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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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 251. Tax 11.87(title) and (1)(b) and (e) are amended to read:

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

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

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

SECTION 252. Tax 11.87(1)(em) is created to read:

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

SECTION 253. Tax 11.87(1)(h) and (2)(a) and (b) are amended to read:

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

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

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

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

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

SECTION 254. Tax 11.87(2)(c) is repealed and recreated to read:

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

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

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

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

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

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

5) Same as Example 4, except that Convenience Store C's customary practice is to physically give or hand the napkins and straws to the purchaser. Convenience Store C's sales of heated food, heated beverages, soft drinks, candy, cookies, and cartons of milk are subject to tax since Convenience Store C's customary practice is to physically give or hand the napkins

and straws to the purchaser. The tax applies to these sales even though Convenience Store C's sales of prepared foods are less than 75% of its total sales of food and food ingredients.

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

SECTION 255. Tax 11.87(2)(d)(intro.) and 1. to 3. are amended to read:

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

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

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

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

SECTION 256. Tax 11.87(2)(e) is repealed and recreated to read:

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

SECTION 257. Tax 11.87(2)(f), (g)2., (h), (i)(title), (intro.), 1.(intro.) and a. to d., and 2.(intro.), a., and b., (j), and (k)1. and (3)(intro.), (a), and (b) are amended to read:

Tax 11.87(2)(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive prepared food, meals or drinks ~~candy, dietary supplements, soft drinks, or other taxable property, items, or goods~~, shall be taxable. If prepared food, meals or drinks ~~candy, dietary supplements, soft drinks, or other taxable property, items, or goods~~ are furnished, prepared, or served at locations other than the

place of business of the seller or in a room other than a regular dining room and an extra charge is made for the service, the entire amount shall be taxable.

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

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

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

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

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

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

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

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

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

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

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

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

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

meals prepared foods, candy, dietary supplements, soft drinks, and alcoholic beverages by transportation companies.

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

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

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

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

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

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

SECTION 258. Tax 11.87(3)(c)(intro.) is repealed and recreated to read:

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

SECTION 259. Tax 11.87(3)(c)1. and 2., (d), and (e) are amended to read:

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

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

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

(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental security income, veterans administration, or other disability and retirement benefits reflecting the value of ~~meals prepared foods~~ provided.

SECTION 260. Tax 11.87(3)(f) is created to read:

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

SECTION 261. Tax 11.87(4)(b) is amended to read:

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

SECTION 262. Tax 11.88 is repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) PAYMENT OF TAX. (a) No recreational vehicle may be registered in Wisconsin unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the recreational vehicle was exempt from the tax. If the recreational vehicle registrant does not present proof that the tax has been paid, the registrant shall pay the tax at the time the recreational vehicle is registered with the department of transportation even though the recreational vehicle may also be used out-of-state.

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

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

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

Note: Section Tax 11.88 interprets ss. 77.51 (2), (4) (b) 6., (13) (am) and (15) (b) 5., 77.52 (2) (a) 1., 77.53 (17) and (18), 77.54 (7), (31) and (36), 77.61 (1) (a) and (c), 218.10 (3), (7) and (9) and 340.01 (29), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective

August 1, 1987, pursuant to 1987 Wis. Act 27; (g) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; and (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

SECTION 263. Tax 11.91(1)(a), (2)(b)1., and (3)(b) are amended to read:

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

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

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

SECTION 264. Tax 11.92(1)(intro.) and (a) to (c) are amended to read:

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

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

(b) The basis for all deductions claimed in filing returns, including ~~resale and~~ exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order and the supplier's invoice or billing document. Sales to organizations holding a certificate of exempt status, CES, including religious or charitable organizations, can be shown to be exempt by recording the CES number on the seller's copy of the bill of sale. ~~All other~~ Except as provided in this paragraph, s. 77.52 (13), Stats., and s. 77.53 (10), Stats.,

exempt sales shall be supported by an exemption certificate signed by the purchaser and retained by the seller, ~~unless the merchandise sold is specifically exempted by statute regardless of use, such as groceries.~~ Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

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

SECTION 265. Tax 11.92(1)(d) is renumbered 11.92(1)(d)(intro.) and amended as renumbered to read:

Tax 11.92(1)(d)(intro.) Every person subject to the county, stadium, or regional transit authority sales and use tax shall keep a record of sales that the person completes in makes that are sourced under s. 77.522, Stats., to each:

SECTION 266. Tax 11.92(1)(d)1. to 3. and (e) are created to read:

1. County that has in effect an ordinance imposing a county tax under s. 77.70, Stats.

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

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

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

SECTION 267. Tax 11.92(2)(b), (3)(c), and (6) are amended to read:

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

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

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

SECTION 268. Tax 11.925(1) is renumbered 11.925(1)(a) and amended as renumbered to read:

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

SECTION 269. Tax 11.925(1)(b) is created to read:

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

SECTION 270. Tax 11.925(2)(a)1., (3)(a)1., and (5)(a) and (d)3. and 5. are amended to read:

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

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

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

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

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

SECTION 271. Tax 11.93(1) is amended to read:

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

SECTION 272. Tax 11.94 is repealed and recreated to read:

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

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

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

Selling price of clothing	\$100.00
Delivery charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 5% (\$110 @ 5%)	<u>5.50</u>
Total	\$115.50

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

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

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

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

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

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

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

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

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

Note: Section Tax 11.94 interprets ss. 71.51 (4) (a) 3., (14) (intro.) and (d), (14r) and (15) (a) and 77.52 (1), Stats.

Note: The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969.

SECTION 273. Tax 11.945 is created to read:

Tax 11.945 Sourcing Transactions. (1) DEFINITIONS.

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

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

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

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

b. 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.

c. 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.

d. Containers that are designed for use on the vehicles described in subd. 2. a. to c. and component parts attached to or secured on such vehicles."

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

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

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

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

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

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

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

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

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

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

1. The purchaser's direct pay permit.

2. An exemption certificate claiming direct mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 274. Tax 11.95(1)(a) is amended to read:

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

SECTION 275. Tax 11.95(1)(am) and (c) and (3)(d) are created to read:

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

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

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

SECTION 276. Tax 11.96(title), (1), and (2)(a) and (b) are amended to read:

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

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

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

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

SECTION 277. Tax 11.96(2)(c) to (h) are created to read:

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

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

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

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

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

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

SECTION 278. Tax 11.96(3) is amended to read:

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

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

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

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

SECTION 279. Tax 11.97(1)(a) is amended to read:

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

SECTION 280. Tax 11.97(1)(b)8. is created to read:

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

SECTION 281. Tax 11.97(2)(a) and (3)(b) to (f) are amended to read:

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

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

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

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

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

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

SECTION 282. Tax 11.97(3)(h) and (i) are created to read:

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

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

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

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

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

SECTION 283. Tax 11.97(5)(a)4. and (6) are amended to read:

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

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

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

Note: 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.

SECTION 284. Tax 11.98(1)(intro.) and (d), (2)(c), and (3) are amended to read:

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

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

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

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

SECTION 285. Tax 11.985 is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. If a transaction includes a bundle of products that are sold for one nonitemized price and also one or more additional products that were individually priced or itemized from the bundled products in a catalog or price list, but the invoice provided to the purchaser only included one price, the additional products that were individually priced in the catalog or price list are not part of the bundled transaction.

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

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

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

(b) 1. At the retailer's option, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products that are not subject to the tax imposed under this subchapter, that portion of the sales price is not taxable.

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

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


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

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

The rules contained in this order shall take effect on October 1, 2009.

DEPARTMENT OF REVENUE

Dated: September 22, 2009

By: 

Roger M. Ervin
Secretary of Revenue

E:Rules/Chapter 11 Proposed Order (emergency)

FISCAL ESTIMATE FORM

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09-

INTRODUCTION #

Admin. Rule # Chapter Tax 11 Streamlined Sales Tax Implementation (emergency)

Subject PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

2009 Wisconsin Act 2 adopted statutory changes to bring Wisconsin into conformity with the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA is the result of an effort by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration. Under the agreement, Wisconsin must use standard definitions for sales tax purposes.

The proposed rule conforms ch. Tax 11 to current law, as modified by the Streamlined Sales and Use Tax Agreement provisions of 2009 Wisconsin Act 2. The rule provides guidance in the application of the law by providing specific examples of items that are both included and excluded from certain SSUTA definitions. The rule provides examples of exempt durable medical equipment, exempt prosthetic devices, and exempt mobility enhancing equipment. The rule also provides several guide lists – including items typically sold by grocers that are subject to the sales tax and items typically sold by grocers that are exempt from the tax.

Since the fiscal effect of conforming Wisconsin law to the SSUTA was included in the fiscal estimate of 2009 Wisconsin Act 2, the rule has no fiscal effect.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by Wisconsin Department of Revenue	Authorized Signature/Telephone No.	Date
Paul Ziegler 608 266-5773	Paul Ziegler 608 266-5773	09/01/09

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09
INTRODUCTION #

Admin. Rule #
 Chapter Tax 11
 Streamlined

Subject PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringe	\$	\$ -
(FTE Position Changes)	()	-
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	-
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$
FED		-
PRO/PRS		-
SEG/SEG-S	\$	-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Authorized Signature/Telephone No. Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Date 09/01/09
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