

## 09hr\_JCR-AR\_Misc\_pt21a



Details: Emergency Rule extension requests by Department of Revenue.  
(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

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



# State of Wisconsin • DEPARTMENT OF REVENUE

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*Jim Doyle*  
Governor

*Roger M. Ervin*  
Secretary of Revenue

December 18, 2009

Honorable Jim Holperin  
Co-Chair Joint Committee for Review  
of Administrative Rules  
Room 409 South State Capitol  
PO Box 7882  
Madison WI 53707-7882

Honorable Josh Zepnick  
Co-Chair Joint Committee for Review  
of Administrative Rules  
Room 219 North State Capitol  
PO Box 8953  
Madison WI 53708-8953

Re: Emergency Rule Extension – Chapter Tax 11

Dear Senator Holperin and Representative Zepnick:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., a 60-day extension of the emergency rule revising Chapter Tax 11, relating to sales and use tax. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule expires February 28, 2010.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. Public hearings were held on December 1 and 15, 2009, on both the emergency and permanent rules. However, since the permanent rule cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

### Analysis

The proposed rule does the following:

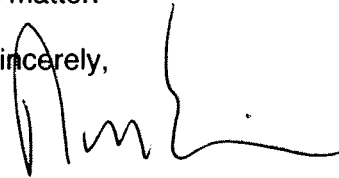
- Reflects the changes in Wisconsin's sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin's sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement;
- Provides guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws;
- Removes incorrect and outdated information;
- Revises punctuation to improve readability and conform to Legislative Clearing House rules and requirements;
- Removes the term "gross receipts" from the rules and replaces it with "sales price," which is a newly defined term under the Streamlined Sales and Use Tax Agreement;
- Changes numerous references to "tangible personal property" that were previously contained in the rules to "tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats." because the definition of "tangible personal property" under previous law was amended and some items that were previously included in the definition of "tangible personal property" now have the sales and use tax specifically imposed on them in new sections of the statutes, specifically secs. 77.52 (1) (b), (c), and (d), Stats.;
- Renumbers various sections within the rules to improve readability;
- Adds additional information related to numerous statutory changes that were not previously reflected in the rules, including information related to new exemptions on items such as durable medical equipment for home use, mobility-enhancing equipment, prosthetic devices and food and food ingredients and certain admissions.
- Adds numerous definitions that were adopted to various rules including s. Tax 11.08, 11.09, 11.12, 11.29 and 11.66;
- Creates a new rule (s. Tax 11.945), specifically relating to the proper sourcing of transactions so a person will know whether the transaction is subject to Wisconsin sales and use tax and adds information relating to the sourcing of leases and rentals in s. Tax 11.29;
- Adds numerous listings of taxable and nontaxable items to various rules, including s. Tax 11.08, 11.09, 11.17, 11.45 and 11.51; and
- Adds additional information pertaining to exemption certificates in s. Tax 11.14.

Honorable Jim Holperin  
Honorable Josh Zepnick  
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Emergency rules are needed to be in conformity with the Streamlined Sales and Use Tax Agreement.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Ervin', with a long horizontal flourish extending to the right.

Roger M. Ervin  
Secretary of Revenue

RME:DSK

e:\rules\Combined Reporting Emergency - Extension - JCRAR

Enclosure

## ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 73.03 and 77.51 to 77.79, Stats., relating to sales and use tax.

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### *Analysis by the Department of Revenue*

**Statutes interpreted:** ss. 73.03 and 77.51 to 77.79, Stats.

**Statutory authority:** ss. 227.24, Stats.

**Explanation of agency authority:** Section 227.24, Stats., provides an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

**Related statute or rule:** There are no other applicable statutes or rules.

**Plain language analysis:** This emergency rule does the following:

- Reflects the changes in Wisconsin's sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin's sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).
- Provides guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws.
- Removes incorrect and outdated information.
- Revises punctuation to improve readability and conform to Legislative Clearing House rules and requirements.
- Removes the term "gross receipts" from the rules and replaces it with "sales price," which is a newly defined term under the SSUTA.
- Changes numerous references to "tangible personal property" that were previously contained in the rules to "tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats." because the definition of "tangible personal property" under previous law was amended and some items that were previously included in the definition of "tangible personal property" now have the sales and use tax specifically imposed on them in new sections of the statutes, specifically secs. 77.52 (1) (b), (c), and (d), Stats.
- Renumbers various sections within the rules to improve readability.
- Adds additional information related to numerous statutory changes that were not previously reflected in the rules, including information related to new exemptions on items such as durable medical equipment for home use, mobility-enhancing equipment, prosthetic devices and food and food ingredients and certain admissions.

- Adds numerous definitions that were adopted to various rules including s. Tax 11.08, 11.09, 11.12, 11.29 and 11.66.
- Creates a new rule (s. Tax 11.945), specifically relating to the proper sourcing of transactions so a person will know whether the transaction is subject to Wisconsin sales or use tax and adds information relating to the sourcing of leases and rentals in s. Tax 11.29.
- Adds numerous listings of taxable and nontaxable items to various rules, including s. Tax 11.08, 11.09, 11.17, 11.45 and 11.51.
- Adds additional information pertaining to exemption certificates in s. Tax 11.14.

**Summary of, and comparison with, existing or proposed federal regulation:**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule. However, the Streamlined Sales Tax Project (SSTP) is a nationwide project that is intended to modernize and simplify the sales and use tax reporting in the states who choose to conform their laws to the requirements contained in the Streamlined Sales and Use Tax Agreement (SSUTA). Adopting the requirements of the SSUTA will help make Wisconsin's sales and use tax laws more uniform with the sales and use tax laws of the other states that have also conformed their laws to the requirements of the SSUTA.

**Comparison with rules in adjacent states:**

Minnesota, Michigan and Iowa have conformed their laws to the requirements of the SSUTA and therefore, like Wisconsin, must administer their laws in a manner consistent with the requirements of the SSUTA. These states do this through a combination of statutory provisions and administrative rules.

Illinois has not conformed their laws to the requirements of the SSUTA and is not bound by the requirements contained in the SSUTA.

**Summary of factual data and analytical methodologies:** 2009 Wisconsin Act 2 adopted statutory changes to bring Wisconsin's sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement. The department has created this emergency rule to reflect these changes in Wisconsin's sales and use tax laws.

**Analysis and supporting documents used to determine effect on small business:** As explained above, this proposed rule is created to reflect changes in Wisconsin's sales and use tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

**Anticipated costs incurred by private sector:** This emergency rule does not have a significant fiscal effect on the private sector.

**Effect on small business:** This emergency rule does not have a significant effect on small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this emergency rule.

**Place where comments are to be submitted and deadline for submission:**  
Comments may be submitted to the contact person shown below no later than one week after the public hearing on this emergency rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven  
Department of Revenue  
Mail Stop 6-40  
2135 Rimrock Road  
P.O. Box 8933  
Madison, WI 53708-8933

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### FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The changes made by this rule order must be effective October 1, 2009, to be in conformity with the Streamlined Sales and Use Tax Agreement. In order to meet this deadline, it is necessary to promulgate this rule as an emergency rule.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

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#### **SECTION 1.** Tax 11.001(1) and (2)(a) are amended to read:

Tax 11.001(1) **APPLICABILITY.** Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to the county, and stadium, and regional transit authority sales and use taxes authorized under subch. V of ch. 77, Stats.

(2)(a) "Consumers" means persons who purchase and use tangible personal property or items, property, or goods under sec. 77.52 (1) (b), (c), or (d), Stats.

#### **SECTION 2.** Tax 11.001(2)(am), (bc), (bg), (bn), (br), and (bw) are created to read:

Tax 11.001(2)(am) **"County tax"** means the sales and use tax that is authorized under subch. V of ch. 77, Stats.

(bc) **"Goods under s. 77.52 (1) (d), Stats."** means specified digital goods and additional digital goods that are sold, leased, licensed, or rented on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.

(bg) "Items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats." means "items under s. 77.52 (1) (b) Stats." as defined in par. (bn), "property under s. 77.52 (1) (c), Stats." as defined in par. (br), and "goods under s. 77.52 (1) (d), Stats." as defined in (bc).

(bn) "Items under s. 77.52 (1) (b) Stats." means coins and stamps of the United States that are sold, licensed, leased, rented, or traded as collector's items above their face value.

(br) "Property under s. 77.52 (1) (c), Stats." means leased property that is affixed to real property, if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed.

(bw) "Regional transit authority tax" means a local regional transit authority sales and use tax that is authorized under subch. V. of ch. 77, Stats.

**SECTION 3.** Tax 11.001(2) (e) and (f)1. and 2. are amended to read:

Tax 11.001(2)(e) "Tax" means the Wisconsin sales or use ~~tax~~ taxes in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats. "Tax" also includes the county, stadium, and regional transit authority taxes imposed under s. 77.71, Stats.

(f)1. The sales tax applies to a sale of tangible personal property, items, property, or goods under secs. 77.52 (1) (b), (c), or (d), Stats., or services, measured by the gross receipts sales price from the sale.

2. The use tax applies to the storage, use, or other consumption of tangible personal property, items, property, or goods under secs. 77.52 (1) (b), (c), or (d), Stats., or services sold, measured by the sales purchase price.

**SECTION 4.** Tax 11.002(1) and (2)(a) and (d) are amended to read:

Tax 11.002(1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate, or consumer's use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department will act on the application.

(2)(a) *Seller's permit.* Every individual, partnership, corporation, or other organization making retail sales, licenses, leases, or rentals of tangible personal property or items, property, or goods under secs. 77.52 (1) (b), (c), or (d), Stats., or selling, licensing, performing, or furnishing taxable services at retail in Wisconsin shall have a seller's permit for each place of operation, unless the seller is exempt from taxation.

