

Clearinghouse Rule 12-014

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 11.001(2)(bw), 11.28(3)(c)1.b. (Example 1), 11.66(2)(a)9., 11.84(2)(c)2. and 3., 11.92(1)(d)3., and 11.96(2)(g) and (h); **renumber** Tax 11.32(7) and 11.66(2)(a)10. to 16.; **renumber and amend** Tax 11.05(3)(b), 11.83(3)(a), and 11.84(2)(c)4.; **amend** Tax 1.12(8)(c), 11.001(1), (2)(e), and (3) (Note), 11.04(1), 11.05(4)(a) and (Note), 11.12(3), 11.14(2)(a)3., (6)(b)1., (8), (9), (10)(intro.), and (13)(b), 11.15(3)(a), 11.17(4)(b)6., 11.26(3)(b) (Example 1) and (Example 3) and (Note), 11.28(3)(c)1.(intro.), a., and b. and (7) (Note), 11.32(6) (Example) and (8) (Note), 11.33(5)(title), 11.34(1) and (3)(a) and (b)(intro.), 11.35(1), 11.49(2)(b) and (d), 11.51(2)(a) and (b) and (4)(b)1. (Example) and 2. (Example 1) and (d)1.(intro.), a., and b., 11.65(4)(b), 11.66(3)(a)2. and 3., (b), and (c), 11.68(13)(title), (a), (c), (d), (e), and (Note), 11.70(7)(a)2. and (Note), 11.71(2)(c) (Example 2), 11.83(11)(a) and (b), 11.85(2)(b), 11.87(4)(b), 11.88(3)(b), 11.92(1)(b), (d)(intro.), and (e), 11.95(1)(a), and 11.96(title), (1), (3)(intro.), and (Note); **repeal and recreate** Tax 11.33(4), 11.51(3)(a)2., 11.84(1)(b), and 11.97(8); and **create** Tax 11.05(3)(b)2. and 3., 11.28(3)(c)1.a. (Example), ag., and ar., 11.32(7)(b) and (c) and (8)(d), 11.33(5)(b) (Example), 11.34(3)(bg) and (br), 11.51(3)(a)3. to 10. and (4)(b)3. (Example), (c)3. (Examples) and 4. (Example), and (d)1.b. (Examples), 11.65(2)(L) and (4)(b) (Examples), 11.66(2)(cm), 11.68(4)(g), 11.83(3)(a)(intro.) and 2. and (15), 11.84(4)(g) to (i), 11.85(2)(bm), 11.87(3)(g) and (4)(b) (Examples), and 11.88(1)(bm), (3)(c), and (4m); **relating to** sales and use tax law changes made by 2011 Wisconsin Act 32 and other legislation.

The scope statement for this rule, SS 031-11, was approved by the Governor on October 21, 2011, published in Register No. 671 on November 14, 2011, and approved by the Secretary of Revenue on November 28, 2011.

Analysis by the Department of Revenue

Statutes interpreted: s. 77.52(21), 77.54(5)(am), and 77.54(11m), Stats.

Statutory authority: ss. 73.029, 77.52(19), 77.65(3), and 227.11(2)(a), Stats.

Explanation of agency authority: Section 73.029, Stats., provides “[t]he department of revenue may require electronic funds transfer only by promulgating rules.” This provision applies to proposed rule changes relating to Section Tax 1.12.

Section 77.52(19), Stats., provides “[t]he department shall by rule provide for the efficient collection of the taxes imposed by this subchapter on sales of tangible personal property, or items, property, or goods under sub. (1)(b), (c), or (d), or services by persons not regularly engaged in selling at retail in this state or not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessions at fairs and carnivals, and the like. The department may authorize such persons to sell property or items, property or goods under sub. (1)(b), (c), or (d) or sell, perform, or furnish services on a permit or nonpermit basis as the department by rule prescribes and failure of any person to comply with such rules

constitutes a misdemeanor.” This provision applies to proposed rule changes relating to Chapter Tax 11.

Section 77.65(3), Stats., provides “[t]he department may enter into the agreement to simplify and modernize sales tax and use tax administration in order to substantially reduce the tax compliance burden for all sellers and for all types of commerce. The department may act jointly with other states that are signatories to the agreement to establish standards for the certification of a certified service provider and certified automated system and to establish performance standards for multistate sellers. The department may promulgate rules to administer this section, may procure jointly with other states that are signatories to the agreement goods and services in furtherance of the agreement, and may take other actions reasonably required to implement this section. The secretary of revenue or the secretary’s designee may represent this state before the states that are signatories to the agreement.” This provision also applies to proposed rule changes relating to Chapter Tax 11.

Section 227.11(2)(a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

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

Plain language analysis: This proposed rule:

- reflects the following tax law changes:
 - Section 77.52(21), Stats., as revised by 2011 Wisconsin Act 32 to change the sales and use tax treatment of items provided free of charge by a retailer.
 - Section 77.54(5)(am), Stats., as created by 2011 Wisconsin Act 32 to create a sales and use tax exemption for modular and manufactured homes used in real property construction activities outside Wisconsin.
 - Section 77.54(11m), Stats., as created by 2011 Wisconsin Act 32 to create a sales and use tax exemption for vegetable oil or animal fat converted to motor vehicle fuel that is exempt from the taxes imposed under s. 78.01(1), Stats.
 - The repeal of the regional transit authorities.
- provides consistency with the interpretive rules and amendments adopted by the Streamlined Sales Tax Governing Board (SSTGB) to the extent those rules and amendments are consistent with Wisconsin’s laws and makes changes to clarify rules based on suggestions made during last year’s compliance review conducted by the SSTGB.
- provides specifically that if the due date of a payment falls on a day the Federal Reserve Bank is closed the payment is timely if it is made on the next day the Federal Reserve is open (existing provisions to be updated are in Section Tax 1.12)
- removes potentially obsolete language and adds and amends examples where needed for clarification purposes
- makes corrections to incorrect statutory cross-references
- correctly reflects the occasional sale provisions contained in Wisconsin law

- reflects the department's position relating to the Federal Anti-Head Tax Act (49 U.S.C. 40166) as it applies to Wisconsin sales and use tax

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2011 Wisconsin Act 32 and the other legislation referenced in the above plain language analysis made various changes to Wisconsin's sales and use tax laws. The department has created this proposed rule order to reflect these statutory changes. No other data was used in the preparation of this proposed rule order or this analysis.

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

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

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

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

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

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SECTION 1. Tax 1.12(8)(c) is amended to read:

Tax 1.12(8)(c) When the prescribed due date falls on a weekend, ~~or~~ legal holiday, or day the Federal Reserve Bank is closed, the payment due date is revised to

be the first business day immediately following the weekend, ~~or holiday,~~ or day the Federal Reserve Bank was closed.

