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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)

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COMMITTEE NOTICES ...

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 - (**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)

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

Examples: 1) A retailer knows key chains it purchases will be given away to customers when those customers purchase gasoline, food items, or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. The retailer may purchase the key chains without Wisconsin sales tax by giving a ~~resale~~ an exemption certificate claiming resale to its supplier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 105. Tax 11.29 is repealed and recreated to read:

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

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

(b) "Lease or rental," as defined in s. 77.51 (7) (a), Stats., does not include "...1. *A transfer of possession or control of tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d) under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) after making all required payments.*

2. *A transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) under any agreement that requires transferring title to*

the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) after making all required payments and after paying an option price that does not exceed the greater of \$100 or 1 percent of the total amount of the required payments.

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

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

(d) "Receive" as provided in s. 77.522 (1) (a) 1., Stats., "*...means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c)...or taking possession or making first use of digital goods under s. 77.52 (1) (d), whichever comes first. 'Receive' does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c) on a purchaser's behalf.*"

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

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

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

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

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

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

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

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

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

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

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

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

(5) SERVICE VS. RENTAL OF EQUIPMENT. (a) If an item of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c) or (d), Stats., is provided along with an operator that does more than maintain, inspect, or set up the tangible personal property or item, property, or good, the transaction is considered a service and not a lease, license, or rental of tangible personal property or item, property, or good under s. 77.52 (1) (b), (c), or (d), Stats.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Subsequent periodic payments.* Except as provided in pars. (d) and (e), subsequent periodic payments on the lease, license, or rental of tangible personal property and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., are sourced to the property's, item's,

or good's primary location. The primary location is the address of the property, item, or good provided by the lessee or licensee and that is available in the business records of the lessor or licensor that are maintained in the ordinary course of the lessor's or licensor's business, provided the use of such address does not constitute bad faith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: Section Tax 11.29 interprets ss. 77.51 (4) (c) 5., (13) (k) and (14) (j), 77.52 (1), 77.54 (5) (b) and (d), (26m) and (36) and 77.58 (6), Stats.

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

SECTION 106. Tax 11.30(1)(a) and (b) are amended to read:

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

(b) *Repossessions.* No deduction from ~~gross receipts~~ the sales price shall be made if property, items or goods sold on credit ~~is~~ are repossessed unless the entire consideration paid by the purchaser is refunded to the purchaser or a deduction for worthless accounts is allowable as a bad debt under s. ~~77.51(4)(b)~~ 4. 77.585(1), Stats.

SECTION 107. Tax 11.30(2) is repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

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

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

| | | | | |
|------------------------------------------------|----------|----------------|-----------------|-------------------|
| 10. Nondeductible loss | | <u>\$93.51</u> | <u>\$198.37</u> | <u>289.88</u> |
| 11. Total loss | | | | <u>\$2,160.00</u> |
| 12. Percentage of sales price and tax (Line 1) | 95.2381% | 4.7619% | | 100% |
| 13. Percentage of contract balance (Line 5) | 86.5801% | 4.3290% | 9.0909% | 100% |

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

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

SECTION 108. Tax 11.32(title), (1), (2), and (3)(a) to (c) are amended to read:

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

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

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

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

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

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

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

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

SECTION 109. Tax 11.32(3)(d) is created to read:

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

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

SECTION 110. Tax 11.32(4)(a)(intro.), (b), and (c) are amended to read:

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

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

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

\$9,478.67). The tax payable by the tavern is determined by multiplying its taxable receipts times the tax rate ($\$9,478.67 \times .055 = \521.33 tax payable).

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

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

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

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

SECTION 111. Tax 11.32(5) is repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| <u>Amount of Taxable Sale</u> | | | <u>Combined State and Stadium Tax of 5.1%</u> |
|-------------------------------|----|-------|---------------------------------------------------|
| \$.01 | to | \$.09 | 0¢ |
| .10 | to | .29 | 1¢ |
| .30 | to | .49 | 2¢ |
| .50 | to | .68 | 3¢ |
| .69 | to | .88 | 4¢ |
| .89 | to | 1.07 | 5¢ |
| 1.08 | to | 1.27 | 6¢ |
| 1.28 | to | 1.47 | 7¢ |
| 1.48 | to | 1.66 | 8¢ |
| 1.67 | to | 1.86 | 9¢ |