**Note to LRB:** Amend the note at the end of Tax 11.002(2)(a) as follows:



**Note:** A nonprofit organization's gross receipts are exempt from taxation if it meets the requirements under s. 77.54 (7m), Stats. Also see s. Tax 11.35.

(d) *Local exposition registration.* Every person selling lodging, ~~food, beverages and other items described in s. 77.54 (20) (e) 2.~~ candy, as defined in s. 77.51 (1fm), Stats., prepared food, as defined in s. 77.51 10m), Stats., and soft drinks, as defined in s. 77.51 (17w), Stats., or renting automobiles subject to local exposition district taxes shall register with the department. Upon registration for local exposition district taxes, a separate seller's permit or use tax registration certificate only for local exposition district taxes will not be issued. The seller's permit or use tax registration certificate, as described in pars. (a) and (b), issued for sales and use tax purposes will apply for local exposition district tax purposes.

**SECTION 5.** Tax 11.002(3) is renumbered 11.002(3)(a)(intro.) and amended as renumbered to read:

Tax 11.002(3)(a)(intro.) A person required to have a seller's permit or one of the use tax certificates described in sub. (2) or required to register for local exposition district taxes shall ~~file an "Application for Permit/Certificate," form A-101, with the department at the address shown on the form.~~ register by one of the following methods: ~~The application shall include all information and fees required and shall be signed by the appropriate person described on the form.~~ ~~Security, as described in s. Tax 11.925, may be required.~~

**SECTION 6.** Tax 11.002(3)(a)1. and 2. and (b) are created to read:

Tax 11.002(3)(a)1. Using the department of revenue's online registration system.

2. Filing an "Application for Business Tax Registration," form BTR-101, with the department at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form.

(b) Security, as described in s. Tax 11.925, may be required.

**Note to LRB:** Replace the note at the end of Tax 11.002(3)(b) with the following:

**Note:** The online registration system and Form BTR-101 are available on the Department's website at: <http://www.revenue.wi.gov/forms/sales/index.html>. Form BTR-101 may also be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

**SECTION 7.** Tax 11.03(2)(a)(intro.) and 6. and (b)(intro.), (3)(intro.) and (c), and 4(intro.) are amended to read:

Tax 11.03(2)(a)(intro.) ~~Sales~~ Exempt sales by elementary or secondary schools, ~~the gross receipts from which are exempt,~~ include:

**Notes to LRB:** Replace the example at the end of Tax 11.03(2)(a)3. with the following:

**Example:** A school auditorium is rented to a religious group which conducts a religious revival. The sales price from the rental is exempt.

Replace the examples at the end of Tax 11.03(2)(a)4. with the following:

**Examples: 1)** A school gymnasium is rented to a professional basketball team which will sell tickets to the event. The sales price from the rental is exempt.

**2)** A school auditorium is rented to a popular band for one night. The band will sell tickets to its performance. The sales price from the rental is exempt.

6. The transfer of tangible personal property ~~or items, property or goods~~ under s. 77.52 (1) (b), (c), or (d), Stats., to a contractor for performance of a real property construction activity in exchange for a reduction in the contract price, even though the contract provides that the contractor is to supply all materials.

(b)(intro.) ~~Sales Taxable sales~~ by elementary or secondary schools, ~~the gross receipts from which are taxable,~~ include:

**Notes to LRB:** Replace the example at the end of Tax 11.03(2)(b)2. with the following:

**Example:** A local neighborhood group rents the school gymnasium for its residents to play volleyball. The neighborhood group does not charge its residents to play volleyball. The sales price from the rental is taxable. If the group charged an entry fee to play volleyball, the sales price from the rental of the gymnasium is not taxable because the rental is for resale.

Replace the example at the end of Tax 11.03(2)(b)3. with the following:

**Example:** A school sponsors an athletic tournament and charges \$1 for parking. The sales price from parking is taxable.

(3)(intro.) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. ~~Sales Taxable sales~~ by school-related organizations and others, not including school districts, ~~the gross receipts from which are taxable,~~ include:

(c) Sales of tangible personal property ~~or items, property or goods~~ under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services by technical college districts.

(4)(intro.) SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS. Under s. 77.54, Stats., ~~gross receipts from sales to the following organizations are exempt:~~

**SECTION 8.** Tax 11.04 (1), (2)(title), (3), and (5) are amended to read:

Tax 11.04(1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority; or any county, ~~municipality~~ city, village, town or school district in this state or other political subdivision; a county-city hospital established under s. 66.0927, Stats.; a

sewerage commission organized under s. 281.43 (4), Stats. or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any transit authority created under ss. 59.58 (7) or 66.1039, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated [incorporated] agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2)(title) TAXABLE GROSS RECEIPTS SALES.

(3) PURCHASES PRESUMED TAXABLE. When a contractor and an exempt entity enter into a construction contract to improve real property, ~~which~~ and the contract provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(5) EXEMPT GROSS RECEIPTS SALES. A supplier's sales of building materials made directly to an exempt entity are not taxable, even though such tangible personal property or items or property under s. 77.52 (1) (b), (c), or (d), Stats., is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received directly from the exempt entity.

**SECTION 9.** Tax 11.05(2)(title), (intro.), (a), (b), (d), and (g) are amended to read:

Tax 11.05(2)(title) TAXABLE RECEIPTS SALES.

(intro.) Taxable ~~receipts of~~ sales by governmental units include ~~gross receipts from~~ the following:

(a) Admissions to facilities if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature, except as provided in sub. (3) (r), (s), and (y).

(b) Food and gift stand sales, including sales of, ~~sandwiches, beverages~~ candy, soft drinks, prepared foods, cigarettes, ~~ice cream, confections,~~ tobacco products, postcards, books, magazines and other periodicals described in s. Tax 11.19, and novelties. Newspaper sales are exempt.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature, except as provided in sub. (3) (r), (s), (y), and (zg).

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. ~~Governmental units may not collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.~~

**SECTION 10.** Tax 11.05(2)(gm) is created to read:

Tax 11.05(2)(gm) Sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), trailers, semitrailers, all-terrain vehicles, and aircraft. Governmental units must collect the sales tax on its sales of these items. If the governmental unit does not collect the tax from the purchaser, the purchaser shall file a sales tax return and pay the tax prior to titling or registering the property in this state.

**SECTION 11.** Tax 11.05(2)(i) to (m), (o), (p), (r), and (s) are amended to read:

Tax 11.05(2)(i) ~~Rental~~ Furnishing of rooms or lodging facilities, available to the public, to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges, or universities operated by governmental units or furnishing rooms or lodging to a person through the sale of any kind of time-share property.

(j) ~~Vending machines~~ Sales of taxable items, property, or goods dispensed through vending machines, and sales of access to or the use of amusement devices, if the governmental unit owns the machine or device or has control ~~over the gross receipts from the machine and its contents~~ of the contents of the machine or the device.

(k) Sales of ~~soda water~~ soft drinks and alcoholic beverages, ~~fermented malt beverages and intoxicating liquor~~, including sales of these items by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., and day care centers under ch. 48, Stats., to patients, employees or guests.

(L) Charges for ~~meals~~ candy, soft drinks, dietary supplements and prepared foods to "Huber" law prisoners.

(m) Sales of books and supplies, including sales by technical college districts. Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by elementary and secondary schools are exempt under s. 77.54 (4), Stats.

(o) Auction sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., ~~but excluding~~ including motor vehicles as ~~provided in par. (g).~~

(p) Sales and delivery of trees, shrubs, or gravel to private purchasers. A sale of gravel is not taxable if the gravel is delivered to its final resting place and no further spreading, grading, raking, compacting, or leveling of the gravel will be completed after it is delivered by the seller.

(r) The ~~gross receipts from~~ sales price received for parking and providing parking space for motor vehicles and aircraft, and docking or providing storage space for boats.

(s) The ~~gross receipts from~~ sales price received for landscaping and lawn maintenance services, including weed cutting in lawn and garden areas and along highways, streets and walkways, but not charges for damages described in sub. (3) (c).

**SECTION 12.** Tax 11.05(2)(t) is created to read:

Tax 11.05(2)(t) Charges for salvage vehicle inspections.

**SECTION 13.** Tax 11.05(3)(intro.), (a), (b), (d), and (j) are amended to read:

Tax 11.05(3)(intro.) ~~Gross receipts of~~ Receipts by governmental units from the following are not taxable:

(a) Fees for licenses and permits, including tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, including original or duplicate library cards but not camping permits or I.D. cards issued exclusively for obtaining admission to facilities or events taxed under s. 77.52 (2) (a) 2., Stats.

(b) Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste ~~and wood, and biomass as defined in s. 196.378 (1) (a), Stats.,~~ used for fuel, sold for residential use. Electricity and natural gas sold for residential use ~~and electricity sold for farm use~~ during the months of November through April. Fuel and electricity sold for use in farming. Fuel and electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. "Sold" is defined in s. 77.54 (30) (b), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (L) 7.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms, ~~not~~ used for activities which are not amusement, athletic, entertainment or recreational in nature.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the ~~machines or have control of the machines' gross receipts and contents~~ machine or device, or does not have the right of access to the machine or device for stocking or restocking or for removing the receipts from the machine or device.

**SECTION 14.** Tax 11.05(3)(jm) is created to read:

Tax 11.05(3)(jm) Sales through vending machines of food and food ingredients, except for candy, soft drinks, dietary supplements, and prepared foods.