SECTION 2. Tax 11.001(1) is amended to read:

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

SECTION 3. Tax 11.001(2)(bw) is repealed

SECTION 4. Tax 11.001(2)(e) is amended to read:

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

SECTION 5. Tax 11.001(3) (Note) is amended to read:

Tax 11.001(3) (Note) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2. The regional transit authority taxes were authorized by 2009 Wis. Act 28 and repealed by 2011 Wis. Act 32.

SECTION 6. Tax 11.04(1) is amended to read:

Tax 11.04(1) In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, ~~the Wisconsin Quality Home Care Authority,~~ and the Fox River Navigational System Authority; 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 s. 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 s. 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.; a cemetery company or corporation described under section 501 (c) 13 of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation. Section 77.55

(1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated [incorporated] agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

SECTION 7. Tax 11.05(3)(b) is renumbered (3)(b)1. and amended as renumbered to read:

Tax 11.05(3)(b)1. Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste, wood, and biomass as defined in s. 196.378 (1) (ar), Stats., used for fuel sold for residential use. Electricity and natural gas sold for residential use during the months of November through April. Fuel and electricity sold for use in farming. Fuel and electricity consumed in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats. ~~"Sold" is defined in s. 77.54 (30) (b), Stats.~~ In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (q) 2.

SECTION 8. Tax 11.05(3)(b)2. and 3. are created to read:

Tax 11.05(3)(b)2. Electricity and natural gas are considered sold at the time of the billing. If the billings are mailed, the time of billing is the day on which the billing is mailed.

3. Fuels other than electricity and natural gas are considered sold at the time possession is transferred from the seller or seller's agent to the purchaser or purchaser's agent, except that a common carrier is the agent of the seller regardless of any f.o.b. point and regardless of the method in which the freight is paid.

SECTION 9. Tax 11.05(4)(a) and (Note) are amended to read:

Tax 11.05(4)(a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., and services by Wisconsin or by any agency of Wisconsin, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, ~~the Wisconsin Quality Home Care Authority,~~ and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; ~~any transit authority created under s. 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 s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; and a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

(Note) The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972, through October 3, 1973; (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973; (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977; (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, and the electricity and natural gas six-month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979; (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980, pursuant to Chapter 221, Laws of 1979; (f) Landscaping and lawn maintenance services became taxable on May 1, 1982, pursuant to Chapter 317, Laws of 1981; (g) A governmental unit's charges for copying public records became exempt effective April 27, 1984, pursuant to 1983 Wis. Act 287, later amended effective April 2, 1986, pursuant to 1985 Wis. Act 149 to clarify that the exemption also applies to confidential records, and again amended effective May 1, 1992, pursuant to 1991 Wis. Act 269, to include records under s. 19.35 (1) (a), Stats.; (h) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption for an agency or instrumentality of a Wisconsin governmental unit became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wis. Act 27; (k) The exemption for admissions to a museum operated by a nonprofit corporation under lease with the state historical society became exempt July 20, 1985, pursuant to 1985 Wis. Act 29; (L) The exclusion of hospital service insurance corporation from the definition of exempt entity became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (m) Revenues from establishing a "911" emergency telephone system became exempt August 1, 1987, pursuant to 1987 Wis. Act 27; (n) State park camping fees became exempt effective September 1, 1989, pursuant to 1989 Wis. Act 31; (o) The exemption for animal identification tags and standard samples by the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16; (p) The exemption for fuel used in farming became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (q) The requirement that meals must be served on the premises of hospitals, nursing homes, etc., for exemption to apply became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (r) The exemption for sales to a local exposition district became effective April 26, 1994, pursuant to 1993 Wis. Act 263; (s) The exemption for sales of meals by community-based residential facilities became effective June 1, 1994, pursuant to 1993 Wis. Act 332; (t) The exemption for sales to the University of Wisconsin Hospitals and Clinics Authority became effective July 29, 1995, pursuant to 1995 Wis. Act 27; (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; (v) The exemption for electricity sold for use in farming was expanded to include sales of

electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9; (w) The exemption for sales from the collection of public benefit fees became effective October 29, 1999, pursuant to 1999 Wis. Act 9; (x) The exemption for use of recreational facilities in connection with the sale of time-share property became effective December 1, 1999, pursuant to 1999 Wis. Act 9; (y) The exemption for certain items sold from a vending machine became effective July 1, 2001, pursuant to 1999 Wis. Act 9; (z) The exemption for fuel consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (zb) The exemption for regional transit authorities and the Wisconsin Quality Home Health Care Authority became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (ze) The exemption for federally recognized American Indian tribes or bands in Wisconsin became effective August 1, 2009, pursuant to 2009 Act 28; (zh) The requirement that governmental units collect sales tax on their sales of used motor vehicles became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (zL) The exemption for low-income assistance fees became effective July 1, 2005, pursuant to 2005 Wis. Act 141; (zp) The exemption for certain admissions to sports activities by governmental units became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (zr) The exemption for the police and fire protection fee became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (zu) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~-(zy) The exemption for sales of food and food ingredients, except soft drinks, by any facility certified or licensed under ch. 48, Stats., became effective May 6, 2010, pursuant to 2009 Wis. Act 204; and (zz) The exemption for regional transit authorities was repealed effective September 28, 2011, pursuant to 2011 Wis. Act 32 and the exemption for the Wisconsin Quality Home Care Authority was repealed effective June 29, 2011, pursuant to 2011 Wis. Act 10.

SECTION 10. Tax 11.12(3) is amended to read:

Tax 11.12(3) A retailer shall have a signed exemption certificate for every exempt sale made to a farmer, except that if the exemption certificate is received electronically, a signature is not required. ~~The certificate shall be used only for categories of items listed on it.~~ Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

SECTION 11. Tax 11.14(2)(a)3., (6)(b)1., (8), (9), (10)(intro.), and (13)(b) are amended to read:

Tax 11.14(2)(a)3. Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003 or Streamlined Sales and Use Tax Exemption Certificate - Wisconsin, Form S-211-SST. ~~This is a~~ These are multistate ~~form~~ forms which may be used to claim any sales or use tax exemption provided under Wisconsin law. ~~Since this is a~~ these are multistate exemption ~~certificate~~ certificates, purchasers should use caution when issuing ~~this certificate~~ these certificates, since ~~it contains~~ they contain various exemptions that are not applicable in Wisconsin and only apply in other states. Purchasers are responsible for knowing if they qualify for the exemption they are claiming in the state in which the exemption is being claimed. The purchaser will be held liable for any tax, interest, and penalties that result from the purchaser claiming an exemption for which they were not eligible.

(6)(b)1. The name, ~~and address,~~ and the signature of the purchaser, except that if the exemption certificate is received electronically, a signature is not required.

(8) A retailer shall have a signed exemption certificate for every exempt sale made to a farmer, except that if the exemption certificate is received electronically, a signature is not required.

(9) A retailer shall have a signed exemption certificate if the sale of fuel oil, propane, coal, steam or wood for residential or farm use is partially exempt from sales or use tax, except that if the exemption certificate is received electronically, a signature is not required. If the sale is 100% exempt, an exemption certificate is not required.