| | | | |
|-------------------------------|----|-------|-----------------------------------------------|
| 1.87 | to | 2.05 | 10¢ |
| 2.06 | to | 2.25 | 11¢ |
| 2.26 | to | 2.45 | 12¢ |
| 2.46 | to | 2.64 | 13¢ |
| 2.65 | to | 2.84 | 14¢ |
| 2.85 | to | 3.03 | 15¢ |
| 3.04 | to | 3.23 | 16¢ |
| 3.24 | to | 3.43 | 17¢ |
| 3.44 | to | 3.62 | 18¢ |
| 3.63 | to | 3.82 | 19¢ |
| 3.83 | to | 4.01 | 20¢ |
| 4.02 | to | 4.21 | 21¢ |
| 4.22 | to | 4.41 | 22¢ |
| 4.42 | to | 4.60 | 23¢ |
| 4.61 | to | 4.80 | 24¢ |
| 4.81 | to | 4.99 | 25¢ |
| 5.00 | to | 5.19 | 26¢ |
| 5.20 | to | 5.39 | 27¢ |
| 5.40 | to | 5.58 | 28¢ |
| 5.59 | to | 5.78 | 29¢ |
| <u>Amount of Taxable Sale</u> | | | <u>Combined State and Stadium Tax of 5.1%</u> |
| 5.79 | to | 5.98 | 30¢ |
| 5.99 | to | 6.17 | 31¢ |
| 6.18 | to | 6.37 | 32¢ |
| 6.38 | to | 6.56 | 33¢ |
| 6.57 | to | 6.76 | 34¢ |
| 6.77 | to | 6.96 | 35¢ |
| 6.97 | to | 7.15 | 36¢ |
| 7.16 | to | 7.35 | 37¢ |
| 7.36 | to | 7.54 | 38¢ |
| 7.55 | to | 7.74 | 39¢ |
| 7.75 | to | 7.94 | 40¢ |
| 7.95 | to | 8.13 | 41¢ |
| 8.14 | to | 8.33 | 42¢ |
| 8.34 | to | 8.52 | 43¢ |
| 8.53 | to | 8.72 | 44¢ |
| 8.73 | to | 8.92 | 45¢ |
| 8.93 | to | 9.11 | 46¢ |
| 9.12 | to | 9.31 | 47¢ |
| 9.32 | to | 9.50 | 48¢ |
| 9.51 | to | 9.70 | 49¢ |
| 9.71 | to | 9.90 | 50¢ |
| 9.91 | to | 10.09 | 51¢ |

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

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

| <u>Amount of Taxable Sale</u> | | <u>Combined State, County and Stadium Tax of 5.6%</u> |
|-------------------------------|--------|-------------------------------------------------------|
| \$.01 to | \$.08 | 0¢ |
| .09 to | .26 | 1¢ |
| .27 to | .44 | 2¢ |
| .45 to | .62 | 3¢ |
| .63 to | .80 | 4¢ |
| .81 to | .98 | 5¢ |
| .99 to | 1.16 | 6¢ |
| 1.17 to | 1.33 | 7¢ |
| 1.34 to | 1.51 | 8¢ |
| 1.52 to | 1.69 | 9¢ |
| 1.70 to | 1.87 | 10¢ |
| 1.88 to | 2.05 | 11¢ |
| 2.06 to | 2.23 | 12¢ |
| 2.24 to | 2.41 | 13¢ |
| 2.42 to | 2.58 | 14¢ |
| 2.59 to | 2.76 | 15¢ |
| 2.77 to | 2.94 | 16¢ |
| 2.95 to | 3.12 | 17¢ |
| 3.13 to | 3.30 | 18¢ |
| 3.31 to | 3.48 | 19¢ |
| 3.49 to | 3.66 | 20¢ |
| 3.67 to | 3.83 | 21¢ |
| 3.84 to | 4.01 | 22¢ |
| 4.02 to | 4.19 | 23¢ |
| 4.20 to | 4.37 | 24¢ |
| 4.38 to | 4.55 | 25¢ |
| 4.56 to | 4.73 | 26¢ |

| <u>Amount of Taxable Sale</u> | | <u>Combined State, County and Stadium Tax of 5.6%</u> |
|-------------------------------|------|-------------------------------------------------------|
| 4.74 to | 4.91 | 27¢ |
| 4.92 to | 5.08 | 28¢ |
| 5.09 to | 5.26 | 29¢ |
| 5.27 to | 5.44 | 30¢ |
| 5.45 to | 5.62 | 31¢ |
| 5.63 to | 5.80 | 32¢ |
| 5.81 to | 5.98 | 33¢ |
| 5.99 to | 6.16 | 34¢ |
| 6.17 to | 6.33 | 35¢ |
| 6.34 to | 6.51 | 36¢ |
| 6.52 to | 6.69 | 37¢ |
| 6.70 to | 6.87 | 38¢ |
| 6.88 to | 7.05 | 39¢ |
| 7.06 to | 7.23 | 40¢ |
| 7.24 to | 7.41 | 41¢ |
| 7.42 to | 7.58 | 42¢ |
| 7.59 to | 7.76 | 43¢ |
| 7.77 to | 7.94 | 44¢ |
| 7.95 to | 8.12 | 45¢ |
| 8.13 to | 8.30 | 46¢ |
| 8.31 to | 8.48 | 47¢ |
| 8.49 to | 8.66 | 48¢ |

| | | | |
|------|----|-------|-----|
| 8.67 | to | 8.83 | 49¢ |
| 8.84 | to | 9.01 | 50¢ |
| 9.02 | to | 9.19 | 51¢ |
| 9.20 | to | 9.37 | 52¢ |
| 9.38 | to | 9.55 | 53¢ |
| 9.56 | to | 9.73 | 54¢ |
| 9.74 | to | 9.91 | 55¢ |
| 9.92 | to | 10.08 | 56¢ |

