~ Sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of this property.

(f) ~~A sale~~ Sales by persons engaged primarily in the business of making nontaxable sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., such as manufacturers and wholesalers. Since these persons are in the business of selling tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

Note to LRB: Replace the second note at the end of Tax 11.33(5)(f) with the following:

Note: The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3) (b) became effective March 1, 1979; (b) Non-retailer sales of all-terrain vehicles as described in sub. (4) (c) became taxable and the sale of an all-terrain vehicle as described in sub. (3) (c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for the sale of a business or business assets in sub. (3) (e) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; (d) The exemption for transfers of motor vehicles, boats, etc., to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (e) The occasional sales exemption for 5 or fewer auctions became effective January 1, 2000, pursuant to 1999 Wis. Act 9; (f) The term "mobile home" was changed to "recreational vehicle, as defined in s. 340.01 (48r), Stats." effective January 1, 2008, pursuant to 2007 Wis. Act 11; 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 123. Tax 11.34(2)(a), (3)(b)1. and 2., (4)(a), and (5)(c) are amended to read:

Tax 11.34(2)(a) The sale of business assets, consisting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., by a person who holds or is required to hold a seller's permit at the time of the sale is subject to sales tax, except as provided in sub. (3) (c).

(3)(b)1. The sale is of personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., other than inventory held for sale, previously used by a person to conduct a trade or business at a location.

2. The sale occurs after the person ceased actively operating the business in the regular course of business as a seller of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services at that location.

(4)(a) Retailers may personally deliver their seller's permits to a representative of the department's income, sales, ~~inheritance~~ and excise tax division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(5)(c) The fact that a business ceases operating and no longer conducts its day-to-day sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services may not result in the automatic cancellation of a seller's permit.

Note to LRB: Replace the third note at the end of Tax 11.34(5)(c) with the following:

Note: The interpretations in s. Tax 11.34 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The procedure in sub. (3) became effective

May 4, 1976, and reflects the Wisconsin supreme court's decision in *Three Lions Supper Club, Ltd. vs. Dept. of Revenue* (May 4, 1976), 72 Wis. 2d 546; (b) The exemption described in sub. (2) (b) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; (c) The requirement that a person surrender its seller's permit within 10 days after the last sale of tangible personal property for the sale of business assets to qualify as an occasional sale was repealed effective August 12, 1993, pursuant to 1993 Wis. Act 16; 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 124. Tax 11.35(2)(b) is amended to read:

Tax 11.35(2)(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than ~~\$300~~ \$500 per event by all persons for performing, for reimbursement of expenses or for prize money.

SECTION 125. Tax 11.35(2)(c) is repealed

SECTION 126. Tax 11.35(2)(d) is renumbered 11.35(2)(c) and amended as renumbered to read:

Tax 11.35(2)(c) "Nonprofit organization" includes a neighborhood association, church, civic group, garden club, social club or similar organization not operated or organized for profit where no part of the net income inures to the benefit of any private shareholder or individual. A governmental unit described in s. 77.54 (9a) ~~(a) through (e)~~, Stats., is considered a "similar organization" for purposes of this paragraph.

SECTION 127. Tax 11.35(2)(d) is created to read:

Tax 11.35(2)(d) "Sales price" means sales price as defined in s. 77.51 (15b), Stats., from all sales in Wisconsin of otherwise taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and services after subtracting allowable exemptions.

SECTION 128. Tax 11.35(3), (4)(c), (5)(a) and (b), (6)(b), (7)(d), and (8) are amended to read:

Tax 11.35(3) GENERAL. A nonprofit organization shall charge Wisconsin sales tax on sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to gross receipts the sales price from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(4)(c) The organization does not have ~~or~~ and is not required to have a Wisconsin seller's permit, except for conducting bingo.

(5)(a) Its sales of otherwise taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

(b) Its taxable ~~gross receipts~~ sales price for tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services for the calendar year are \$15,000 \$25,000 or less, regardless of the number of days on which its sales or events occur. ~~Nontaxable gross receipts may not be~~ Sales that are nontaxable are not included for purposes of the \$15,000 ~~gross receipts~~ \$25,000 sales price test.

Notes to LRB: 1. Amend the examples at the end of Tax 11.35(5)(b) as follows:

Examples: 1) A church sells ~~cookies and cakes at a bake sale~~ frozen pizzas. Since the ~~sale of cookies and cakes for off-premises consumption is~~ sales of frozen pizzas are exempt from sales tax, the sale of these items is sales of the frozen pizzas are not counted as gross receipts part of the sales price for purposes of the \$15,000 ~~\$25,000~~ receipts test.

2) A nonprofit organization, which sells hundreds of Christmas trees, sells 5 Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as ~~gross receipts~~ part of the sales price for purposes of the \$15,000 ~~\$25,000~~ receipts test.

2. Amend examples 1, 2, 3, and 5 at the end of Tax 11.35(6)(a) as follows:

Examples: 1) Four different bands are paid ~~\$400~~ \$200 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (~~\$400~~) (\$800) exceeds the ~~\$300~~ \$500 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

2) Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band ~~\$200~~ \$300. Since the total payment for entertainment (~~\$400~~) (\$600) exceeds the ~~\$300~~ \$500 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

3) A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of the ~~\$300~~ \$500 limit in sub. (2) (b). There is no separate admission charge. However, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the nonprofit organization at this event are taxable.

5) Nonprofit Organization A sponsors an admission event at which a band is hired to perform. The band is paid more than ~~\$300~~ \$500. Nonprofit Organization A allows Nonprofit Organization B, a separate entity, to sell soft drinks and food at the event for consumption on the premises of the event. Although Nonprofit Organization A's sales at the event do not qualify for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

(6)(b) A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may obtain a temporary seller's permit from the department for the day or days involving entertainment, pay the sales tax on that event, and still have exempt occasional sales on days not covered by the temporary seller's permit. Days and receipts from events involving admissions to entertainment for which a temporary seller's permit was obtained are included with all other sales in determining the 20-day test and the \$15,000 \$25,000 taxable receipts test described in sub. (5).