(10)(intro.) A retailer of electricity or natural gas shall have a signed exemption certificate, except that if the exemption certificate is received electronically, a signature is not required, for all sales of electricity or natural gas for residential or farm use which are exempt from sales or use tax unless any, or all, of the following apply:

(13)(b) The certificate shall give the descriptive name of the contract, job site, county or stadium tax effective date, date of prime contract and bid, date contract was signed, seller's name, date of performance of the contract, and contractor's name and address and shall be signed by the contractor, except that if the certificate is received electronically, a signature is not required.

SECTION 12. Tax 11.15(3)(a) is amended to read:

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

SECTION 13. Tax 11.17(4)(b)6. is amended to read:

Tax 11.17(4)(b)6. An optometrist's sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including nonprescription sun glasses, contact lens solution, ~~thermal and chemical care units for contact lenses,~~ and other types of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., ordinarily taxable when sold at retail, unless the sales price from those sales are less than \$1,000 during the calendar year. Optometrists whose receipts from taxable property, items, and goods equal or exceed \$1,000 in a calendar year shall register with the department and obtain a seller's permit. Those whose receipts from taxable property, items, and goods are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable property, items, or goods.

SECTION 14. Tax 11.26(3)(b) (Example 1) and (Example 3) and (Note) are amended to read:

Tax 11.26(3)(b) (Example 1) The room taxes imposed under s. ~~66.75~~ 66.0615, Stats., which municipalities or local exposition districts impose on persons furnishing lodging to transients.

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

(Note) The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (c) the regional transit authority taxes were authorized by 2009 Wis. Act 28 and repealed by 2011 Wis. Act 32.

SECTION 15. Tax 11.28(3)(c)1.(intro.) and a. are amended to read:

Tax 11.28(3)(c)1.(intro.) When a retailer distributes coupons which its customer may use to obtain free tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, the following shall apply:

a. When purchasing ~~tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.~~ taxable products, including services, which will be given away to customers who ~~must purchase other property, items, or goods to obtain the free property, item, or good~~ make a required purchase consisting of only nontaxable products, a retailer may not ~~use an exemption certificate to purchase the free property, item, or good~~ products without ~~payment of the sales tax for resale.~~ The retailer is deemed the consumer of the free ~~property~~ products as provided in s. 77.52 (21) (a), Stats. If the free ~~property, item, or good~~ products were acquired without tax for resale, the retailer shall report the tax on its purchase price of ~~the property, item, or good~~ those products.

SECTION 16. Tax 11.28(3)(c)1.a. (Example), ag., and ar. are created to read:

11.28(3)(c)1.a. (Example) A retailer purchases key chains that it will give to customers who purchase eight gallons of gasoline. The gasoline is exempt from sales tax. The retailer is required to pay Wisconsin sales or use tax on its purchase of the key chains.

ag. When purchasing taxable products, including services, which will be given away to customers who make a required purchase consisting of only taxable property, items, or goods, a retailer may purchase the free products without tax for resale. The retailer is deemed to be selling both the required property, item, or good and the product being provided free, as provided in s. 77.52 (21) (b), Stats.

Example: A retailer purchases bicycles that it will give to customers who purchase a sofa. The retailer may purchase the bicycles without tax for resale because the customer must purchase the sofa in order to receive the bicycle.

ar. When purchasing taxable products, including services, which will be given away to customers who make a required minimum purchase that may consist of both

taxable and nontaxable property, items, and goods, the retailer may owe tax on its purchase of the free products. If the sales price of all of the taxable products sold equals or exceeds the required minimum purchase, the retailer may purchase the free products without tax for resale. If the sales price of all of the taxable products sold does not equal or exceed the required minimum purchase, the retailer owes tax on its purchase price of the free products to the extent that nontaxable products are included in the required minimum purchases. The retailer may make a reasonable allocation to compute the tax due on its purchase price of the free products. If the retailer does not want to make this allocation, the retailer shall pay tax on its purchase price of the products provided free of charge.

Examples: 1) A retailer provides a free soft drink to each customer that purchases at least \$20 worth of property. A customer purchases \$15 dollars of taxable property and \$5 dollars of nontaxable property and receives the free soft drink. The retailer purchased the soft drink from its supplier for \$1. Since 75% of the selling price of the minimum required purchase is from taxable property ($\$15/\20 minimum purchase requirement = 75%), the retailer is only required to pay tax on the remaining 25% of its \$1 purchase price of the soft drink it gave away to this customer.

2) Same as Example 1 except that the customer purchases \$5 of taxable property and \$15 of nontaxable property and receives the free soft drink. Since 25% of the selling price of the minimum required purchases is from taxable property ($\$5/\20 minimum purchase requirement = 25%), the retailer is only required to pay tax on the remaining 75% of its \$1 purchase price of the soft drink it gave away to this customer.

3) Same as Example 1 except that the customer purchased \$15 of taxable property and \$30 of nontaxable property and receives the free soft drink. Since 75% of the minimum required purchases is from taxable property ($\$15/\20 minimum purchase requirement = 75%), the retailer is only required to pay tax on the remaining 25% of its \$1 purchase price of the soft drink it gave away to this customer.

4) Same as Example 1 except that the customer purchases \$25 of taxable property and \$30 of nontaxable property and receives the free soft drink. Since at least 100% of the \$20 minimum required purchase is from taxable property, the retailer does not owe any sales or use tax on its purchase of the soft drink that it gave away to this customer.

Note: Additional examples can be obtained in *Wisconsin Tax Bulletin 174* (January 2012) available on the Department's web site at www.revenue.wi.gov.

SECTION 17. Tax 11.28(3)(c)1.b. is amended to read:

Tax 11.28(3)(c)1.b. A retailer may not use an exemption certificate when purchasing taxable ~~tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.,~~ products which the retailer knows, or should know, ~~is~~ are to be given away to customers ~~without the customers being a required to purchase other property, items, or goods to receive the free property, item, or good.~~ without the customers being a required to purchase other property, items, or goods to receive the free property, item, or good. If the ~~property, item, or good~~ product that is given away was acquired without tax for resale, the retailer shall report the tax on its purchase price of the ~~property, item, or good~~ product.

SECTION 18. Tax 11.28(3)(c)1.b. (Example 1) is repealed

SECTION 19. Tax 11.28(7) (Note) is amended to read:

Tax 11.28(7) (Note) The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (c) Section 77.57, Stats., was amended to remove the portion of the statute that allowed a purchaser to use the lesser of the cost or fair market value of an item that was purchased exempt and whose first taxable use occurred more than 6 months after it was purchased, pursuant to 2009 Wis. Act 2; (d) The requirements for a third party reimbursement to be considered part of the sales price or purchase price of a product are effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (e) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (f) The tax treatment of products provided for free by retailers became effective September 1, 2011 pursuant to 2011 Wis. Act 32.