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

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

SECTION 112. Tax 11.32(6) is repealed

SECTION 113. Tax 11.32(7) is renumbered 11.32(6) and amended as renumbered to read:

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

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

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

SECTION 114. Tax 11.32(8) is repealed

SECTION 115. Tax 11.32(7) is created to read:

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

SECTION 116. Tax 11.32(9) is renumbered 11.32(8) and amended as renumbered to read:

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

1. 35% of the sales price.

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

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

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

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

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

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

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

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

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

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

Amend the second note at the end of Tax 11.32(8)(c) as follows:

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

SECTION 117. Tax 11.33(2), (4)(a) to (d), (f), and (g), and (5)(b) to (d) and (f) are amended to read:

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

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

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

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

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

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

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

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

(g) The sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services by a person who does not otherwise hold and is not required to hold a seller's permit, if the total taxable ~~gross receipts sales price~~ from sales of

tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services are less than \$1,000 during the calendar year. However, purchases of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person. This paragraph does not apply to nonprofit organizations.

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

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

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

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

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

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

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

SECTION 118. Tax 11.34(2)(a), (3)(b)1. and 2., (4)(a), and (5)(c) are amended to read:

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

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

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

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

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

SECTION 119. Tax 11.35(2)(b) is amended to read:

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

SECTION 120. Tax 11.35(2)(c) is repealed

SECTION 121. Tax 11.35(2)(d) is renumbered 11.35(2)(c) and amended as renumbered to read:

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

SECTION 122. Tax 11.35(2)(d) is created to read:

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

SECTION 123. Tax 11.35(3), (4)(c), (5)(a) and (b), (6)(b), (7)(d), and (8) are amended to read:

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

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

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

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

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

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

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

2. Amend the examples at the end of Tax 11.35(6)(a) as follows:

Examples: 1) Four different bands are paid ~~\$100~~ \$200 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (~~\$400~~) (\$800) exceeds the ~~\$300~~ \$500 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

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

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

4) A nonprofit organization holds a pig roast at the city park and hires a band to play at the park gazebo so that patrons, if they so wish, can be entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. Entertainment is deemed not to be involved. Therefore, the sales by the nonprofit organization may still qualify as exempt occasional sales.

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

for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

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

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

2) A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a temporary seller's permit because entertainment is involved and collects sales tax on its receipts of \$5,000 from that event. Taxable receipts from its other events must be combined with the \$5,000 of receipts from the event for which it held a temporary seller's permit for purposes of determining whether the ~~\$15,000~~ \$25,000 taxable receipts test is met.

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

Example: A nonprofit organization has held seven 3-day events for a total of 21 days each year for the past 5 years. Receipts were always over ~~\$15,000~~ \$25,000, and there were no admissions to entertainment. One event has lost money for the past 2 years. The organization intends to discontinue that event for the following year; thus, it may anticipate coming under the 20-day standard. Its seller's permit may be delivered to the department for cancellation in good faith.

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

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

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

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

Note: The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to ~~1989~~ 1987 Wis. Act 399.

SECTION 124. Tax 11.38(title), (1)(title), (intro.), and (a), (2)(e), and (3)(b) are amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 125. Tax 11.39(1) and (2) are repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

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

SECTION 126. Tax 11.39(4)(intro.) and (a) are amended to read:

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

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

SECTION 127. Tax 11.39(4)(h) and (i) are repealed

SECTION 128. Tax 11.39(4)(j) to (n) are renumbered 11.39(4)(h) to (L)

SECTION 129. Tax 11.40(1)(a) to (c), (2)(a), (3)(b), (c), and (e), and (4) are amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 130. Tax 11.41(title) and (1)(a) are amended to read:

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

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

SECTION 131. Tax 11.41(1)(b) is repealed and recreated to read:

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

SECTION 132. Tax 11.41(2)(title), (a)(intro.), and (b) are amended to read:

(2)(title) PROPERTY AND ITEMS EXEMPT.

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

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

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

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

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

SECTION 133. Tax 11.41(3) is repealed and recreated to read:

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

1. The activity is not manufacturing or is not within the scope of manufacturing.

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

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

1. Machine drills and auger bits.
2. Milling cutters.
3. Grinding wheels.
4. Chucks, jigs, and dies.
5. Saw blades.
6. Machine tool holders.

7. Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels, and spray guns.

8. Wearing apparel for the comfort or welfare of the employee or for the protection of the employee's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur-lined boots and jackets.

SECTION 134. Tax 11.41(4)(a) is amended to read:

(4)(a) Fuel and electricity are specifically excluded from the exemption provided by s. 77.54 (2), Stats., ~~even though they may be consumed or destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except that any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edging, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue is exempt from sales or use tax.~~ However, an exemption is provided in s. 77.54 (30) (a) 6., Stats., for fuel and electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in this state.

SECTION 135. Tax 11.45 is repealed and recreated to read:

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

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

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

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

1. Pills and capsules.
2. Powders.
3. Liquids, including sterile water and irrigation solutions.
4. Salves and ointments.
5. Insulin.
6. Other preparations consumed orally, injected or applied, including dermal fillers.

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

(c) This exemption does *not* include:

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

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

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

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

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

1. Trusses; post-operative shoes; orthopedic shoes, shoe lifts, inserts, arch supports, and heel protectors; braces including ankle, knee, neck, and back braces; knee immobilizers; traction devices; cervical collars; head halters; abdominal belts, binders, and supports; slings; suspensories; and bone pins, plates, nails, screws, wax, and cement.
2. Antiembolism elastic hose and stockings, and compression stockings and sleeves.
3. Pressure garments, including edema gloves, mast pants, and burn garments.
4. Artificial limbs; skin, shoulder, elbow, tendon, testicular, penile, hip, and knee implants and acetabular cups for hip implants; neuro, spinal, and joint membranes implants; adhesion barriers; artificial eyes; ocular, orbital, ear, nose, and throat implants; cochlear implants; maxillofacial devices; hands and feet implants; orthobiologics implants; surgical mesh implants; vena cava filters; artificial heart valves; artificial larynx; trachea tubes; grafts; sphincters; stump shrinkers; gastric bands and intragastric balloons; nasogastric tubes; stents; pacemakers and leads that are implanted or worn; defibrillator and leads that are implanted; and hearing aids and batteries.
5. Contact lenses and corrective eyeglasses (prescription and non-prescription).
6. Ostomy adhesives, barriers, catheters, collection bags and pouches, drain tubes, stoma caps, tubing, belts, hernia belts, and valves, but not barrier prep wipes, barrier powder, or lubricants.
7. Feeding, drainage, urinary and dialysis catheters, access ports, drains, and shunts.
8. Collagen implants, implanted tissue expanders, breast implants and prosthesis, and mastectomy surgical bras.
9. Casts and casting materials, splint and splint materials, staples, sutures, and suture alternatives.
10. Bone growth stimulators, CPAP machines, infuser pumps, programmable drug infusion devices, insulin pumps, penile pumps, electronic speech aids and tracheostomy speaking valves, tens units, and nerve stimulators implanted with leads.

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

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

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

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

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

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

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

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

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

1. Anesthesia machines and ventilators; anti-thrombolytic pumps; artificial inhalation equipment; audiology equipment including audiometers and acoustic impedance meters or bridges; automatic external defibrillators; autotransfusion equipment; billie lights; bone growth stimulators that are not worn; cardiology machines; cauterization equipment; chair and sling scales; continuous passive motion devices; crash carts; exam and surgical tables and stirrups;

electroencephalogram equipment; heat lamps and bulbs; intraaortic balloon pump; kidney dialysis machines and dialyzers; lithotripters; mammography equipment; monitors; MRI/CT machines; needleless drug delivery system injection guns; nerve stimulator programmer; external pacemakers; pacemaker programmers and transmitters; percussors; platelet separators; drug infusion pumps; radiology and ultrasound equipment; pulse oximetry equipment and blood parameter monitors; respiratory equipment; resuscitators; staplers; stretchers; suction regulators; tens units; tourniquets; traction equipment; vaporizers; and medical atomizers and instruments.

2. Apnea monitors and CPAP machines that are not worn.
3. Alternating pressure beds, incubators, hospital beds, kinetic therapy beds, kodel bed pads, pressure reduction therapy beds; blanket cradles, patient positioners, and overbed tables and trays.
4. Abduction, cervical, and orthotic pillows.
5. Enteral and parenteral feeding bags that are generally used for up to 24 hours which will encompass numerous feedings and are then disposed, and enteral and parenteral connectors, pumps, stands, and tubing and feeding plugs.
6. IV poles, stands and reusable therapy arm boards, but not disposable arm boards.
7. Oxygen delivery equipment, oxygen tents or beds, nebulizers, and respiratory bags.
8. Electronic speech aids.
9. Therapeutic heating or cooling pads or compresses or packs.
10. Thermometers; glucose meters; scopes and lasers including stethoscopes, ophthalmoscopes, otoscopes, and endoscopes; and blood pressure equipment.
11. Commodes and collection basins including bed pans, urine containers, and emesis basins.
12. Wheelchair cushions that are braces or supports that are not attached and do not become a component part of the wheelchair itself.
13. Portable over-the-tub whirlpool devices that are not available for sale to the general public and are specifically manufactured for a medical purpose.