**SECTION 15.** Tax 11.05(3)(k) to (m), (o), (q), and (u) are amended to read:

Tax 11.05(3)(k) Sales or rental of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(L) ~~Meals, food, food products or beverages~~ Food and food ingredients, except ~~sea water beverages, fermented malt beverages and intoxicating liquor~~ soft drinks and alcoholic beverages, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employees, residents or guests; and ~~meals~~ prepared food sold to the elderly or handicapped by "mobile meals on wheels."

(m) ~~Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor.~~ Food and food ingredients furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The ~~meals, food, food products or beverages~~ food and food ingredients are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.

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

(o) Sales for resale, if supported by a valid ~~resale~~ exemption certificate obtained from the purchaser.

(q) Charges for filing, entering, docketing, recording, or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officer and clerk of court under ss. ~~69.42~~ 59.40 (3), ~~69.57~~ 59.43 (2), and 69.22, Stats., or by a filing officer under s. ~~409.407 (2)~~ 409.525, Stats., and fees charged by a register in probate pursuant to s. 814.66, Stats. Also, charges by an "authority," as defined in s. 19.32 (1), Stats., for ~~copying~~ copies of a record under s. 19.35 (1) (a), Stats., including charges for a search of records.

(u) ~~Gross receipts from telecommunications revenues~~ Revenues collected in establishing a "911" emergency telephone system under s. 256.35 (3), Stats., and the surcharge established by rule by the public service commission under s. 256.35 (3m) (f), Stats., for customers of wireless providers, as defined in s. 256.35 (3m) (a) 6., Stats.

**SECTION 16.** Tax 11.05(3)(y), (z), (zg), and (zr) are created to read:

Tax 11.05(3)(y) The sale or furnishing the use of recreational facilities on a periodic basis or other recreational rights, including but not limited to, membership rights, vacation services and club memberships, in connection with the sale or use of time-share property, if the facilities or rights are not available to persons who have not purchased the time-share property, other than guests.

(z) The collection of low-income assistance fees under s. 16.957 (4) (a) or (5) (a), Stats.

(zg) Admissions by a governmental unit to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger.

(zr) Police and fire protection fees imposed under s. 196.025 (6), Stats.

**SECTION 17.** Tax 11.05(4)(a) and (b)(intro.) are amended to read:

Tax 11.05(4)(a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and items, property, and goods under s. 77.52(1) (b), (c) and (d), Stats., and services by Wisconsin or by any agency of Wisconsin, ~~or any Wisconsin county, city, village, town, school district, county city hospital established under~~

~~s. 66.0927, Stats., sewerage commission organized under s. 281.43 (4), Stats., metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats., local exposition district under subch. II of ch. 229, Stats., joint local water authority created under s. 66.0823, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats. or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any transit authority created under ss. 59.58 (7) or 66.1039, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; and a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.~~

(b)(intro.) In addition to the invoice or other billing document being in the name of the governmental unit, A a Wisconsin governmental unit shall provide one of the following to a retailer as proof that a sale to the governmental unit is exempt from tax:

**Note to LRB:** Amend the second note at the end of Tax 11.05(4)(f) as follows:

**Note:** The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972, through October 3, 1973; (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973; (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977; (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, and the electricity and natural gas six-month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979; (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980, pursuant to Chapter 221, Laws of 1979; (f) Landscaping and lawn maintenance services became taxable on May 1, 1982, pursuant to Chapter 317, Laws of 1981; (g) A governmental unit's charges for copying public records became exempt effective April 27, 1984, pursuant to 1983 Wis. Act 287, later amended effective April 2, 1986, pursuant to 1985 Wis. Act 149 to clarify that the exemption also applies to confidential records, and again amended effective May 1, 1992, pursuant to 1991 Wis. Act 269, to include records under s. 19.35 (1) (a), Stats.; (h) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption for an agency or instrumentality of a Wisconsin governmental unit became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wis. Act 27; (k) The exemption for admissions to a museum operated

by a nonprofit corporation under lease with the state historical society became exempt July 20, 1985, pursuant to 1985 Wis. Act 29; (L) The exclusion of hospital service insurance corporation from the definition of exempt entity became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (m) Revenues from establishing a "911" emergency telephone system became exempt August 1, 1987, pursuant to 1987 Wis. Act 27; (n) State park camping fees became exempt effective September 1, 1989, pursuant to 1989 Wis. Act 31; (o) The exemption for animal identification tags and standard samples by the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16; (p) The exemption for fuel used in farming became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (q) The requirement that meals must be served on the premises of hospitals, nursing homes, etc., for exemption to apply became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (r) The exemption for sales to a local exposition district became effective April 26, 1994, pursuant to 1993 Wis. Act 263; (s) The exemption for sales of meals by community-based residential facilities became effective June 1, 1994, pursuant to 1993 Wis. Act 332; (t) The exemption for sales to the University of Wisconsin Hospitals and Clinics Authority became effective July 29, 1995, pursuant to 1995 Wis. Act 27; and (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; (v) The exemption for electricity sold for use in farming was expanded to include sales of electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9; (w) The exemption for sales from the collection of public benefit fees became effective October 29, 1999, pursuant to 1999 Act 9; (x) The exemption for use of recreational facilities in connection with the sale of time-share property became effective December 1, 1999, pursuant to 1999 Act 9; (y) The exemption for certain items sold from a vending machine became effective July 1, 2001, pursuant to 1999 Act 9; (z) The exemption for regional transit authorities and the Wisconsin Home Health Care Authority became effective July 1, 2009 pursuant to 2009 Act 28; and (zm) The exemption for federally recognized American Indian tribes or bands in Wisconsin became effective August 1, 2009 pursuant to 2009 Act 28.

**SECTION 18.** Tax 11.08 is repealed and recreated to read:

**Tax 11.08 Durable medical equipment, mobility-enhancing equipment, and prosthetic devices.** (1) GENERAL. Certain items may qualify as either "durable medical equipment" or a "prosthetic device," depending on whether or not the item is worn in or on the body. The distinction between when an item is "durable medical equipment" or a "prosthetic device" is important because an item that is "durable medical equipment" is exempt only when purchased for use by a human being in a person's home, whereas the purchase of a "prosthetic device" for a human being is exempt regardless of whether or not it is purchased for use in a person's home.

(2) DURABLE MEDICAL EQUIPMENT. Section 77.54 (22b), Stats., exempts the sales price from the sale of and the storage, use, or other consumption of durable medical equipment that is for use in a person's home, along with repair parts, replacement parts, and accessories for that equipment, if the equipment is used for a human being.



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

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

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

(c) Examples of durable medical equipment that qualify for exemption from Wisconsin sales and use tax if they are purchased for use in a person's home include the following:

Alternating pressure pads and decubitus pads (eliminate bed sores).

Anesthesia equipment.

Anti-thrombolytic pumps.

Apnea monitors.

Aqua K pumps and pads.

Aspirators (suction pumps).

Audiology equipment.

Bed pans, commodes, urinals.

Billie lights (used for yellow jaundice).

Blanket cradles.

Blood glucose monitoring machines.

Blood pressure machines and cuffs.

Cardiology equipment.

Cauterization equipment.

Cofflator.

Crash carts.

Dialyzers.

Defibrillators (not implanted).

Drug infusion pumps.

Examination tables.

Forceps.

Heat lamps.  
Heating pads.  
Hospital beds and mattresses.  
Incubators and isolettes.  
Injection guns for drug delivery.  
Infra-red lamps and bulbs for heat therapy.  
Intra-aortic balloon pump.  
Intravenous stands.  
IV therapy arm boards.  
Kinetic therapy tables.  
Lambs wool pads.  
Laser equipment.  
Lithotripters.  
Mammography equipment.  
Medical atomizers.  
Medical instruments.  
Medical monitoring equipment.  
Mini dopplers (measures blood flow & rate).  
Nebulizers.  
Nerve stimulator programmers.  
Ophthalmoscopes.  
Ostomy irrigation sets.  
Otosopes.  
Over the bed tray tables.  
Oxygen concentrators and regulators.  
Pacemaker programmers and transmitters.  
Patient positioners.  
Percussors.  
Pillows (abduction, cervical, orthotic).  
Platelet separator.  
Radiology equipment.  
Respirators and respiratory bags.  
Respiratory humidifies (connects to oxygen equipment).  
Resuscitators.  
Scales (chair and sling).  
Speech aids (hand held).

Stethoscopes.  
Stirrups.  
Stretchers.  
Suction machines and regulators.  
Surgical equipment.  
Surgical tables.  
Thermometers (oral, rectal, ear, etc.).  
Tourniquets (pneumatic and non-pneumatic).  
Traction equipment.  
Transfusion equipment.  
Ultrasound equipment.  
Vaporizers.  
Ventilators, anesthesia.  
Wheelchair cushions (brace or support).  
Whirlpools (portable over-the-tub only).  
X-ray equipment.

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

(d) Examples of items that are not durable medical equipment include the following:

Air purifiers.  
Air conditioners, dehumidifiers and humidifiers.  
Blankets and sheets.  
Closed caption devices.  
Cubicle curtains.  
Disposable or single use instruments or equipment.  
Eating utensils including adjustable utensils.  
Exercise equipment.  
Hot and cold packs.  
Massagers, massage appliances and furniture.  
Needles.  
Pillows not specifically designed for medical purposes.  
Safety equipment such as goggles and shields.  
Sitz baths.

Spas not specifically manufactured for medical purposes.

Specimen containers.

Syringes.

Telephone alert systems.

Visually impaired equipment and supplies.

Waterproof sheeting.

**(3) MOBILITY-ENHANCING EQUIPMENT.** Section 77.54 (22b), Stats., exempts from Wisconsin sales and use tax the sales price from the sale of mobility-enhancing equipment for human use and its accessories.