SECTION 20. Tax 11.32(6) (Example) is amended to read:

Tax 11.32(6) (Example) A restaurant operator exchanges meals having a 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 the sales price of \$100 as a result of the transaction since the total sales reported on the sales and use tax return includes both taxable and nontaxable transactions.

The radio station may, however, deduct the \$100 from its total sales reported on its sales and use tax return, if the advertising service that it is selling is not subject to Wisconsin sales or use tax. The restaurant operator's sales of these meals are taxable. Therefore, no deduction may be taken on the restaurant operator's sales and use tax return relating to these meals.

SECTION 21. Tax 11.32(7) is renumbered 11.32(7)(a)

SECTION 22. Tax 11.32(7)(b) and (c) and (8)(d) are created to read:

Tax 11.32(7)(b) If the exclusion under par. (a) applies to the sale of a manufactured home, no reduction in the sales price or purchase price is allowed for trade-ins.

(c) Sales of manufactured homes as defined in s. 101.91 (2), Stats., to a contractor-consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

(8)(d) Sales of modular homes as defined in s. 101.71 (6), Stats., to a contractor-consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

SECTION 23. Tax 11.32(8) (Note) is amended to read:

Tax 11.32(8) (Note) The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (d) The reduction of gross receipts and sales price for sales of manufactured buildings, as defined in s. 101.71 (6), Stats., became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The term "manufactured building" was changed to "modular home" and the term "mobile home" was changed to "manufactured home" effective January 1, 2008 pursuant to 2007 Wis. Act 11; ~~and~~ (f) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (g) The exemption for modular homes and manufactured homes used in real property construction activities outside Wisconsin became effective September 1, 2011 pursuant to 2011 Wis. Act 32.

SECTION 24. Tax 11.33(4) is repealed and recreated to read:

Tax 11.33(4) SALES WHICH ARE EXEMPT OCCASIONAL SALES. Sales which are exempt occasional sales include:

(a) The sale of a motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle or aircraft that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin is an exempt occasional sale only if one of the following applies:

1. The sale is 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 or titled in Wisconsin in the name of the transferor, if required to be registered or titled, and the transferor is not engaged in the business of selling this type of property.

2. The item is a motor vehicle and the transferor sells the motor vehicle to a corporation owned solely by the transferor or the transferor's spouse, provided the motor vehicle has been previously registered or titled in Wisconsin in the name of the transferor, if required to be registered or titled, and the transferor is not engaged in the business of selling motor vehicles. Transferor for purposes of this subdivision means a natural person.

3. The motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle or aircraft is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(b) Any sale of a boat that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin or under the laws of the United States, is an exempt occasional sale only if one of the following applies:

1. The sale is 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 or titled in Wisconsin in the name of the transferor, if required to be registered or titled, and the transferor is not engaged in the business of selling boats.

2. The boat is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(c) Except as provided in pars. (a) and (b), five or fewer auctions that are the sale of personal farm property or household goods 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.

Note: Refer to s. Tax 11.50 (4) and (5) regarding exempt occasional sales at auction of personal farm property and household goods.

(d) Except as provided in pars. (a) and (b), sales of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., by an individual who operates a sole proprietorship and who holds or is required to hold a seller's permit, which have not been used in the course of the person's business and 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 are taxable.

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 sales price from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the 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.

(e) Except as provided in pars. (a) and (b), 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 at that location.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(f) Except as provided in pars. (a) and (b), 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 hold and is not required to hold a seller's permit, if the total taxable 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.

Examples: 1) If the 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 sales price from soft drink sales does not exceed \$1,000 per year. These groups are deemed consumers and the supplier's sales to them are taxable retail sales.

(g) Sales by nonprofit organizations meeting the requirements in s. 77.54 (7m), Stats.

Note: Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

SECTION 25. Tax 11.33(5)(title) is amended to read:

Tax 11.33(5)(title) SALES WHICH ARE NOT EXEMPT OCCASIONAL SALES.

SECTION 26. Tax 11.33(5)(b) (Example) is created to read:

Tax 11.33(5)(b) (Example) The sale by a sole proprietor holding a seller's permit of a motor vehicle used in the sole proprietor's business is taxable unless it qualifies as an exempt occasional sale under s. Tax 11.33 (4) (a) 1. or 2.

SECTION 27. Tax 11.34(1) and (3)(a) and (b)(intro.) are amended to read:

Tax 11.34(1) This section describes the ~~occasional sales exemption under s. 77.54 (7) (a), Stats.,~~ for the occasional sale of a business or business assets as ~~provided described in s. 77.51 (9) (a) and (am), Stats.~~

(3)(a) Pursuant to s. 77.51 (9) (a) and (am), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim ~~the occasional sales exemption that a sale of a business asset is an occasional sale,~~ except as provided in par. (b).

(b)(intro.) A sale, other than a sale described in par. (bg) or (br), is exempt from sales and use tax as an occasional sale if all of the following conditions are met:

SECTION 28. Tax 11.34(3)(bg) and (br) are created to read:

Tax 11.34(3)(bg) A sale of a motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle or aircraft that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin, is subject to tax unless s. Tax 11.33 (4) (a) 1. or 2. apply.

Example: A business has four business locations in Wisconsin and has ceased all of its business activities at one location. All of the business assets at the location where the business has ceased operating, including one motor vehicle that it used in its business, are being sold. The business is required to continue to hold a seller's permit for its other three locations. The motor vehicle is sold, but the purchaser is not a person described in s. Tax 11.33 (4) (a) 1. or 2. The sale of the motor vehicle is not an exempt occasional sale of a business asset and the seller is required to collect tax on its sale of the motor vehicle.

(br) A sale of a boat that is registered or titled or required to be registered or titled in Wisconsin or under the laws of the United States is subject to tax unless s. Tax 11.33 (4) (b) 1. applies.

SECTION 29. Tax 11.35(1) is amended to read:

Tax 11.35(1) This section describes the occasional sales exemption for nonprofit organizations as provided in s. 77.54 ~~(7)~~ and (7m), Stats.

SECTION 30. Tax 11.49(2)(b) and (d) are amended to read:

Tax 11.49(2)(b) Sales made directly to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, ~~the Wisconsin Quality Home Care Authority,~~ and the Fox River Navigational System Authority; 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 s. 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 s. 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.

(d) Sales to farmers of parts and repairs for tractors or farm machines used exclusively and directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

SECTION 31. Tax 11.51(2)(a) and (b) are amended to read:

Tax 11.51(2)(a) Adhesive tape.
Air fresheners.
Albums.
Alcoholic beverages.
Almond bark.
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.
Breath sprays and strips.
Brooms.
Brushes.
Bubble bath.
Butterscotch chips.
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.
Cereal bars, unless they contain flour.
Charcoal and starter.
Chewing gum.
Chocolate chips and other flavored chips, if sweetened.
Chocolate covered potato chips, unless they contain flour.