(6) MEDICARE CLAIMS. The administrator of Medicare claims, such as surgical care-blue shield, is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills the administrator directly in full or in part, the portion paid by the administrator is a tax exempt sale to the United States. If the provider of a taxable item bills an individual in full or in part who then seeks reimbursement from Medicare, the portion paid by the administrator to the individual is not an exempt sale to the United States.

Note: Section Tax 11.45 interprets s. 77.54 (14), (14g), (14m), (14s), (22) and (28), Stats.

Note: The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; and (e) Sales of parts and accessories for certain medical items became exempt effective August 15, 1991, pursuant to 1991 Wis. Act 39.

SECTION 136. Tax 11.46(2)(a), (3)(c), and (4)(a) and (b) are amended to read:

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

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

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

(b) An agency camp is not engaged in a trade or business if its sales of otherwise taxable tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or services or its events occur on 20 days or less during the calendar year or if its taxable receipts for the calendar year are ~~\$15,000~~ \$25,000 or less.

SECTION 137. Tax 11.46(5) is repealed and recreated to read:

Tax 11.46(5) COMBINED CHARGE. (a) Except as provided in par. (b), if a single, combined charge is made for all the privileges extended by a camp and both taxable and nontaxable property, items, goods, and services are provided, and the transaction meets the definition of a "bundled transaction" as defined in s. 77.51 (1f), Stats., the entire charge is subject to tax.

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

SECTION 138. Tax 11.47(1)(title), (intro.), (a) to (c), and (e), (2)(title), (a), and (b), and (3)(a)(intro.) and 1. to 3. and (b)(intro.) are amended to read:

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

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

- (a) Taking, reproducing, and selling photographs and ~~video tapes~~ videos.
- (b) Processing, developing, printing, and enlarging film.
- (c) Enlarging, retouching, tinting, or coloring photographs.
- (e) Reproducing copies of documents, drawings, photographs, ~~video tapes~~ videos, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

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

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

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

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

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

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

SECTION 139. Tax 11.47(3)(bm) is created to read:

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

SECTION 140. Tax 11.47(3)(c) is amended to read:

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

SECTION 141. Tax 11.48(1)(a) to (d), (2)(intro.), (a), (b), (c)(intro.), 2.(intro.) and b., and 3., (d), and (e), and (3)(a) and (b) are amended to read:

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

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

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

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

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

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

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

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

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

(b) The rental of space for meetings, conventions, and similar activities that are not amusement, athletic, entertainment, or recreational in nature, is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the type of use.

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

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

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

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

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

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

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

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

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

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

SECTION 142. Tax 11.48(3)(c) is created to read:

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

SECTION 143. Tax 11.49(1)(b) to (e) and (2)(a), (b), (c), and (g) to (j) are amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Sales of ~~wood~~ any residue used for fuel ~~and sold for use in a business activity. Wood residue includes that results from the harvesting of timber or the production of wood products including~~ slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or wood residue.

SECTION 144. Tax 11.49(2)(k) and (L) are created to read:

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

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

SECTION 145. Tax 11.49(3)(a) and (b) are amended to read:

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

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

SECTION 146. Tax 11.50, 11.51, and 11.52 are repealed and recreated to read:

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

(2) RETAILER. If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are

responsible for reporting the sales tax on auction receipts even if the owner of the property has a seller's permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Professional or business inventory or equipment.

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

related hunting equipment, fishing equipment, camping equipment, photographic equipment, tools, bicycles, and personal collections of those items.

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

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

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

1. The auctioneer is not the retailer, because the auctioneer's services are donated.
2. The sales qualify as exempt occasional sales under s. Tax 11.35 (4).

(5) AUCTION SALES OF MOTOR VEHICLES, BOATS, SNOWMOBILES, RECREATIONAL VEHICLES AS DEFINED IN S. 340.01 (48r), TRAILERS, SEMI-TRAILERS, ALL-TERRAIN VEHICLES, AND AIRCRAFT.

(a) An auctioneer shall collect, report, and remit tax on its sales of any of the following items if the auctioneer is a retailer, unless an exemption applies:

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

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

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

Note: Section Tax 11.50 interprets s. 77.51 (9) (e), (13) (b) and (14) (intro.) and (a), Stats.

Note: The interpretations in s. Tax 11.50 are effective under the general sales and use tax law on and after September 1, 1969, except that the standard in sub. (4) (d) 2. became effective January 1, 1989, pursuant to 1987 Wis. Act 399.