(a) "Mobility-enhancing equipment" is defined in s. 77.51(7m), Stats., to mean *"...equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a person who has normal mobility. 'Mobility-enhancing equipment' does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer. 'Mobility-enhancing equipment' does not include durable medical equipment."*

(b) Examples of mobility-enhancing equipment for a human being that are exempt include the following:

Adjustable or raised toilet seat.

Tub and Shower Stools.

Bed Pull-up Ts.

Canes.

Crutches.

Grab bars and hand rails.

Lift chairs.

Patient lifts.

Scooters and transporters for disabled persons.

Specialty chairs.

Transfer belts and benches.

Walkers.

Wheelchairs and ramps.

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

**(4) PROSTHETIC DEVICES.** Section 77.54 (22b), Stats., exempts from Wisconsin sales and use tax the sales price from the sale of prosthetic devices and accessories for prosthetic devices that are used for a human being.

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

(b) A device is "worn in or on the body" if the device is implanted or attached so that it becomes part of the body or if it is carried by the body and does not hinder the mobility of the individual. Items that are attached to the body, but are either stationary or placed on a pole, cart or other device that makes them portable are durable medical equipment and not prosthetic devices. Therefore, these items are only exempt if they are purchased for use in a person's home.

(c) Examples of prosthetic devices for a human being which are exempt include:

- Abdominal belts and supports
- Access ports (Port-a-cath).
- Ace bandages.
- Anti-embolism stockings.
- Arch supports.
- Arm slings.
- Arterial prostheses (artificial arteries implanted into humans).
- Artificial body parts (eyes, heart valves, limbs, etc.).
- Body implants (bone, hip, knee, ocular, etc.).
- Bone cement and wax.
- Bone pins, plates, nails, screws, etc.
- Braces.
- Breast implants.
- Burn garments.
- Casts, foam padding inside, any part of cast.
- Catheters.
- Cervical collars.
- Cochlear implant devices.
- Collagen implants.
- Colostomy devices.
- Compression sleeves and stockings.
- Contact lenses.
- Dentures.

Drainage catheters.

Drains, shunts.

Elastic bandages and supports (wrist, ankle, knee, etc.).

Eye glasses.

Gastric bands and intragastric balloons.

Grafts (Vascular, Dacron).

Head halters.

Hearing aids and batteries.

Heel protectors.

Insulin pumps.

Knee immobilizers.

Mastectomy surgical bras.

Maxillofacial devices (implanted).

Nasal cannulas.

Orthopedic shoes.

Ostomy adhesives, barriers, catheters, leg bags and straps, drain bags and pouches, drain valves and tubes, stoma caps, tubing, hernia belts.

Pacemakers.

Penile pumps and implants.

Pressure garments (edema gloves and mast pants).

Salem sump (used to fill or empty stomach).

Seraphim (barrier to separate tissue in the body).

Shoe lifts and inserts.

Slings.

Speaking valves.

Sphincters.

Splints, air or other.

Staples and sutures.

Stents.

Stump shrinkers.

Suspensories.

Synthetic skin implants.

Tissue expander (stimulates skin growth).

Trachea tubes.

Tracheostomy

Traction devices (cervical, pelvic).

Trusses.

Vena cava filters.

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

(d) The following are examples of items which if worn in or on the body are also exempt as prosthetic devices:

Bone growth stimulators.

CPAP machines.

Defibrillator and leads.

Electronic nerve and muscle stimulators.

Incontinence control devices.

Infusion pumps.

Programmable drug infusion devices.

Speech generating devices.

TENS devices (nerve stimulators).

**Note:** If these items are not worn in or on the body, they are not exempt as prosthetic devices, but may be exempt as durable medical equipment if for use by a person in a person's home.

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

(5) PARTS, ACCESSORIES AND SERVICE. The sales price from the sale of repair and replacement parts, accessories and services to the exempt property identified in s. 77.54 (22b), Stats., is also exempt.

(6) DIABETES SUPPLIES. Section 77.54 (28), Stats., exempts from Wisconsin sales and use tax, the "...sales price from the sale of and the storage, use or other consumption to or by the ultimate consumer of supplies used to determine blood sugar level."

**Example:** The sales price from the sale of blood glucose test strips is exempt from sales and use tax.

**Note:** Section Tax 11.08 interprets s. 77.54 (22b), Stats.

**Note:** The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for

apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a handicapped person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; and (f) The exemption for parts and accessories became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

**SECTION 19.** Tax 11.09(title), (1), (2), and (3) are repealed and recreated to read:

**Tax 11.09 Drugs. (1) DEFINITION.** For the exemption in s. 77.54 (14), Stats., "drug" means "...a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

(a) *It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them.*

(b) *It is intended for use in diagnosing, curing, mitigating, treating or preventing a disease.*

(c) *It is intended to affect a function or structure of the body."*

**(2) ITEMS WHICH ARE DRUGS.** Drugs include the following items described in sub. (1):

Acne medications.

Alcohol (rubbing).

Analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.).

Antacids.

Antibiotic creams and ointments.

Antifungal creams and sprays.

Antihistamines.

Antiseptics (betadyne, iodine).

Birth control (pills and patches and implants).

Burn remedies.

Contraceptives (creams, gels, foams and medicated condoms).

Cold and cough medicines, drops and lozenges.

Contact lens solutions.

Decongestants.

Dermal fillers (injectable).

Dialysis dialysate solution.

Diaper rash creams.

Enema preparations.



Eye drops.  
Gases – medical grade (air, carbon dioxide, helium, nitrogen, oxygen).  
Hand sanitizers.  
Hydrogen peroxide.  
Insulin.  
Laxatives.  
Lip balm.  
Nutrition formulas (enteral and parenteral with a drug facts label).  
Oxygen.  
Prescription medicines.  
Radioactive isotopes.  
Rubs, mentholated.  
Sleeping pills.  
Smoking cessation products such as Nicorette gum, lozenges and patches.  
Sterile water (for injections).  
Sterile normal saline .9% (IV or irrigation).  
Vaccines.  
Yeast infection medications.

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

**(3) ITEMS WHICH ARE NOT DRUGS.** Items which are not described in sub. (1) and which are not drugs include:

- (a) Alcoholic beverages, soft drinks and distilled water.
- (b) Durable medical equipment.
- (c) Prosthetic devices.
- (d) Mobility-enhancing equipment.
- (e) Dietary supplements.

**SECTION 20.** Tax 11.09(4)(title), (intro.), (a) to (d), and (f) and (5)(title), (intro.), and (b) are amended to read:

Tax 11.09(4)(title) EXEMPT SALES OR USE OF ~~MEDICINES~~ DRUGS.

(intro.) ~~Medicines~~ Drugs shall be exempt if:

(a) ~~Prescribed by a licensed physician, surgeon, podiatrist or dentist for the treatment of a human being by a person authorized to prescribe the drugs, and dispensed on prescription filled by a registered pharmacist in accordance with law. However, oxygen prescribed by a licensed physician, surgeon, podiatrist or dentist shall be exempt even if it is not dispensed by a registered pharmacist.~~

(b) Sold to a licensed physician, surgeon, podiatrist, dentist, or hospital for the treatment of a human being.

(c) Furnished by a licensed physician, surgeon, podiatrist, or dentist to a patient who is a human being for treatment of the patient.

(d) Furnished by a hospital for treatment of any person by pursuant to the order of a licensed physician, surgeon, dentist, or podiatrist. For this exemption, "hospital" has the meaning described in s. 50.33 (2), Stats., and does not include nursing homes.

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

(5)(title) TAXABLE SALES OF ~~MEDICINES~~ DRUGS.

(intro.) Taxable sales of ~~medicines~~ drugs include:

(b) Retail sales of ~~medicines~~ drugs for pets ~~and work stock, but not for farm livestock.~~

**SECTION 21.** Tax 11.11(1) is amended to read:

Tax 11.11(1) GENERAL. Section 77.54 (26), Stats., provides a sales and use tax exemption for tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., which becomes a component part of a certain waste treatment facility facilities.

**Note to LRB:** Replace the note at the end of Tax 11.11(2) with the following:

**Note:** Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines and pipelines, approved by the department, write to Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, PO Box 8971, Madison WI 53708-8971; telephone (608) 266-8162; send an e-mail to [utility@revenue.wi.gov](mailto:utility@revenue.wi.gov); or access the department's internet web site at [www.revenue.wi.gov/contact/slfbust](http://www.revenue.wi.gov/contact/slfbust).

**SECTION 22.** Tax 11.11(2m)(a) is renumbered 11.11(2m)(a)(intro.) and amended as renumbered to read:

Tax 11.11(2m)(a)(intro.) An industrial waste treatment facility is any property ~~taxed under ch. 70, Stats., that is built, constructed or installed as a unit used for the treatment of liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource~~ purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale. In this paragraph, "used exclusively" means to the exclusion of all other uses except:

**SECTION 23.** Tax 11.11(2m)(a)1. and 2. are created to read:

Tax 11.11(2m)(a)1. For other use not exceeding 5% of total use.

2. To produce heat or steam for a manufacturing process, if the fuel consists of either 95% or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50 percent or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

**SECTION 24.** Tax 11.11(2m)(b), (3)(intro.) and (5)(a) and (c)1. to 3. are amended to read:

Tax 11.11(2m)(b) Tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., becoming a component part of an industrial waste treatment facility is exempt from the sales and use tax under s. 77.54 (26), Stats., if the facility qualifies for property tax exemption under s. 70.11 (21) ~~(a)~~, Stats.

