

Clearinghouse Rule 13-011

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

The Wisconsin Department of Revenue proposes an order to: **renumber** Tax 11.70 (1) (a), (b), and (c) and 11.945 (3) (a) 1. to 5.; **amend** Tax 11.17 (3), 11.19 (Note), 11.56 (Note), 11.70 (2) (c) and (Note), 11.72 (Note), 11.94 (3) (a) and (Note), and 11.945 (3) (a) 3., 4., 5., and 6.a. and (Note); and **create** Tax 11.19 (2) (dm) and (5s), 11.56 (4) (b) 3., and 11.70 (1) (a) and (c) and (3) (n); **relating to** sales and use tax provisions concerning advertising and promotional direct mail and prosthetic devices.

The scope statement for this rule, SS 073-12, was approved by the Governor on September 18, 2012, published in Register No. 682 on October 14, 2012, and approved by the Secretary of Revenue on October 29, 2012.

Analysis by the Department of Revenue

Statutes interpreted: s. 77.54 (59), Stats.

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

Explanation of agency authority: Section 77.65 (3), Stats., provides “[t]he department may promulgate rules to administer this section...”

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 creation of s. 77.54 (59), Stats., by 2011 Wisconsin Act 32 to provide a sales and use tax exemption for advertising and promotional direct mail. This requires the explanation of the new exemption in Subchapter III of Chapter Tax 11 and updates to the provisions of ss. Tax 11.19, 11.56, 11.70, and 11.945.
- Amends the second note at the end of s. Tax 11.72 to correctly reflect the effective date of the repeal of the sales and use tax exemption for cloth diapers.
- Amends the list of taxable and exempt purchases contained in s. Tax 11.17 (3) to move "Splints and cast materials" and "Rib belts and supports" from the taxable list to the exempt list so that it is consistent with the information in ss. Tax 11.08 (4) and 11.45 (3) (b) 9. and current law.

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 made a change to Wisconsin's sales and use tax treatment of advertising and promotional direct mail. The department has created this proposed rule order to reflect this statutory change. 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: This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

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

Effect on small business: This proposed rule does not affect 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 11.17 (3) is amended to read:

Tax 11.17 (3) PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSION. Purchases made by physicians and medical clinics that do not hold a Certificate of Exempt Status, "CES," are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list shall be furnished to patients at the direction of a physician, surgeon, or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of the health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	*Antiembolism elastic hose and stockings, including parts and accessories
Alcoholic beverages	
Apparatus and equipment for	*Artificial eyes and limbs,

treatment of diabetes	including parts and accessories
Bandages, gauze and cotton	
Bed pans	*Blood sugar level testing supplies
Beds and linens	
Blankets	Bone pins and plates, including parts and accessories
Cold packs and hot packs	
Compresses and dressings	* Crutches and wheel chairs, including motorized wheelchairs and scooters, including parts and accessories
Cosmetics	
Deodorants and disinfectants	Diaphragms
Distilled water	*Disposable syringes containing insulin
Enema kits	Drugs
Instruments	Dye
Laboratory equipment and supplies	* Hearing aids, including parts and accessories
Medical equipment	Medical oxygen
Needles and syringes	Oral contraceptives
Office equipment and supplies	Pacemakers, including parts and accessories
Oxygen delivery equipment	
Paper products	Prophylactics
Printed material	
Rib belts and supports	<u>Rib belts and supports</u>
Soda water beverages	Rubbing alcohol
Soap	<u>Splints and cast materials</u>
Splints and cast materials	Suppositories
Uniforms and gowns	Sutures
X-ray film and machines	Vaccines
	Vaginal creams and jellies
	Vitamins

SECTION 2. Tax 11.19 (2) (dm) and (5s) are created to read:

Tax 11.19 (2) (dm) Section 77.54 (59), Stats., provides an exemption for advertising and promotional direct mail.

(5s) ADVERTISING AND PROMOTIONAL DIRECT MAIL. (a) Section 77.54(59), Stats., provides an exemption from Wisconsin sales and use tax for the sales price from the sale of and the storage, use, or other consumption of advertising and promotional direct mail.