Tax 11.51 Grocers' guidelist. (1) GENERAL. (a) All sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c) and (d), Stats., are taxable except when a specific exemption applies. One of the exemptions is for "food and food ingredients," which generally exempts all food and food ingredients for human consumption, except candy, soft drinks, dietary supplements, and prepared food. This exemption also does not include many items normally available in grocery and food stores, such as soft drinks, alcoholic beverages, tobacco products, paper products, and detergents.

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

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

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

- Adhesive tape.
- Air fresheners.
- Albums.
- Ammonia.
- Anti-acid products.
- Anti-freeze.
- Appliances.
- Ash trays.
- Aspirin.
- Auto supplies.
- Baby needs, except food.
- Bags of all kinds.
- Bakeware.
- Baking chips, sweetened.
- Baking chocolate that contains a sweetener in the form of bars, drops, or pieces.
- Barbecue supplies.
- Baskets.
- Batteries, except hearing aid batteries.
- Beauty aids.
- Beer.
- Binders.
- Bird food and supplies.
- Bleach.
- Blueing.
- Bobby pins and rollers.
- Books.
- Bottled water, sweetened.
- Bottles.
- Bowl cleaner.

Breath mints, unless they contain flour.
Brooms.
Brushes.
Bubble bath.
Cake decorations, non-edible.
Cake decorations that are candy.
Calcium tablets.
Cameras and supplies.
Can openers.
Candy.
Candy apples.
Canning and freezer supplies.
Caramel apples.
Caramel corn.
Cat food and supplies.
Charcoal and starter.
Chewing gum.
Chocolate chips, sweetened.
Chocolate covered raisins and nuts.
Cigarette lighter fluid, wicks, flints.
Cigarettes.
Cigars.
Cleaning equipment and supplies.
Cleansers.
Clocks.
Clothes lines.
Clothespins.
Clothing.
Cocktail mixes.
Cod liver oil.
Coffee drinks that contain sweeteners, unless it also contains milk or milk products.
Cold remedies.
Combs and brushes.
Confections that are candy.
Cough drops.
Crayons.
Deli items, as explained in sub. (3) (g) 2.
Dental aids.
Deodorants.
Deodorizers.
Detergents.
Diapers
Dietary supplements.
Dinnerware.
Disinfectants.
Distilled spirits.
Dog food and supplies.
Dolls.
Drain cleaners.
Dried fruit with sweeteners.
Drug sundries.
Dry cleaners.
Dry ice.

Dye.
Electrical supplies.
Facial tissues.
Farm and garden implements.
Feminine hygiene needs including napkins and tampons.
Fermented malt beverages.
Fertilizers.
Film.
First aid products.
Flash bulbs.
Flatware.
Floor care products.
Flowers and seeds.
Foil, aluminum and similar products.
Foot care products.
Frames.
Fruit drinks that contain a sweetener and have 50 percent or less fruit juice by volume.
Fuel and lubricants.
Furniture polish.
Games.
Garbage bags and cans.
Garden needs.
Gifts, non-food and nonexempt food.
Ginseng sold as a dietary supplement.
Glassware.
Gloves.
Glue.
Granola bars, unless they contain flour.
Greeting cards.
Grilling supplies.
Grooming aids.
Gum.
Hair care products.
Hardware.
Health and beauty aids.
Heated foods and beverages, as explained in sub. (3) (ar).
Honey roasted and honey coated nuts.
Hosiery.
Household equipment and supplies.
Hygiene products.
Ice blocks
Insect and pest control products.
Insulated containers.
Internal remedies.
Intoxicating liquor.
Iron tablets.
Jewelry.
Juices that contain sweeteners and 50% or less fruit or vegetable juice by volume.
Laundry products.
Lawn furniture.
Light bulbs and fuses.
Lozenges.
Lunch boxes.

Lye.
Magazines.
Manicure needs.
Marshmallows, unless they contain flour.
Mason jars.
Matches.
Medicinal preparations.
Milk of magnesia.
Mineral tablets.
Nail polish and remover.
Nails.
Napkins.
Nonalcoholic beer that contains a sweetener.
Notebooks.
Nursery stock.
Nuts that are candy, such as honey roasted cashews.
Pails.
Paint and paint supplies.
Paper products, including tissues, plates, cups, towels, napkins and writing paper.
Peanuts that are candy, such as honey roasted peanuts.
Pens and pencils.
Periodicals.
Pet food and supplies.
Plants.
Plastic utensils.
Polishes.
Pots and pans.
Powder, face and body.
Prepared foods as explained in sub. (4).
Raisins that are candy, such as yogurt coated raisins.
Razors and blades.
Records.
Root beer.
Rotisseries.
Rubber bands.
Salt, water softener.
Sandwiches that are prepared food.
Sanitary goods.
School supplies.
Scissors.
Sewing aids.
Shampoo and rinse.
Shaving supplies.
Shelf coverings.
Shoe laces and polishes.
Soaps.
Soft drinks.
Sponges.
Starch.
Stationery.
Steel wool.
Stockings.
Sun glasses.