**Note to LRB:** Replace the note at the end of Tax 11.11(2m)(b) with the following:

**Note:** Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities. For more information regarding the property tax exemption for industrial waste treatment facilities of manufacturers write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, PO Box 8971, Madison WI 53708-8971; telephone (608) 266-1147. The web site is [www.revenue.wi.gov/contact/sifbmta](http://www.revenue.wi.gov/contact/sifbmta). To ascertain whether a non-manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

(3)(intro.) **MUNICIPAL WASTE TREATMENT EXEMPTION.** Tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., which ~~becomes~~ become a component or ingredient part of the following municipal facilities that treat waste qualifies for exemption from Wisconsin sales and use tax under s. 77.54 (26), Stats.:

**Note to LRB:** Replace the note at the end of Tax 11.11(3)(d)2. with the following:

**Note:** For more information regarding the exemption for municipal treatment facilities, write or call Wisconsin Department of Revenue, Bureau of Customer Service, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902, telephone (608) 266-2772. The web site is [www.revenue.wi.gov/contact/pcs.html#cust](http://www.revenue.wi.gov/contact/pcs.html#cust).

(5)(a) *Exempt purchases.* The sales and use tax exemption extends to and includes the purchases of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., by a contractor-installer who incorporates the property into an approved utility waste treatment facility or who incorporates the property into an industrial waste treatment facility or a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sales. Certification of exempt use shall be made on a Wisconsin sales and use tax exemption certificate, form S-211.

(c)1. 'Utility property taxed under ch. 76, Stats.' A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property or item or property under s. 77.52 (1) (b) or (c), Stats., that becomes a component part of a utility waste treatment facility that has not been approved by the department for a property tax exemption under s. 76.025 (1), Stats.

2. 'Industrial property taxed under ch. 70, Stats.' Approvals are not required for industrial waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that becomes a component part of a facility that is determined to not qualify for a waste treatment facility property tax exemption under s. 70.11 (21), Stats.

3. 'Municipal waste treatment facilities.' Approvals are not required for municipal waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property or items or property under s. 77.52(1) (b) or (c), Stats., that becomes a component part of a facility that is determined not to be a municipal waste treatment facility as provided in sub. (3).

**SECTION 25.** Tax 11.12(title), (1), (2)(intro.), (d), and (f) are amended to read:

Tax 11.12(title) **Farming, including dairy farming, agriculture, horticulture, and floriculture, silviculture, and custom farming services.**

(1) STATUTES. Section 77.54 (3) and (3m), Stats., provides exemptions for certain sales of tangible personal property, or items or property under s.77.52 (1) (b) or (c), Stats., to persons who are engaged in farming as a business enterprise, including dairy farming, agriculture, horticulture, ~~or~~ floriculture, silviculture, and custom farming services as a business enterprise.

(2)(intro.) DEFINITIONS. In this section and s. 77.54 (3), (3m), ~~and (30) (a) 3. and 5., and (33),~~ Stats.:

(d) "Farm livestock ~~medicine drugs~~" means any substance or preparation ~~intended for use by external or internal application to farm livestock used in the diagnosis, cure, mitigation, or treatment or prevention of disease and which is commonly recognized by veterinarians as a substance or preparation intended for that use in farm livestock.~~ This includes antibiotics, dewormers, drugs, mastitis treatments, medicated shampoos and vaccines in the form of boluses, capsules, feed additives, fluids, pills, powders, ointments and salves. This also includes disinfectants, flea powder and flea sprays, mastitis indicators, teat dips, udder wash and vitamins. "Farm livestock ~~medicine drug~~" does not include ~~medicines drugs~~ for work stock, riding horses used in racing, pleasure riding or show or small domestic animals, including dogs and cats. It also does not include ~~vitamins, dewormers, teat dip, udder wash, disinfectants, shampoos, pet feeds, flea powder and flea sprays,~~ laboratory equipment used by a veterinarian,

non-medicated shampoos, non-medicated pet foods, and non-medicated bandages, or plaster of paris that is used to set an animal's broken bone.

(f) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "farming" includes raising earthworms, pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses and llamas for sale; and raising ginseng, mushrooms and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; operating sporting or recreational facilities, such as riding stables or shooting preserves; operating stockyards, slaughterhouses or feed lots as described in par. (g); ~~lumbering and logging~~; and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

**SECTION 26.** Tax 11.12(2)(k) is repealed and recreated to read:

Tax 11.12(2)(k) 1. "Silviculture" means the business of raising trees for timber, lumber or other wood products. Silviculture includes the logging of timber when it is performed by a person engaged in the business of silviculture and the logging is conducted with respect to that person's silviculture activity. Silviculture does not include pulp or sawmill operations.

2. "Logging" as used in subd. 1. includes the following activities which occur while in the field:

- a. The felling of trees.
- b. The delimiting of trees.
- c. The cutting of trees into logs, poles, or other units.
- d. The transportation of cut timber to a sawmill.
- e. Activities conducted in the forest incidental to the felling, cutting and removal of trees from the forest such as the clearing of the forest to allow access to and removal of the timber from the forest land.

**SECTION 27.** Tax 11.12(4)(a)(intro.) and 1. are amended to read:

Tax 11.12(4)(a)(intro.) Section 77.54 (3) (a), Stats., exempts: "The gross receipts sales price from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments, and parts therefore, lubricants, nonpowered equipment, and other tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property and excluding tangible personal property or items or property under s. 77.52(1) (b) or (c), Stats.,

*used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that that personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., makes to the production process in that building or real property and regardless of the extent to which that personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., functions as a machine, except as provided in par.(c)."* For purposes of this section:

1. 'Directly.' Items used "directly" in farming include a plow ~~and~~ a combine, ~~and a~~ milking machine. Items of "indirect" ~~or non-qualifying~~ use include ~~typewriters, electric drills or other repair tools, dog and cat feed~~ computers used for tracking prices or inventories or for word processing, and lawn and garden tractors used for mowing lawns and tilling home gardens.

**SECTION 28.** Tax 11.12(4)(a)2g. and 2r. are created to read:

Tax 11.12(4)(a)2g. 'Consumed.' Property is "consumed" in farming when it is used 100% in farming. Items consumed in farming include repair tools used to repair farm machinery or farm equipment, insect control strips, computers used indirectly but solely in the business of farming, test kits to test milk for contaminants, and lubricants used in farm tractors and machines.

2r. 'Lose their identities.' Property "loses its identity in farming" when it is used 100% in farming. Property losing its identity in farming includes disinfectants and sanitizers such as iodine and chlorine, water softener salt, and detergents.

**SECTION 29.** Tax 11.12(4)(a)3., 4.b. to d., and 5.b. are amended to read:

Tax 11.12(4)(a)3. 'Accessories, attachments and parts.' Included within the exemption are accessories, attachments and parts for tractors and machines used exclusively and directly, or which are consumed or lose their identities in agriculture the business of farming. "Accessories" and "attachments" include devices designed to be mounted on a machine, such as a slow moving vehicle sign attached to a tractor or pipes attached to an irrigation pump, or devices to be pushed or pulled by a machine such as a farm wagons wagon and pipes attached to irrigation pumps or a plow. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor ~~eab~~ tires, oil filters and ~~slow-moving-vehicle signs fuel pumps~~. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids such as antifreeze ~~or lubricants, hydraulic fluids, or diesel fuel anti-gel additives~~. These are "supplies" "other tangible personal property" rather than "parts," ~~and are not exempt~~.

4.b. "Machines which qualify for exemption" include, if not realty improvements, all-terrain vehicles or trucks not licensed for highway use, balers, chain saws for orchard or logging use but not for use in ~~lumbering, pulping or~~ cutting firewood for personal use or for use in pulpwood or sawmill operations, choppers, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, end loaders, electric clippers and hoof trimmers, electric dehorers, electric fence chargers not fencing or insulators, electric foggers, fork lifts, harrows, harvesting combines, hay wagons, manure spreaders, mowers, planters, plows, powered posthole diggers, pumps and associated piping for irrigation, rock pickers, rotary hoes, space heaters not for residential use, sprayers, stalk shredders and windrowers.

c. "Machines which do not qualify for exemption" include tangible personal property and items and property under s. 77.52(1) (b) and (c), Stats., that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property. Also, tangible personal property, and items and property under s. 77.52 (1) (b) and (c), Stats., used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that the personal property, or item or property under s. 77.52(1) (b) or (c), Stats., makes to the production process in that building or real property and regardless of the extent to which that personal property, or item or property under s. 77.52(1) (b) or (c), Stats., functions as a machine does not qualify for exemption. However, there is an exception for those items specifically mentioned in subd. 4. d.

d. The following items ~~are deemed by statute to~~ retain their character as tangible personal property and qualify for exemption, regardless of the extent to which they are fastened to, connected to or built into real property: auxiliary power generators, bale loaders, barn cleaners and elevators, conveyors, feed elevators and augers, grain dryers and grinders, irrigation implements, milk coolers, milking machines, including piping, pipeline washers and compressors, top and bottom silo unloaders and powered feeders, excluding platforms and troughs constructed from ordinary building materials.

5b. Certain machines in addition to those in subd. 4. qualify for the exemption if purchased by farmers directly from retailers, even though ~~they are used to make realty improvements after the sale they are affixed to realty by the farmer, or someone hired by the farmer.~~ Machines included are automated livestock feeder bunks, but not ordinary building materials; automatic stock waterers powered by electricity or water pressure and built into a permanent plumbing system; automatic water softeners, such as for milkhouses; barn fans and blowers and other ventilating units; unit heaters and other heating units; water heaters serving production areas; and water pumps serving production areas.