Chocolate covered raisins and nuts.
Cigarette lighter fluid, wicks, flints.
Cigarettes.
Cigars.
Cleaning equipment and supplies.
Cleansers.
Clocks.
Clothes lines.
Clothespins.
Clothing.
Cocktail mixes containing 50% or less fruit or vegetable juice.
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) (e) 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.
Flaked coconut with sweetener.
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.

Fruit roll-ups.

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) (c).

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.

Licorice, unless it contains flour.

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.
Popcorn that is candy, such as caramel corn.
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.
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) Apple cider, sweet.
Baby food.
Bakery goods.
Baking powder and soda.
Barbecue potato chips.
Barbecue sauces.
Barbecue sunflower seeds.
Berries.
Beverage powders, unless they are a dietary supplement.
Beverages that contain milk.
Biscuit mix.
Bouillon cubes.
Bread and rolls.
Breakfast cereals.
Breakfast pastries.
Brownies.
Butter.
Cake mixes and flour.
Cakes, prepared, mixes and snack type.
Candy bars containing flour.
Canned foods, except candy, soft drinks, dietary supplements, and prepared foods.
Catsup.
Cereal and cereal products.
Cereal bars containing flour.
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.
Cotton candy not sold as prepared food.
Cream.
Dairy products.
Deli items, as explained in sub. (3) (e).
Desserts and toppings.
Dinners, frozen.
Doughnuts.
Dressings.
Dried fruits, unsweetened.
Dried milk products.
Eggs.
Fish and fish products.
Flaked coconut without sweetener.
Flavoring extracts.
Flour.
Food coloring.
Frosting in containers.
Frozen desserts.
Frozen fruit juices.
Frozen fruits and vegetables.
Frozen juice bars.
Frozen pizza.
Frozen TV dinners.
Fruit.
Fruit juices that contain more than 50% fruit juice by volume.
Garlic.
Gelatin.
Granola bars that contain flour.
Gravy extracts and mixes.
Grits.
Hash.
Honey.
Ice cream.
Ice cream bars and similar products.
Ice cream in cones.
Ice cubes.
Icing in tubes.
Jams.
Jellies.
Juices that contain more than 50% fruit or vegetable juice by volume.
Ketchup.
Licorice containing flour.
Lobster.
Luncheon meats.
Macaroni.
Malted milk powder.
Maraschino cherries.
Margarine.
Marshmallow creme.

Marshmallows that contain flour.
Mayonnaise.
Meal.
Meat and meat products.
Meat extracts and tenderizers.
Melons.
Milk and milk products.
Mustard.
Newspapers, as defined in s. 77.51 (8), Stats.
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, that is not candy as defined in sub. (3) (a).
Popcorn, unpopped.
Popsicles.
Potato chips.
Potato salad, as explained in sub. (3) (e).
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.
Sugar cubes.
Sweeteners.

Syrup.
Tea, bags, leaves or instant.
Tea and ice tea beverages that are not sweetened.
Trail mix.
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.

SECTION 32. Tax 11.51(3)(a)2. is repealed and recreated to read:

Tax 11.51(3)(a)2. This definition is intended to be used when a person is trying to determine if a product that is commonly thought of as “candy” is in fact “candy.” The definition is not intended to be applied to every type of food product sold.

Examples: 1) The definition of candy would be applied in a situation where a person is trying to determine if a product is “candy” as opposed to a cookie.

2) Many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables are not commonly thought of as “candy.” The candy definition is not applicable to products such as these since they are not commonly thought of as candy.

Note: A listing that determines whether various products meet the definition of “candy” was prepared by the Streamlined Sales Tax Governing Board (SSTGB) and can be found in the Rules and Procedures of the SSTGB at <http://www.streamlinedsalestax.org>.

SECTION 33. Tax 11.51(3)(a)3. to 10. are created to read:

Tax 11.51(3)(a)3. Candy must be a “preparation” that contains certain ingredients, other than flour. A “preparation” is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the candy definition. For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

4. Candy must be sold in the form of bars, drops, or pieces.

a. A “bar” is a product that is sold in the form of a square, oblong, or similar form.

Example: Company A sells one pound square blocks of chocolate. The blocks of chocolate are “bars.”

b. A “drop” is a product that is sold in a round, oval, pear-shaped, or similar form.

Example: Company B sells chocolate chips in a bag. Each individual chocolate chip contains all of the ingredients indicated on the label. The chocolate chips are “drops.”

c. A “piece” is a portion that has the same make-up as the product as a whole. Individual ingredients and loose mixtures of items that make up the product as a whole are not pieces. Exception: If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

Examples: 1) Company C sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a “piece” or “drop.”

2) Company D sells trail mix in a bag. The product being sold (e.g., trail mix), is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make-up the trail mix are not “pieces,” but instead are the ingredients, which when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.

3) Company E sells a product called “candy lover’s mix.” “Candy lovers mix” is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.

5. In order for a product to be treated as containing “flour,” the product label must specifically list the word “flour” as one of the ingredients. There is no requirement that the “flour” be grain-based and it does not matter what the flour is made from.

Examples: 1) The ingredient list for a breakfast bar lists “flour” as one of the ingredients. This breakfast bar is not “candy” since it contains flour.

2) The ingredient list for a breakfast bar lists “peanut flour” as one of the ingredients. This breakfast bar is not candy because it contains flour.

3) The ingredient list for a breakfast bar that otherwise meets the definition of “candy” lists “whole grain” as one of the ingredients, but does not specifically list “flour” as one of the ingredients. This breakfast bar is candy because the word “flour” is not included in the ingredient list.

4) Company E sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not candy since flour is identified as one of the ingredients on the label.

5) Company F sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, which otherwise meets the definition of “candy,” does not identify flour as one of the ingredients. The box of chocolates is candy.

6. “Other ingredients or flavorings”, as used in this definition, means other ingredients or flavorings that are similar to chocolate, fruits, or nuts. This phrase includes

candy coatings such as carob, vanilla, and yogurt, flavorings or extracts such as vanilla, maple, mint, and almond, and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs which are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of “candy.”

Examples: 1) Retailer A sells barbeque flavored peanuts. The ingredient label for the barbeque flavored peanuts indicates that the product contains peanuts, sugar, and various other ingredients, including barbeque flavoring. Since the barbecue flavored peanuts contain a combination of sweeteners and nuts, and flour is not listed on the label and the nuts do not require refrigeration, they are candy.

2) Retailer B sells barbeque potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbeque potato chips are food and food ingredients and not candy. The fact that the ingredient label for the barbeque potato chips indicates that the product contains barbeque seasoning which contains a sweetener does not change the fact that the barbeque potato chips are not commonly thought of as candy.