Sun tan lotion.
Tableware.
Taffy apples.
Tape.
Tea drinks that contain sweeteners.
Thread.
Tobacco products.
Toilet tissue.
Tonics.
Tools.
Tooth brushes.
Toothpaste and powders.
Toothpicks.
Toys.
Trail mix that includes candy.
Utensils.
Vegetable juices that contain a sweetener and 50% or less juice by volume.
Video rentals.
Vitamins.
Wash cloths.
Waste baskets.
Watches.
Water, sweetened.
Water conditioners.
Wax paper.
Waxing.
Wearing apparel.
Wine making supplies.
Wrap, foil, plastic and waxed paper.
Writing supplies.
Yogurt covered raisins and nuts.
Zippers.

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

Apple cider, sweet.
Baby food.
Bakery goods.
Baking powder and soda.
Barbecue sauces.
Berries.
Beverage powders, unless they are a dietary supplement.
Beverages that contain milk.
Biscuit mix.
Bouillon cubes.
Bread and rolls.
Breakfast pastries.
Brownies.
Butter.
Cake mixes and flour.
Cakes, prepared, mixes and snack type.
Canned foods.

Catsup.
Cereal and cereal products.
Cheese.
Chicken.
Chip dip.
Chips, potato, corn and similar items.
Chocolate, unsweetened or not sold in form of bars, drops, or pieces.
Citrus fruits.
Cocoa.
Coffee beans, grounds, freeze dried and coffee substitutes.
Coffee drinks that contain no sweeteners or that contain a milk or milk product.
Condiments.
Cookies and crackers.
Cooking oils.
Cones, ice cream cups.
Cream.
Dairy products.
Deli items, as explained in sub. (3) (g) 1.
Desserts and toppings.
Dinners, frozen.
Doughnuts.
Dressings.
Dried fruits, unsweetened.
Dried milk products.
Eggs.
Fish and fish products.
Flavoring extracts.
Flour.
Food coloring.
Frozen desserts.
Frozen fruit juices.
Frozen fruits and vegetables.
Frozen pizza.
Frozen TV dinners.
Fruit.
Fruit juices that contain more than 50% fruit juice by volume.
Garlic.
Gelatin.
Granola bars, except candy or yogurt coated.
Gravy extracts and mixes.
Grits.
Hash.
Honey.
Ice cream.
Ice cream bars and similar products.
Ice cream in cones.
Ice cubes.
Jams.
Jellies.
Juices that contain more than 50% fruit or vegetable juice by volume.
Ketchup.
Lobster.
Luncheon meats.

Macaroni.
Malted milk powder.
Maraschino cherries.
Margarine.
Marshmallows that contain flour.
Mayonnaise.
Meal.
Meat and meat products.
Meat extracts and tenderizers.
Melons.
Milk and milk products.
Mustard.
Newspapers.
Noodles.
Nuts, except as provided in par. (a).
Oil, cooking, salad.
Oleomargarine.
Olives.
Pancake mix.
Pasta.
Peanut butter.
Peanuts, in shell or canned, salted or not, except as provided in par. (a).
Pectins.
Pepper.
Pickles.
Pie and pie fillings.
Pie crust and mixes.
Popcorn.
Popsicles.
Potato chips.
Potato salad, as explained in sub. (3) (g) 1.
Poultry and poultry products.
Powdered drink mixes, except dietary supplements.
Preserves.
Pretzels.
Puddings.
Raisins, except as provided in par. (a).
Ravioli.
Relishes.
Rice.
Rolls and biscuits.
Salad dressing.
Salt and salt substitutes.
Salted nuts.
Sardines.
Seafood.
Seasonings.
Sherbet.
Shortening.
Soup.
Spaghetti products.
Spices.
Spreads.

Sugar.
 Sweeteners.
 Syrup.
 Tea, bags, leaves or instant.
 Tea and ice tea beverages that are not sweetened.
 Turkey.
 Vanilla and vanilla extract.
 Vegetable juices that contain more than 50% juice by volume.
 Vegetables.
 Vinegar.
 Waffle mix.
 Water, carbonated, unsweetened.
 Water, flavored, unsweetened
 Water, unsweetened.
 Yeast.
 Yogurt and yogurt bars, cones and sundaes.

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

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

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

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

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

(a) The product contains any of the following ingredients or any combination of any of the following ingredients:

1. A vitamin.
2. A mineral.
3. An herb or other botanical.
4. An amino acid.

5. A dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake.

6. A concentrate, metabolite, constituent, or extract.

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

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

2. Dietary supplements can be identified by the "Supplemental Facts" box found on the label as required by the Code of Federal Regulations, title 21, section 101.36 and include items such as amino acids, antioxidants, bee pollen, enzymes, garlic capsules, ginseng, herbal

supplements, immune supports, lecithin, metabolic supplements, vitamins and minerals and zinc lozenges.