**SECTION 30.** Tax 11.12(4)(a)6. is repealed and recreated to read:

Tax 11.12(4)(a)6. 'Motor vehicles and their accessories, attachments and parts.' Specifically excluded from the exemption are "motor vehicles for highway use," which includes motor trucks, automobiles, station wagons, buses and motorcycles. The exclusion from the exemption also applies to accessories, attachments and parts for motor vehicles for highway use. "For highway use" means registered for that use. Charges for labor for the repair of vehicles registered for highway use, such as nurse tanks and trailers, are taxable. Sales of parts for vehicles registered for highway use which are used exclusively and directly in farming or are consumed in farming, such as nurse tanks and trailers, are not taxable.

**Note to LRB:** Insert the following note at the end of Tax 11.12(4)(a)6.

**Note:** Nurse tanks may qualify for the exemption provided in s. 77.54 (5) (d), Stats., as mobile units used for mixing and processing if they have pumps to blend and mix the product.

**SECTION 31.** Tax 11.12(4)(a)7.a. is amended to read:

Tax 11.12(4)(a)7.a. Tools used in construction of or ~~for~~ making repairs to real estate ~~or farm machinery~~, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, powered or nonpowered hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

**SECTION 32.** Tax 11.12(4)(a)7.c. is repealed

**SECTION 33.** Tax 11.12(4)(a)8. and (b)(intro.), 2., and 6.c. are amended to read:

Tax 11.12(4)(a)8. 'Sales and use tax.' A person who buys without tax by claiming the farming exemption owes the sales tax at the time the person uses the property or item purchased 5% or more of total use for a nonexempt purpose in a taxable manner or for a taxable purpose. Property, items, or goods purchased without tax by claiming they will be used exclusively and directly in the business of farming, become subject to the tax when use of the property, items, or goods for nonexempt purposes exceeds 5% of total use. Property, items, or goods purchased without tax by claiming they will be consumed or lose their identity in the business of farming, become subject to the tax when the property, items, or goods are used for a purpose other than for an exempt use in the business of farming.

(b)(intro.) Section 77.54 (3m), Stats., exempts: *"The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of the following items if they are used exclusively by the purchaser or user in the business of farming; including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services:*

- (a) Seeds for planting.
- (b) Plants.
- (c) Feed.
- (d) Fertilizer.
- (e) Soil conditioners.
- (f) Animal bedding.
- (g) Sprays, pesticides and fungicides.
- (h) Breeding and other livestock.
- (i) Poultry.
- (j) Farm work stock.
- (k) Baling twine and baling wire.
- (L) Containers for fruits, vegetables, grain, hay, silage and animal wastes.
- (m) Plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage."

"Exclusively" as used in s. 77.54 (3m), Stats., and in this section means that the items mentioned in s. 77.54 (3m), Stats., are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for those items will not be invalidated by an infrequent and sporadic use other than in farming. For purposes of this section:

2. 'Plants.' "Plants" include herbs, shrubs or young trees, slips, seedlings or saplings planted or ready to plant.

6.c. Farmers or contractors may purchase animal waste containers or the component parts of animal waste containers without tax, by issuing their supplier a properly completed "single purchase" exemption certificate.

**SECTION 34.** Tax 11.12(4)(b)6.e. is repealed

**SECTION 35.** Tax 11.12(4)(b)7. is amended to read:

Tax 11.12(4)(b)7. 'Semen.' Semen used for artificial insemination of livestock is exempt under s. 77.54 (27), Stats.

**Note to LRB:** Delete the note at the end of Tax 11.12(4)(b)7.



**SECTION 36.** Tax 11.12(4)(c) and (d) are created to read:

Tax 11.12(4)(c) Section 77.54(30)(a)3., Stats., exempts the sales price from the sale of: *"Electricity sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, and horticulture."* Section 77.54(30)(a)5., Stats., exempts the sales price from the sale of: *"Fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, and horticulture."*

1. Electricity and fuel sold for use in farming includes electricity and fuel sold for use in performing custom farming services.

2. Fuel includes oxygen used to enrich a fuel mixture, or oxygen and acetylene used in a welding process.

(d) Section 77.54 (33), Stats., exempts *"The sales price from sales of and the storage, use or other consumption of drugs used on farm livestock, not including workstock."*

**SECTION 37.** Tax 11.12(5)(a) and (6)(a)1. are amended to read:

Tax 11.12(5)(a) ~~The Sales tax imposed under s. 77.52 (2) (a) 10., Stats., does not apply to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which farmers if the farmer may purchase the property, item, or good without tax under s. 77.54 (3), and (3m), (27), (30)(a)3. and 5., and (33), Stats., are also exempt from the sales and use tax under s. 77.52 (2) (a) 10., Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses or horses used exclusively in farming for breeding or to check on or herd livestock shod, but not when having horses ridden for pleasure shod.~~

**Note to LRB:** Insert the following examples at the end of Tax 11.12(5)(a):

**Examples:** 1) Charges to a farmer for labor to replace a water pump on a motor vehicle registered for highway use are taxable. However, charges to a farmer for labor to replace a water pump on a tractor used exclusively and directly in farming are not taxable.

2) A farmer may claim an exemption when having draft horses or horses used exclusively in farming for breeding or to check on or herd livestock shod, but not when having horses ridden for pleasure shod.

(6)(a)1. 'Custom work.' The performance of custom farm services ~~by one farmer for another farmer~~, such as plowing a field, planting seeds, harvesting hay or grain, or logging timber.

**SECTION 38.** Tax 11.12(6)(b)(title) and (intro.) are repealed and recreated to read:

Tax 11.12(6)(b) *Services to tangible personal property.* Charges 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., are taxable, unless at the time such services are performed, a sale in Wisconsin of the type of property, item or good so serviced would have been exempt from Wisconsin sales tax. Taxable

services to tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., include:

**SECTION 39.** Tax 11.12(6)(b)1. and (7)(intro.) are amended to read:

Tax 11.12(6)(b)1. 'Boarding animals.' The boarding of dogs, cats, horses used for racing, pleasure riding or show, or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed exemption certificate claiming an exemption for resale.

**Note to LRB:** Insert the following example at the end of Tax 11.12(6)(b)2.:

**Example:** Charges by a farmer for labor to replace a radiator on a motor vehicle registered for highway use are taxable. However, charges by a farmer for labor to replace a radiator on a tractor used exclusively and directly in the business of farming are not taxable.

(7)(intro.) Sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., by farmers which are taxable include:

**SECTION 40.** Tax 11.12(7)(a) is repealed

**SECTION 41.** Tax 11.12(7)(b), (c), (d), and (e) are renumbered 11.12(7)(a), (b), (c), and (d) and amended as renumbered to read:

Tax 11.12(7)(a) Horses for use in racing, pleasure riding, or show.

(b) Llamas for use as pack animals, pets, or to herd sheep.

(c) Flowers, Christmas trees and other decorative trees, plants, or shrubs.

(d) Timber or gravel when the purchaser acquires this property for removal, unless the purchaser pays royalties to lease land.

**Note to LRB:** Amend the notes at the end of Tax 11.12(7)(d) as follows:

**Note:** Section Tax 11.12 interprets ss. 77.52 (2) (a) 10. and 77.54 (3), (3m), (27), (30), and (33) and ~~(34)~~, Stats.

**Note:** The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Semen became exempt effective July 22, 1971, pursuant to Chapter 64, Laws of 1971; (b) Baling wire and twine became exempt effective December 24, 1975, pursuant to Chapter 146, Laws of 1975; (c) The exemption for electricity for residential use and use in farming and for fuel oil, propane, coal, steam or wood for residential use became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (d) The definition of "feed lot" became effective December 1, 1981; (e) Farm livestock medicine, milk house supplies and animal bedding became exempt effective July 1, 1986, pursuant to 1985 Wis. Act 29; (f) The definition of "exclusively used" became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (g) The farm machinery exemption was revised effective October 1, 1989, pursuant to 1989 Wis. Act 31; and (h) The exemption for farm fuel for items other than machines became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (i) The exemption for

electricity sold for use in farming was expanded to include sales of electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9.

**SECTION 42.** Tax 11.13(2)(a) and (b) are amended to read:

Tax 11.13(2)(a) The holder of a direct pay permit may purchase tangible personal property, items, property, and goods under s. 77.52(1)(b), (c) and (d), Stats., and taxable services, except those in sub. (6) (a) and (b), from a retailer without paying Wisconsin sales or use tax to the retailer.

(b) The direct pay permit holder shall report Wisconsin use tax on the sales purchase price of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or and taxable services purchased from a retailer without tax using a direct pay permit if the property, item, good, or service is subject to Wisconsin sales or use tax. The tax shall be reported on the direct pay permit holder's Wisconsin sales tax return for the period in which the taxable storage, use, or consumption first occurs in Wisconsin.

**Notes to LRB:** 1. Replace the note at the end of Tax 11.13(2)(b) with the following:

**Note:** Purchase price, for purposes of this paragraph, has the meaning specified in s. 77.51 (15), Stats.

2. Replace the note at the end of Tax 11.13(3)(b) with the following:

**Note:** Form S-101 is available by writing to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902; calling (608) 266-2776; or downloading it from the department's web site, [www.revenue.wi.gov](http://www.revenue.wi.gov).

3. In the example at the end of Tax 11.13(3)(c), replace the year "2002" in both places it appears with the year "2009."

4. Replace the example at the end of Tax 11.13(5)(b)3. with the following:

**Example:** On October 1, 2009, Company A begins using its direct pay permit when purchasing tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., from Company B. Company A provides a written statement to Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, except those described in sub. (6) (a) and (b), by Company A from Company B on or after October 1, 2009, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, no other exemption certificate may be used.

**SECTION 43.** Tax 11.13(6)(a)3m. is created to read:

Tax 11.13(6)(a)3m. Section 77.52 (2) (a) 5m., Stats., relating to telecommunications messaging services.