7. The term “natural or artificial sweeteners” means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

8. A product that otherwise meets the definition of “candy” is not “candy” if it requires refrigeration. A product “requires refrigeration” if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it “requires refrigeration,” smaller size packages of the same product are also considered to “require refrigeration.” A product that otherwise meets the definition of “candy” is “candy” if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

Examples: 1) 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, even if it was refrigerated when sold.

2) Company A sells sweetened fruit snacks in a bag that contains multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks “require refrigeration” and therefore are not candy.

3) Company A sells sweetened fruit snacks in single serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 2 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate that after opening, the product must be refrigerated. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to “require refrigeration” and therefore are not candy.

4) Company A sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not “require refrigeration.”

9. a. Products that are a combination of items that are defined as “candy” and items that are defined as “food and food ingredients” are “bundled transactions” when the items are distinct and identifiable, sold for one non-itemized price, and more than 50 percent of the items are “candy.” Such “bundled transactions” are subject to tax. For example, the sale of a bag of multiple types of individually wrapped bars of which more than 50 percent of the bars are “candy” that is sold for one non-itemized price is taxable.

b. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have “flour” listed as an ingredient are “food and food ingredients” and those bars, drops, or pieces which do not have “flour” listed as an ingredient are “candy.” The determination of whether the package as a whole meets the definition of a “bundled transaction” is based on the percentage of bars, drops, or pieces that meet the definition of “food and food ingredient” as compared to the percentage of bars, drops, or pieces that meet the definition of “candy.” For purposes of this subd. 9. b., the retailer may presume that each bar, drop, or piece contained in the package has the same value and, unless the package clearly indicates otherwise, there is an equal number of each type of product contained in the package.

Examples: 1) Retailer A sells a package that contains 100 total pieces of food and food ingredients. There are 10 different types of foods and food ingredients in the package. Eight of the types of food and food ingredients included in the package meet the definition of “candy,” while two of the types included do not meet the definition of “candy.” It is a reasonable presumption that 20 (2/10 times 100) of the pieces are not “candy” and 80 (8/10 times 100) of the pieces are “candy.” Therefore, since 80 percent of the product is “candy,” the sales price of the entire package is taxable as a bundled transaction.

2) Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are “candy” and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer \$3.49 per pound. Customer C selects some items that are candy and some that are not and puts them in a bag. Since some of the items in the bag are “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy,” unless the retailer ascertains that 50 percent or less of the items in the bag are “candy.”

c. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in b., above, and even if the ingredient lists “flour” as an ingredient, the product will be treated as “candy,” unless the retailer is able to ascertain that 50 percent or less of the products in the package are “candy.” For purposes of this subd. 9. c., the retailer may presume that each bar, drop, or piece contained in the package has the same value and, unless the package clearly indicates otherwise, there is an equal number of each type of product contained in the package.

10. Products whose ingredients are a combination of various unwrapped food ingredients that alone are not candy, along with unwrapped food ingredients that alone are “candy,” such as breakfast cereal and trail mix with candy pieces, are considered “food and food ingredients,” but not “candy.” Sales of these products are not “bundled transactions” because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

SECTION 34. Tax 11.51(4)(b)1. (Example) and 2. (Example 1) are amended to read:

Tax 11.51(4)(b)1. (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~~ assuming the hot dogs do not meet any of the other definitions of prepared food.

2. (Example 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~~ assuming the cake does not meet any of the other definitions of prepared food.

SECTION 35. Tax 11.51(4)(b)3. (Example) and (c)3. (Examples) and 4. (Example) are created to read:

Tax 11.51(4)(b)3. (Example) Grocery Store A prepares potato salad for sale to its customers. Grocery Store A boils the potatoes, cuts the potatoes up, and combines the potatoes with various other ingredients to make potato salad. Once the potato salad has cooled, Grocery Store A sells the potato salad for \$2 per pound. Although the potatoes were previously heated by the retailer when the potato salad was being made, the potato salad is not prepared food since it is sold unheated by weight, assuming the potato salad does not meet any of the other definitions of prepared food.

(c)3. (Examples) **1)** Restaurant A purchases various food and food ingredients (eggs, flour, sugar, ice cream, fudge, cookie bits, etc.) to make cakes with an ice cream layer. Restaurant A makes a layer of cake using the eggs, flour, sugar, etc. Once the cake layers are baked and cooled, Restaurant A covers one of the cake layers with a layer of fudge and cookie bits. Restaurant A then places another cake layer over the fudge and cookie bits and covers the second cake layer with a layer of ice cream. Restaurant A decorates the top of the cake according to instructions provided by its customer. Although this cake is two or more ingredients mixed or combined by the retailer for sale as a single item, it is excluded from the definition of prepared food because it is primarily a bakery item and is not subject to Wisconsin sales or use tax, assuming the cake does not meet any of the other definitions of prepared food.

2) Restaurant B purchases various food and food ingredients (eggs, flour, sugar, ice cream, fudge, cookie bits, etc.) to make a layered ice cream cake. Restaurant B makes a layer of cake using the eggs, flour, sugar, etc. Once the cake layer is baked and cooled, Restaurant B places the cake layer between two layers of ice cream. Restaurant B decorates the top of the cake according to instructions provided by its customer. This cake is prepared food and subject to Wisconsin sales or use tax since

Restaurant B mixed or combined 2 or more ingredients to make the cake, and the ice cream cake is not primarily a bakery item.

4. (Example) Grocer C sells cheese trays. The cheese trays are put together by the grocer selecting the various types of cheeses and slicing the amount of each type of cheese it wants to include, placing each type of sliced cheese on the tray, and then wrapping the cheese tray. The cheese tray is not prepared food since the cheese on the tray was only sliced and repackaged, assuming the cheese tray does not meet any of the other definitions of prepared food.

SECTION 36. Tax 11.51(4)(d)1.(intro.), a., and b. are amended to read:

Tax 11.51(4)(d)1.(intro.) Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, bowls, 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. 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 as described in pars. (a), (b), and (c) and food for which plates, bowls, glasses, or cups are necessary to receive the food ~~sold in a heated state and the retailer's sales of 2 or more food ingredients mixed or combined by a retailer for sale as a single item as provided in s. 77.51 (10m) (a) 4., Stats.,~~ are more than 75 percent of the retailer's total sales of all food and food ingredients at that establishment; or

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

SECTION 37. Tax 11.51(4)(d)1.b. (Examples) is created to read:

Tax 11.51(4)(d)1.b. (Examples) **1)** Deli A has a self-service salad bar. Customers go to the salad bar, pick up a clam shell container at the salad bar, and place the items they would like in the clam shell container. The clam shell container is a plate or bowl necessary for the customer to receive the food and is made available to the customer. Therefore, sales from the self-service salad bar are sales of prepared food.

2) Retailer X has a self-service milk machine. Customers go to the milk machine, pick-up a disposable cup, and fill it with whatever kind of milk they want. The cup is necessary for the customer to receive the milk and is made available to the customer. Therefore, sales of milk in this manner are sales of prepared food.