Note: Although the exemption in sub. (5s) is not effective until July 1, 2013, some of the items that are exempt under this provision are already exempt under ss. 77.54(25) and (25m), Stats. See subs. (4) and (5m) for information relating to those exemptions.

(b) "Advertising and promotional direct mail" is defined in s. 77.51(1ag), Stats., to mean direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

SECTION 3. Tax 11.19 (Note) is amended to read:

Tax 11.19 (Note) The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state in sub. (2) (a) became effective March 1, 1970; (b) The exemption for advertising materials used out-of-state in sub. (4) (a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1985 Wis. Act 149; (h) The provision for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336; (i) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (k) The exemption for periodicals sold by subscription by educational associations and corporations which are exempt under s. 77.54 (9a) (f), Stats., became effective December 1, 1997 pursuant to 1997 Wis. Act 27; (L) The exemption for catalogs became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (m) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (n) The definition of "direct mail" became effective October 1, 2009 pursuant to 2009, Wis. Act 2; (o) The definition of "advertising and promotional direct mail" became effective May 27, 2010, pursuant to 2009 Wis. Act 330; and (p) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32.

SECTION 4. Tax 11.56 (4) (b) 3. is created to read:

Tax 11.56 (4) (b) 3. Advertising and promotional direct mail as defined in s. Tax 11.19 (5s) (b).

Note: Although the exemption in subd. 3. is not effective until July 1, 2013, some of the items that are exempt under this provision are already exempt under ss. 77.54(25m) and (25), Stats. See subds. 1. and 2. for information relating to those exemptions.

SECTION 5. Tax 11.56 (Note) is amended to read:

Tax 11.56 (Note) The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983; (b) The exemption in sub. (3) (b) 2. for ingredients of publications became effective July 2, 1983, pursuant to 1983 Wis. Act 27; (c) The definition of storage and use for purposes of imposing use tax does not include storing or using raw materials becoming printed materials to be shipped outside Wisconsin effective October 1, 1993, pursuant to 1993 Wis. Act 16; (d) The sales and use tax exemption for raw materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for fuel and electricity consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (f) The exemption for catalogs and the envelopes in which they are mailed became effective April 1, 2009 pursuant to 2007 Wis. Act 20; (g) The requirement that property and items which qualify for exemption under s. 77.54 (2) and (2m), Stats., be consumed exclusively and directly by a manufacturer in manufacturing property and items destined for sale became effective August 1, 2009 pursuant to 2009 Wis. Act 28; ~~and~~ (h) 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 (i) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32.

SECTION 6. Tax 11.70 (1) (a), (b), and (c) are renumbered Tax 11.70 (1) (b), (d), and (e).

SECTION 7. Tax 11.70 (1) (a) and (c) are created to read:

Tax 11.70 (1) (a) "Advertising and promotional direct mail" means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

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

SECTION 8. Tax 11.70 (2) (c) is amended to read:

Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, ~~advertising and promotional direct mail~~, brochures, commercials, tapes, or other items of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

SECTION 9. Tax 11.70 (3) (n) is created to read:

Tax 11.70 (3) (n) Advertising and promotional direct mail, as defined in s. 77.51 (1ag), Stats.

Example 1: Company B, located in Wisconsin, contracts with a printer to have 10,000 advertising flyers that are designed to promote Company B's products printed. Once the printer finishes printing the advertising flyers, the printer mails the flyers to the addresses on a mailing list provided by Company B. The addresses are in and outside Wisconsin. The charge by the printer to Company B is exempt from Wisconsin sales and use tax since the advertising flyers are advertising and promotional direct mail.

Example 2: Same as Example 1, except the flyers are sent by the printer to Company B, the purchaser, and Company B mails the flyers to the addresses on the mailing list. The flyers are not advertising and promotional direct mail because the seller/printer is not delivering the flyers to a mass audience or to addresses on a mailing list at the direction of the purchaser.