**SECTION 44.** Tax 11.13(6)(b)(intro.), 1., and 2. are amended to read:

Tax 11.13(6)(b)(intro.) A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sale, lease, license or rental to the direct pay permit holder of the following tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.:

1. Tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., transferred to a purchaser in connection with the sale of landscaping services subject to tax under s. 77.52 (2) (a) 20., Stats.

2. Motor vehicles, boats, snowmobiles, ~~mobile homes not exceeding 45 feet in length~~ recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semitrailers, all-terrain vehicles or aircraft.

**SECTION 45.** Tax 11.13(6)(b)3. is repealed and recreated to read:

Tax 11.13(6)(b)3. Candy as defined in s. 77.51 (1fm), Stats., soft drinks as defined in s. 77.51 (17w), Stats., dietary supplements as defined in s. 77.51 (3n), Stats., and prepared foods as defined in s. 77.51 (10m), Stats.

**SECTION 46.** Tax 11.13(6)(b)4. is repealed

**SECTION 47.** Tax 11.13(6)(c) and (7)(intro.) are amended to read:

Tax 11.13(6)(c) *Exemptions.* Although not eligible to be purchased without paying Wisconsin sales or use tax to a retailer using a direct pay permit, the taxable services and tangible personal property, and items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., described in pars. (a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farming, manufacturing or other exemption applies. Documentation is required to purchase without tax, as provided in s. Tax 11.14.

(7)(intro.) A retailer is not liable for sales or use tax on ~~gross receipts~~ the sales price from the sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, except those described in sub. (6) (a) and (b), to a person who has provided the retailer with the appropriate information under sub. (5) (a), until the earlier of the following:

**SECTION 48.** Tax 11.14(2)(a)(intro.) and 1. are amended to read:

Tax 11.14(2)(a)(intro.) Exemption certificates ~~are signed by purchasers or lessees and~~ are given to sellers or lessors by purchasers or lessees to verify that a transaction is exempt from Wisconsin sales and use taxes. Sellers and lessors shall exclude from the taxable gross receipts sales price those transactions for which they have accepted a valid exemption certificate ~~in good faith from a~~ the purchaser. ~~The department has provided retailers with the~~ following 2 sales and use tax exemption certificates may be used in Wisconsin:

1. Wisconsin sales and use tax exemption certificate, form S-211. This is a multipurpose form which may be used for any Wisconsin sales and use tax exemption provided by law, except as provided in sub. (14). For direct pay, form S-211 may be used as the document described in s. Tax 11.13 (5) (a) 2. if all of the required information is included on the form S-211.

**SECTION 49.** Tax 11.14(2)(a)3. is created to read:

Tax 11.14(2)(a)3. Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003. This is a multistate form which may be used to claim any sales or use tax exemption provided under Wisconsin law. Since this is a multistate exemption certificate, purchasers should use caution when issuing this certificate, since it contains various exemptions that are not applicable in Wisconsin and only apply in other states. Purchasers are responsible for knowing if they qualify for the exemption they are claiming in the state in which the exemption is being claimed. The purchaser will be held liable for any tax, interest, and penalties that result from the purchaser claiming an exemption for which they were not eligible.

**SECTION 50.** Tax 11.14(2)(b) and (c) are amended to read:

Tax 11.14(2)(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. ~~The law requires that the certificate~~ Paper exemption certificates must be signed by and bear the name and address of the purchaser, the name and address of the seller, and that it include the a general character of the property or service being purchased description of the purchaser's business and the basis of reason for the claimed exemption. An electronic exemption certificate shall contain the same information as a paper exemption certificate, except that a signature is not required.

(c) If a purchaser ~~certifies in writing by using~~ provides an exemption certificate indicating that the property purchased will be used for activities or under circumstances which make the purchase of the property exempt from the sales tax or for resale, and the property is subsequently used by the purchaser in a manner that makes the property ineligible for exemption from tax, the purchaser ~~shall pay the~~ is liable for payment of the applicable sales or use tax.

**SECTION 51.** Tax 11.14(3) and (4) are repealed and recreated to read:

Tax 11.14(3) EFFECT OF OBTAINING CERTIFICATE. (a) Except as provided in par. (b), a seller is relieved of liability for the tax if the seller obtains from the purchaser, within 90 days after the date of the sale, a fully completed exemption certificate which indicates that the purchaser will use the property or service in a manner that is exempt from Wisconsin sales and use tax.

(b) A seller is not relieved of its liability to collect and remit the applicable Wisconsin sales or use tax on a sale to a purchaser if any of the following apply:

1. The seller fraudulently fails to collect the sales or use tax.
2. The seller solicits the purchaser to claim an unlawful exemption.
3. The seller accepts an exemption certificate from a purchaser claiming to be an entity that is not subject to sales and use taxes, if both of the following apply:
  - a. The subject of the transaction covered by the exemption certificate is received by the purchaser at the seller's Wisconsin location.

b. The exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in Wisconsin.

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

(4) FAILURE TO OBTAIN CERTIFICATE. (a) A seller who does not obtain an exemption certificate as provided in sub. (3) (a), shall be relieved from liability for the tax if, no later than 90 days after the sale, the seller captures and maintains all of the following data elements in its accounting system, with respect to the transaction upon which an exemption is being claimed:

1. Name and business address of the purchaser.
2. Purchaser's state tax identification number and state of issue. If the purchaser does not have a state tax identification number then the purchaser's federal employer identification number is needed. If the purchaser does not have a federal employer identification number then the purchaser's personal driver's license number and state of issue is needed.
3. Purchaser's type of business.
4. The reason for the claimed exemption.

(b) If a seller does not obtain an exemption certificate as provided in sub. (3) (a) or the relevant data elements provided in par. (a), the seller may, within 120 days after it is requested by the department to substantiate a claimed exemption, either obtain, in good faith, a fully completed exemption certificate from the purchaser; or by some other means provide proof that the transaction was not subject to Wisconsin sales or use tax. If a seller cannot prove that a transaction was exempt by one of these methods, the seller is not relieved from liability for the tax, interest or penalties.

(c) A seller accepts an exemption certificate as provided in sub. (3) (a) in good faith if the exemption certificate is fully completed and contains no statement or entry which the seller or lessor knows, or has reason to believe, is false or misleading and the certificate discloses a valid reason for exemption from Wisconsin sales and use tax under Wisconsin law.

**SECTION 52.** Tax 11.14(5)(a) is amended to read:

Tax 11.14(5)(a) Continuous or blanket exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

**SECTION 53.** Tax 11.14(5)(b) is repealed and recreated to read:

Tax 11.14(5)(b) If a purchaser provides a continuous or blanket exemption certificate, the purchaser may not issue "this time only" purchase orders or similar documents cancelling the continuous or blanket exemption certificate for the one transaction only. In addition, the notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for a previously issued continuous or blanket certificate. The seller is not liable for the tax on transactions covered by a valid exemption certificate. If a purchaser does not want a

continuous or blanket exemption certificate to apply, it must notify the seller in writing that it is rescinding a previously issued continuous or blanket exemption certificate.

**SECTION 54.** Tax 11.14(6)(a)1. and 2. and (b)2. are amended to read:

Tax 11.14(6)(a)1. The burden of proving that a sale of property, items, goods, or services is not at retail is upon the seller unless the seller accepts a an exemption certificate from the purchaser as provided in sub. (3) (a) or captures and maintains the data elements as required in sub. (4) (a) certifying that indicate the property is purchased for resale. ~~If valid and accepted in good faith from a person who is in the business of selling tangible personal property or taxable services and who holds a seller's permit,~~ Obtaining the certificate or capturing and maintaining the data elements that indicate the property is purchased for resale, relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives an exemption certificate as provided in sub. (3) (a) or provides the data elements described in sub. (4) (a), claiming resale for property acquired and then makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable to the purchaser as of the time the property is first stored or used. The sales tax shall be reported and paid by the purchaser with the tax return for the period in which the property is first so stored or used.

(b)2. A general description of the ~~general character of the tangible personal property or service sold by the purchaser~~ purchaser's business.

**SECTION 55.** Tax 11.14(6)(b)3. is repealed

**SECTION 56.** Tax 11.14(6)(b)4.(intro.) is renumbered 11.14(6)(b)3.(intro.) and amended as renumbered to read:

Tax 11.14(6)(b)3.(intro.) The basis for the claimed exemption including the seller's permit number of the purchaser, except that:

**SECTION 57.** Tax 11.14(6)(b)5. is repealed

**Note to LRB:** Delete the example at the end of Tax 11.14(6)(b)5.

**SECTION 58.** Tax 11.14(7)(a), (11)(a) and (b), (12)(intro.) and (b) to (f), and (13)(a)1. and (b) are amended to read:

Tax 11.14(7)(a) A supplier ~~which~~ who accepts a properly completed exemption certificate claiming a manufacturing exemption ~~in good faith~~ marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of the property or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If an exemption certificate is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser shall designate which items are taxable.

(11)(a) A retailer of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services may accept from a federal or Wisconsin governmental unit or any federally recognized American Indian tribe or band in Wisconsin, an exemption certificate as provided in sub. (3) (a) or the data elements as required in sub. (4) (a) as proof that a sale is exempt from sales or use tax.

(b) In lieu of accepting an exemption certificate as provided in par. (a), a retailer who issues its billing or invoice in the name of the Wisconsin or federal governmental unit or any federally recognized American Indian tribe or band in Wisconsin, may accept either one of the following:

1. A purchase order or similar written document from the governmental unit or tribe or band, identifying itself as the purchaser.
2. A verbal indication of the governmental unit's or tribe's or band's, certificate of exempt status, or CES, number, which the retailer shall record on the copy of the invoice it retains.