SECTION 38. Tax 11.65(2)(L) is created to read:

Tax 11.65(2)(L) Sightseeing flights.

SECTION 39. Tax 11.65(4)(b) is amended to read:

Tax 11.65(4)(b) When a charge to a patron bears little or no relationship to the actual value received, ~~such as \$100 per ticket for a fund raising dinner dance,~~ the tax may be based on the reasonable value of the tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services received. The retailer is responsible for determining the reasonable value and showing that the charge to the patron bears little or no relationship to the actual value received.

SECTION 40. Tax 11.65(4)(b) (Examples) are created to read:

Tax 11.65(4)(b) (Examples) **1)** Company A puts on a fundraising dinner. Individuals wishing to attend the dinner must pay \$300 per person to attend. The actual value of the dinner received is \$50. Company A may compute the tax that must be remitted on the \$50 since that is the actual value of the dinner received. The actual value in this example is based on the amount that an individual would be required to pay for this dinner if it was not a fundraising dinner.

2) Company B puts on a fundraising dinner and dance. Individuals wishing to attend the dinner and dance must pay \$300 per person to attend. The actual value of the dinner received is \$50 and the actual value of admission to the dance is \$25. Company B may compute the tax that must be remitted on the \$75 since that is the actual value of the dinner and admission to the dance that is received. The actual values in this example are based on the amount that an individual would be required to pay for the dinner and to attend the dance if this was not a fundraising dinner and dance.

SECTION 41. Tax 11.66(2)(a)9. is repealed

SECTION 42. Tax 11.66(2)(a)10. to 16. are renumbered 9. to 15.

SECTION 43. Tax 11.66(2)(cm) is created to read:

Tax 11.66(2)(cm) Prepaid calling services.

SECTION 44. Tax 11.66(3)(a)2. and 3., (b), and (c) are amended to read:

Tax 11.66(3)(a)2. Except as provided in subds. 3. to 7., the sale of a telecommunications service that is sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use, as defined in sub. (1) (u)-2.

3. The sale of a mobile telecommunications service, except an air-to-ground radiotelephone service and a prepaid calling service, is sourced to the customer's place of primary use, as defined in sub. (1) (u)-2.

(b) Except for detailed telecommunications billing services, ancillary services are sourced to the customer's place of primary use, as defined in sub. (1) (u)-2.

(c) Internet access services are sourced to the customer's place of primary use, as defined in sub. (1) (u)-2.

SECTION 45. Tax 11.68(4)(g) is created to read:

Tax 11.68(4)(g) Under s. 77.54(5)(am), Stats., contractors and subcontractors may purchase without sales and use tax modular homes, as defined in s. 101.71 (6),

Stats., and manufactured homes as defined in s. 101.91(2), Stats., that are used in real property construction activities outside Wisconsin.

SECTION 46. Tax 11.68(13)(title), (a), (c), (d), (e), and (Note) are amended to read:

Tax 11.68(13)(title) COUNTY; AND STADIUM; ~~AND REGIONAL TRANSIT AUTHORITY~~
TAXES ON BUILDING MATERIALS.

(a) Section 77.71 (3), Stats., imposes excise taxes upon a contractor engaged in construction activities, which includes constructing, altering, repairing, or improving real property within any county, or special district, ~~or transit authority's district's~~ jurisdictional area that has adopted the county, or stadium, ~~or transit authority~~ sales and use tax. The taxes are measured by the purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in constructing, altering, repairing, or improving real property which becomes a component part of real property in that county, or special district, ~~or transit authority's district's~~ jurisdictional area, unless the contractor has paid the county, or stadium, ~~or transit authority~~ tax of a county, or special district, ~~or transit authority~~ in Wisconsin or a similar local sales tax in another state on the purchase of that property, item, or good.

(c) In providing the services to property subject to taxation under s. 77.52 (2) (a) 10., Stats., a contractor may purchase without county, or stadium, ~~or transit authority~~ tax for resale tangible personal property and items and goods under s. 77.52 (1) (b) and (d), Stats., physically or electronically transferred to the customer in conjunction with providing such services.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the county, and stadium, ~~and transit authority~~ taxes under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing, or improving real estate for others are not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, or special district resolution, ~~or transit authority resolution~~, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The county, and stadium, ~~and transit authority~~ taxes under s. 77.71 (3), Stats., on building materials used in real property construction activities are not imposed if the contractor purchased the building materials before the effective date of the county, or stadium, ~~or transit authority~~ tax of that county, or special district, ~~or transit authority's district's~~ jurisdictional area or has paid the sales tax of another county, or special district, ~~or transit authority~~ in Wisconsin in purchasing the building materials.

Note: The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's

land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption of 35% of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16; (n) In *Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue*, Wisconsin Court of Appeals, District IV, No. 86-1813, October 29, 1987 (CCH 202-919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation; (o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27; (q) The clarification of the tax treatment of the original installation or complete replacement of certain deemed items became effective on October 1, 2001, pursuant to 2001 Wis. Act 16; (r) The changes in the use of the terms mobile homes and manufactured homes became effective January 1, 2008, pursuant to 2007 Wis. Act 11; and (s) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (t) The exemption for modular homes and manufactured homes used in real property construction activities outside Wisconsin became effective September 1, 2011 pursuant to 2011 Wis. Act 32.

SECTION 47. Tax 11.70(7)(a)2. and (Note) are amended to read:

Tax 11.70(7)(a)2. ~~Becomes physically~~ Physically becomes an ingredient or component part of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., the advertising agency produces and sells.

(Note) Exemption certificates and their instructions may be obtained free of charge from the department's web site at www.revenue.wi.gov, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, or by calling (608) 266-2776.

SECTION 48. Tax 11.71(2)(c) (Example 2) is amended to read:

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

SECTION 49. Tax 11.83(3)(a) is renumbered 11.83(3)(a)1. and amended as renumbered to read:

Tax 11.83(3)(a)1. The ~~occasional sale of a motor vehicle is taxable, unless the~~ transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered or titled in Wisconsin in the name of the transferor, if required to be registered or titled; and the transferor is not engaged in the business of selling motor vehicles.

SECTION 50. Tax 11.83(3)(a)(intro.) and 2. are created to read:

Tax 11.83(3)(a)(intro.) The occasional sale of a motor vehicle is taxable, unless one of the following applies:

2. The motor vehicle is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

SECTION 51. Tax 11.83(11)(a) and (b) are amended to read:

Tax 11.83(11)(a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., which are physically transferred to the customer's vehicle and which leave the repair facility with the ~~repaired vehicle customer~~. The property includes paints, paint hardeners, plastic fillers, welding rods, and auto parts.

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

SECTION 52. Tax 11.83(15) is created to read:

Tax 11.83(15) VEGETABLE OIL AND ANIMAL FAT. Sales of vegetable oil and animal fat to an individual that will be converted to motor vehicle fuel for use in that individual's

personal motor vehicle are exempt from sales and use tax if the individual does not sell any of that fuel during the year. This exemption only applies if the motor vehicle fuel is exempt from the motor vehicle fuel tax under s. 78.01(1), Stats.