Note: Although the exemption in par. (n) is not effective until July 1, 2013, some of the items that are exempt under this provision are already exempt under ss. 77.54(25) and (25m), Stats. See pars. (g) and (gm) for information relating to those exemptions.

SECTION 10. Tax 11.70 (Note) is amended to read:

Tax 11.70 (Note) The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; (c) The exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983; (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for catalogs and their mailing envelopes became effective April 1, 2009, pursuant to 2007 Wis. Act 20; (f) The provision that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; (g) The definitions of bundled transaction and finished artwork became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~and~~ (h) 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; (i) The definition of "direct mail" became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (j) The definition of "advertising and promotional direct mail" became effective May 27, 2010, pursuant to 2009 Wis. Act 330; and (k) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32.

SECTION 11. Tax 11.72 (Note) is amended to read:

Tax 11.72 (Note) The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wis. Act 335; (c) The repeal of the exemption for cloth diapers became effective October 1, ~~2002~~ 2009, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 12. Tax 11.94 (3) (a) is amended to read:

Delivery charges for ~~advertising and promotional direct mail~~ and "other direct mail" are not subject to sales or use tax if the delivery charges are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser. Delivery charges for "advertising and promotional direct mail" are exempt from sales and use tax regardless of whether they are separately stated on the invoice, bill of sale, or similar document.

SECTION 13. Tax 11.94 (Note) is amended to read:

Tax 11.94 (Note) The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969, ~~except that the:~~ (a) The definitions of "delivery charges" and "direct mail," and 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; (b) The definitions of "advertising and promotional direct mail" and "other direct mail" became effective May 27, 2010, pursuant to 2009 Wis. Act 330; and (c) The sales and use tax exemption for advertising and promotional direct mail, which includes the delivery charges for advertising and promotional direct mail, became effective July 1, 2013, pursuant to 2011 Wis. Act 32.

SECTION 14. Tax 11.945 (3) (a) 1. to 5. are renumbered Tax 11.945 (3) (a) 2. to 6.

SECTION 15. Tax 11.945 (3) (a) 1. is created to read:

Tax 11.945 (3) (a) 1. Sales of advertising and promotional direct mail sourced to Wisconsin are exempt from Wisconsin sales and use taxes. However, sales of advertising and promotional direct mail sourced to another state may be subject to that other state's sales or use tax.

SECTION 16. Tax 11.945 (3) (a) 3., 4., 5., and 6.a. and (Note) are amended to read:

Tax 11.945 (3) (a) 3. If the purchaser provides one of the items indicated in subd. ~~4. a. 2.a.~~ or b., to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients ~~and pay or remit to the department the tax imposed under s. 77.53, Stats., on all its purchases of advertising and promotional direct mail for which the tax is due, and in the absence of bad faith the seller is relieved from liability for collecting the tax.~~

4. If the purchaser provides delivery information as provided in subd. ~~4. c. 2.c.~~, the seller shall ~~collect the tax source the sales~~ according to that information, ~~and in the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.~~

5. An exemption certificate provided by the purchaser under subd. ~~4. b. 2.b.~~ remains in effect for all sales by the seller who received the exemption certificate to the purchaser who provided the exemption certificate, ~~in the absence of bad faith.~~

6.a. Except as provided in subd. ~~5. b. 6.b.~~, if a transaction is a bundled transaction that includes "advertising and promotional direct mail," subds. ~~4. 2.~~ to 4. only apply if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.

(Note) (a) The interpretations under s. Tax 11.945 are effective beginning October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28; ~~and~~ (b) The definitions of "advertising and promotional direct mail" and "other direct mail" and the provisions relating to the sourcing of transactions that include these types of items are effective May 27, 2010, pursuant to 2009 Wis. Act 330; and (c) The sales and use tax exemption for advertising and promotional direct mail became effective July 1, 2013, pursuant to 2011 Wis. Act 32.

SECTION 17. Effective date. This rule 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 affect small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Richard G. Chandler
Secretary of Revenue