(12)(intro.) The Wisconsin sales and use tax exemption certificate, form S-211, and the Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003, may also be used for to claim any other sales and use tax exemption provided by law, including the following:

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

(c) Trailers or accessories, attachments, parts, supplies, materials, and service on motor trucks, tractors, and trailers which are used exclusively in common or contract carriage.

(d) Property, items, goods, or services purchased directly by and used by a religious, charitable, educational, scientific, or other organization or governmental unit holding a ~~certificate~~ Certificate of ~~exempt status~~ Exempt Status, "CES". Sales to organizations holding a CES also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, which is located out-of-state, may use the Wisconsin sales and use tax exemption certificate, form S-211, or the Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003, to purchase without tax even though it has not been issued a Wisconsin ~~certificate of exempt status~~ CES number.

(e) Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants, or fuel therefor.

(f) Commercial vessels and barges of 50-ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts, and fuel therefor.

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



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

**SECTION 59.** Tax 11.14(15) is renumbered 11.14(15)(a)

**SECTION 60.** Tax 11.14(15)(b) is created to read:

Tax 11.14(15)(b) A purchaser who uses an exemption certificate in a manner that is prohibited by or inconsistent with Wisconsin law or who provides incorrect information to a seller or certified service provider relating to an exemption being claimed will also be subject to a penalty of \$250 for each invoice or bill of sale related to the prohibited or inconsistent use to which the incorrect information applies.

**SECTION 61.** Tax 11.14(16) is repealed and recreated to read:

Tax 11.14(16) EXEMPTION CERTIFICATE NOT NEEDED FOR CERTAIN SALES. No exemption certificate is required for sales of property, items, goods, or services that are exempt from Wisconsin sales and use tax under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51) and (52), Stats.

**SECTION 62.** Tax 11.15(1)(a) and (c)(intro.) and (2)(title), (intro.), (a), and (d) to (f) are amended to read:

Tax 11.15(1)(a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., shall be "used by the purchaser to transfer merchandise to customers." Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor. The exemption does not apply to containers used in the incidental transfer of property to customers by persons providing services.

(c)(intro.) ~~Gross receipts~~ The sales price from the sale of the following items ~~are~~ is within the exemption:

(2)(title) ITEMS NOT EXEMPT UNDER S. 77.54 (6) (B), STATS.

(intro.) ~~Gross receipts from the sales~~ Sales of the following items are not within ~~the~~ this exemption:

(a) Wrapping equipment such as paper holders, tape dispensers, staplers, and string holders.

(d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., to customers are exempt.

(e) Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers, where the carts are not transferred by the bakery to the retailer.

**Note to LRB:** Insert the following examples at the end of Tax 11.15(2)(e):

**Examples: 1)** Wholesaler A's truck driver delivers bakery products to Grocery Store B. The truck driver brings the bakery products into Grocery Store B on a cart, puts the bakery products from the cart onto Grocery Store B's shelves and returns the cart to the truck and provides Grocery Store B with an invoice for the bakery products. The cart is not transferred to Grocery Store B (the bakery retailer), and is not an exempt container.

**2)** Wholesaler C's truck driver delivers bread to Grocery Store D. The truck driver brings the bread into Grocery Store D on a cart, and leaves the bread on the cart at Grocery Store D. The truck driver picks up the cart that was left with the last delivery. The truck driver provides Grocery Store D with an invoice for the bread. Grocery Store D's employees stock its shelves as needed with the bread from the cart. The cart is transferred to Grocery Store D (the bakery retailer), and is an exempt container.

(f) Lumber or other material used for bracing, blocking, skidding, or shoring items while in transit that is not transferred to the customer of the shipped items; and cardboard and paper used to line box cars.

**SECTION 63.** Tax 11.15(2)(g) is repealed

**SECTION 64.** Tax 11.15(2)(h) is renumbered 11.15(2)(g) and amended as renumbered to read:

Tax 11.15(2)(g) Price tags and advertising matter used in connection with the sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., including counter display cards used for advertising and display purposes.

**SECTION 65.** Tax 11.15(2)(i), (j), and (k) are renumbered 11.15(2)(h), (i), and (j)

**SECTION 66.** Tax 11.15(3)(a) and (b) are amended to read:

Tax 11.15(3)(a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., such as soft drink bottles, beer bottles and milk containers, and refunds of the deposits may be excluded from the computation of the taxable gross receipts sales price if they are excluded from ~~gross receipts~~ the sales price on the retailer's books of account.

(b) If a retailer's books of account include container deposits in ~~gross receipts~~ the sales price and if refunds of the deposits are deducted from ~~gross receipts~~ the sales price, the retailer shall use this method of reporting the taxable gross receipts sales price on a sales tax return. Under this method, the ~~gross receipts sales price~~ from the deposit are is subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

**SECTION 67.** Tax 11.15(4) is renumbered 11.15(4)(a) and amended as renumbered to read:

Tax 11.15(4)(a) ~~Gross receipts~~ The sales price from sales to restaurants, cafeterias, caterers, nursing homes or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, wrapping materials and toothpicks, transferred to

customers for a valuable consideration by these persons as part of the sale of food, food products, and beverages to customers are not subject to the tax.

**SECTION 68.** Tax 11.15(4)(b) is created to read:

Tax 11.15(4)(b) The sales price from the sale of disposable products to a restaurant that are transferred with candy, soft drinks, dietary supplements and prepared foods furnished for no consideration by the restaurant to the restaurant's own employees during the employee's work hours is not subject to the tax.

**Note:** This exemption does not apply to purchases of items by grocery stores, convenience stores, or other businesses that do not operate restaurants.

**SECTION 69.** Tax 11.15(5) and (6) are amended to read:

Tax 11.15(5) DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a charge is made to the customer for the use of the container and the container is used *exclusively* for those leasing purposes, the gas supplier may issue a resale certificate when the supplier purchases the container. ~~However, if the gas supplier furnishes a container or other storage tank to a customer without making a separately itemized charge for its use, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of the containers or tanks.~~

(6) CONTAINERS AND PACKAGING MATERIALS SOLD. (a) If a charge is made by a seller or lessor of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. to a customer for a container or packaging materials used in connection with the shipment of the property or item, the charge for the container or packaging materials becomes a part of the selling sales price or rental charge. If the sale of the property or item shipped is not subject to or is exempt from tax, the charge for the container or packaging materials is not subject to or is exempt from tax. If the sale of the property or item shipped is subject to tax, the charge for the container or packaging materials is subject to tax. This paragraph is applicable to the taxation of containers and packaging materials regardless of whether the charge for the containers or packaging materials is separately stated or not separately stated.

(b) Any credit given by a seller or lessor to a customer for the container or packaging materials used in connection with the shipment of property or items which the customer returns to the seller or lessor shall reduce the seller's or lessor's gross receipts sales price subject to tax in the reporting period during which the materials are returned, if the seller or lessor included the selling price of the container or packaging materials in the gross receipts sales price subject to tax, and the seller or lessor returns the tax to the customer.

**SECTION 70.** Tax 11.16(1)(a), (b), and (c) are amended to read:

Tax 11.16(1)(a) *Exemption.* Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for: *"Motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use ~~the~~ such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38."*

(b) *Accessories and attachments.* Accessories, attachments, parts and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54 (5) (b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle's load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps and shoring beams. This exemption does not include corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. ~~(h)~~ (g).

(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 71.** 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 72.** 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 73.** 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~~ 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~~ 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; and (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.

**SECTION 74.** 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.

<u>Taxable</u>	<u>Exempt</u>
Adhesive tape	*Antiembolism elastic hose and stockings, including parts and accessories
Alcoholic beverages	* <del>Apparatus and equipment for treatment of diabetes</del>
<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	<u>Drugs</u>
Deodorants and disinfectants	Dye
Distilled water	*Hearing aids and parts, including parts and accessories
Enema kits	Medical oxygen and equipment to administer oxygen
Instruments	<u>Medicines</u>
	<del>*Needles and syringes used by diabetics</del>
Laboratory equipment and supplies	Oral contraceptives
Medical equipment	Pacemakers, including parts and accessories
<u>Needles and syringes</u>	<u>Prescription drugs</u>
Office equipment and supplies	Prophylactics
<u>Oxygen delivery equipment</u>	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 75.** 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 76.** 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.

**SECTION 77.** 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 78.** 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 79.** 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.

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

**SECTION 80.** Tax 11.18(3)(a)1. is repealed and recreated to read:

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

**SECTION 81.** 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.

**SECTION 82.** 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 83.** 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 84.** Tax 11.19(2)(d), (e)2. and 4., and (g), (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.

(g) 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 85.** 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 86.** 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 87.** 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 88.** 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.

**SECTION 89.** Subchapter IV (title) is amended to read:

**Subchapter IV — ~~Gross Receipts~~ Sales Price**

**SECTION 90.** 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 91.** 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 92.** 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 93.** 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 94.** 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.

**SECTION 95.** Tax 11.27(title) is amended to read:

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

**SECTION 96.** 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 97.** 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 98.** 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 99.** 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), 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 this subchapter.*

**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 100.** 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 good 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~~ 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.

**SECTION 101.** Tax 11.28(1)(a) and (b), (2)(a) to (e), and (3)(a)(title) 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~~ consideration, including cash, credit, property, and services, for which of 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.

(c) *Gift certificates.* ~~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.

(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 102.** 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 103.** 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; and

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; or

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 104.** 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 includes~~ 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 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, item, or good and the other property, item, or good. The sale of the free property, item or good and the other property, item or good by the retailer is subject to Wisconsin sales or use tax, unless an exemption applies.

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.