SECTION 53. Tax 11.84(1)(b) is repealed and recreated to read:

Tax 11.84(1)(b) The occasional sale of an aircraft in Wisconsin is taxable unless one of the following applies:

1. The transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law of the transferor; the aircraft was previously registered or titled in Wisconsin in the transferor's name, if required to be registered or titled; and the transferor is not engaged in the business of selling aircraft.

2. The sale is by a nonprofit organization meeting the requirements in s. Tax 11.35(4).

SECTION 54. Tax 11.84(2)(c)2. and 3. are repealed

SECTION 55. Tax 11.84(2)(c)4. is renumbered 11.84(2)(c)2. and amended as renumbered to read:

Tax 11.84(2)(c)2. Towing a banner that is not provided by the person towing it; ~~towing a hang glider pilot or towing a glider.~~

SECTION 56. Tax 11.84(4)(g) to (i) are created to read:

Tax 11.84(4)(g) Sightseeing flights.

(h) Carrying a skydiver.

(i) Towing a hang glider and pilot.

SECTION 57. Tax 11.85(2)(b) is amended to read:

Tax 11.85(2)(b) Sales of boats to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law of the transferor are exempt if the boat was previously registered or titled with the Wisconsin department of natural resources, if required to be registered or titled, or documented under the laws of the United States in the transferor's name and if the transferor is not engaged in the business of selling boats.

SECTION 58. Tax 11.85(2)(bm) is created to read:

Tax 11.85(2)(bm) The sale of a boat by a nonprofit organization meeting the requirements in s. Tax 11.35(4).

SECTION 59. Tax 11.87(3)(g) is created to read:

Tax 11.87(3)(g) *Vegetable oil and animal fat.* Sales of vegetable oil and animal fat to an individual that will be converted to motor vehicle fuel for use in that individual's personal motor vehicle if the individual does not sell any of that fuel during the year. This

exemption only applies if the motor vehicle fuel is exempt from the motor vehicle fuel tax under s. 78.01 (1), Stats.

SECTION 60. Tax 11.87(4)(b) is amended to read:

Tax 11.87(4)(b) When a charge to a customer bears little or no relationship to the actual value of 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. The retailer is responsible for determining the reasonable value and showing that the charge to the patron bears little or no relationship to the actual value received.

SECTION 61. Tax 11.87(4)(b) (Examples) are created to read:

Tax 11.87(4)(b) (Examples) **1)** Company A puts on a fundraising dinner. Individuals wishing to attend the dinner must pay \$300 per person to attend. The actual value of the dinner received is \$50. Company A may compute the tax that must be remitted on the \$50 since that is the actual value of the dinner received. The actual value in this example is based on the amount that an individual would be required to pay for this dinner if it was not a fundraising dinner.

2) Company B puts on a fundraising dinner and dance. Individuals wishing to attend the dinner and dance must pay \$300 per person to attend. The actual value of the dinner received is \$50 and the actual value of admission to the dance is \$25. Company B may compute the tax that must be remitted on the \$75 since that is the actual value of the dinner and admission to the dance that is received. The actual values in this example are based on the amount that an individual would be required to pay for the dinner and to attend the dance if this was not a fundraising dinner and dance.

SECTION 62. Tax 11.88(title) is amended to read:

Tax 11.88(title) **Manufactured homes, mobile homes, modular homes, and recreational vehicles.**

SECTION 63. Tax 11.88(1)(bm) is created to read:

Tax 11.88(1)(bm) 1. "Modular home," as defined in s. 101.71 (6), Stats., means any structure or component thereof which is intended for use as a dwelling and satisfies either of the following conditions:

a. Is of closed construction and fabricated or assembled on-site or off-site in manufacturing facilities for installation, connection, or assembly and installation, at the building site.

b. Is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer.

2. "Modular home" does not mean any manufactured home under s. 101.91, Stats., or any building of open construction which is not subject to subd. 1. b.

SECTION 64. Tax 11.88(3)(b) is amended to read:

(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 Except as provided in par. (c), 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.

SECTION 65. Tax 11.88(3)(c) and (4m) are created to read:

Tax 11.88(3)(c) Sales of manufactured homes to the contractor-consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

(4m) MODULAR HOMES. (a) The sale of a modular home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax.

(b) If the seller of a modular home as part of the sales transaction agrees to permanently affix the home on a foundation, the seller is a contractor-consumer engaged in improving realty. Except as provided in par. (e), the sale of the modular home to the contractor-consumer is subject to the tax, but the sales price from the subsequent sale by the contractor-consumer to the purchaser of the home is not taxable.

(c) The sales or purchase price from the sale of a modular home that is tangible personal property when sold (i.e., the sale to the contractor-consumer), may be reduced by one of the following:

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

(d) Once the retailer chooses one of the options provided in par. (c) 1. or 2., the retailer may not use the other option without the written approval of the department.

(e) Sales of modular homes to the contractor-consumer for use in real property construction activities outside Wisconsin are exempt from Wisconsin sales and use tax.

SECTION 66. Tax 11.92(1)(b) and (d)(intro.) are amended to read:

Tax 11.92(1)(b) The basis for all deductions claimed in filing returns, including 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. Except as provided in this paragraph and

ss. 77.52 (13) and 77.53 (10), Stats., exempt sales shall be supported by an exemption certificate retained by the seller and paper certificates shall also be signed by the purchaser and retained by the seller. 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.

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

SECTION 67. Tax 11.92(1)(d)3. is repealed

SECTION 68. Tax 11.92(1)(e) is amended to read:

Tax 11.92(1)(e) Every person shall keep a record of the purchase price of property, items, and goods on which the person is subject to county, and stadium,~~and regional transit authority~~ use or excise tax in each enacting county, or stadium district or transit authority's district's jurisdiction.

SECTION 69. 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, 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 70. Tax 11.96(title) and (1) are amended to read:

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

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

SECTION 71. Tax 11.96(2)(g) and (h) are repealed

SECTION 72. Tax 11.96(3)(intro.) and (Note) are amended to read:

Tax 11.96(3)(intro.) An ordinance or resolution referred to in s. 77.70, 77.9941 (1) or (3), 229.68 (15), or 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:

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

SECTION 73. Tax 11.97(8) is repealed and recreated to read:

Tax 11.97(8) COUNTY AND SPECIAL DISTRICT TAXES. Retailers that are registered or required to be registered to collect and remit Wisconsin state sales or use taxes are also

required to collect, report, and remit the applicable county and stadium district sales or use taxes, regardless of whether the retailer is engaged in business in the county or special district, as provided in s. 77.73 (3), Stats.

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

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Richard G. Chandler
Secretary of Revenue

E:Rules/Chapters 1 and 11 Proposed Order (v2)