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

(d) 1. "Soft drink" is defined in s. 77.51 (17w), Stats., to mean "...a beverage that contains less than 0.5 percent of alcohol and that contains natural or artificial sweeteners. 'Soft drink' does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50 percent vegetable or fruit juice by volume."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example: A food manufacturer classified under industry code 31161 of the North American Industry Classification System (NAICS), 2002 edition, makes hot dogs by mixing and combining 2 or more food ingredients, heating the hot dogs so that they are fully cooked and then packaging the hot dogs for sale once they have cooled. Although the hot dogs were heated by the retailer while they were being manufactured, they are not prepared food because they meet the exception in par. (b) 1. and do not meet any of the other definitions of prepared food.

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

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

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

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

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

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

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

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

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

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

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

1. Eating utensils are provided by the retailer if:

a. The eating utensils are available to the purchasers and the retailer's sales of food and food ingredients sold in a heated state, 2 or more food ingredients mixed or combined by a retailer for sale as a single item, soft drinks, and alcoholic beverages are more than 75 percent of the retailers total sales at that establishment; or

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

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

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

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

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

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

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

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

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

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

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

b. For retailers with more than one establishment in Wisconsin, a single determination under subd. 1. a. that combines the information for all of the retailer's establishments in Wisconsin shall be made annually, and will apply to all of the retailer's establishments in Wisconsin.

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

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

Note: Section Tax 11.51 interprets ss. 77.51 (4) (cm), 77.52 (1) and 77.54 (15) and (20), Stats.

Note: The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975; (b) Magazines and periodicals sold over-the-counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27; and (c). The definitions of "meals" and "sandwiches" and the tax treatment of prepackaged food combinations became effective August 1, 1997, pursuant to 1997 Wis. Act 237.

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

(2) DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

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

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

1. Candy.
2. Chewing gum.
3. Dietary supplements.
4. Heated foods and beverages.
4. Prepared foods, such as sandwiches prepared by the retailer.
5. Soft drinks.
6. Non-edible items such as:
 - a. Beauty supplies, such as make-up, hair spray, nail polish, and combs.
 - b. Cameras, film, and photography supplies.
 - c. Cigars, cigarettes, other tobaccos products, and lighters.
 - d. Drugs and other medical supplies, such as aspirin, bandages, and suntan lotion.
 - e. Hygiene products, such as soap and shampoo.
 - f. Photocopies.

- g. Photographs.
- h. Reading materials.
- i. Toys and games.
- j. Videos.
- k. Wearing apparel, such as gloves, hosiery, shoelaces, and sunglasses.

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

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

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

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

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

(c) Coin-operated hair drying machines.

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

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

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

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

1. Conspicuously posting the bracket system charts issued by the department; or
2. Conspicuously posting a sign that states "Prices Include Sales Tax."

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

1. The location of each machine.

2. The serial number of each machine.
3. Purchases and inventories of all merchandise sold through machines.
4. Receipts from sales of exempt merchandise.
5. Purchase records of all machines and the cost of all supplies of which the retailer is deemed to be the user or consumer.

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

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

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

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

Note: Section Tax 11.52 interprets s. 77.52 (1), (1m), (2) (a) 2., 6., 7. and 10. and (2m), Stats.

Note: The interpretations in s. Tax 11.52 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted.

SECTION 147. Tax 11.53(1) is repealed and recreated to read:

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

SECTION 148. Tax 11.53(2)(intro.) is renumbered 11.53(2) and amended as renumbered to read:

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

SECTION 149. Tax 11.53(2)(a) and (b) are repealed

SECTION 150. Tax 11.53(3) to (5) and (7) are amended to read:

Tax 11.53(3) EXCEPTION. Persons, other than nonprofit organizations, ~~not who do not~~ hold and are not otherwise required to hold a seller's permit who have total taxable ~~gross receipts from~~ sales of tangible personal property, ~~items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats.,~~ or taxable services of less than \$1,000 during the calendar year are not required to hold a seller's permit ~~or mobile seller's permit~~. Sales by such persons are exempt occasional sales. However, a person's purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services which when resold are exempt occasional sales under this section, are taxable purchases by that person.

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

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

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

SECTION 151. Tax 11.535(title), (1), (2)(b), (c), and (d), (3), and (5) are amended to read:

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

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

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

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

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

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

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

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

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

SECTION 152. Tax 11.54(title), (1)(a), (b), and (c), (2), (3)(title), (a), and (b), and (4)(a) and (b) are amended to read:

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

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

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

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

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

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