

**ORDER OF THE DEPARTMENT OF REVENUE
RENUMBERING, RENumberING AND AMENDING, AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue adopts an order to: **renumber** Tax 11.001(2), (3)(d) and (6)(intro.), (a) and (b); **renumber and amend** Tax 11.001(intro.), (1), (3)(intro.) and (a) to (c), (4) and (5) and Tax 11.84(2)(c); **amend** Tax 11.13(1)(a), (3)(b) and (5)(a)2.(intro.) and (b)3., Tax 11.14(6)(a)2. and (13)(a)(intro.) and (b) and Tax 11.84(1)(b)1. and 2. and (c) and (4)(a) and (c); and **create** Tax 11.001(1)(title), (2)(title) and (intro.) and (3)(title), (a)(intro.) and (b) and Tax 11.84(2)(c)1. to 4.; **relating to** sales and use tax definitions, direct pay, exemption certificates and aircraft.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: subchs. III and V of ch. 77, Stats.

SECTION 1. Tax 11.001(intro.), (1), (2) and (3)(intro.) are renumbered Tax 11.001(1) and (2)(a) to (c), subs. (3)(a) to (3)(d) are renumbered sub. (3)(a)1. to 4., and subs. (4) to (6) are renumbered subs. (2)(d) to (f), to conform the numbering to Legislative Council Rules Clearinghouse ("Clearinghouse") standards. As renumbered:

- Subsection (1) is revised, to place the introductory clause for definitions in a separate subsection.
- Subsection (2)(a) is revised, to remove substantive provisions from the definition of "consumers."
- Subsection (2)(c) is revised, to reference the definition of "retailer" to the statutory definition and to remove a substantive provision.
- Subsections (3)(a)1., 2. and 3. are revised, to reflect correct punctuation, per Clearinghouse standards and to move substantive provisions in the definition of "retailer" to a separate subsection.
- Subsection (2)(d) is revised, to include the football stadium tax in the definition of "stadium tax," allowed pursuant to 1999 Wis. Act 167, effective May 27, 2000.
- Subsection (2)(e) is revised, to reflect that the definition of "tax" includes county and stadium sales and use taxes.

SECTION 2. Tax 11.001(1)(title), (2)(title) and (3)(title) are created, to conform format to Clearinghouse standards.

Tax 11.001(2)(intro.) is created, to provide an introductory clause for the definitions in pars. (a) to (f) as renumbered.

Tax 11.001(3)(a)(intro.) is created, to provide an introductory clause for requirements with which retailers must comply.

Tax 11.001(3)(b) is created, to move a substantive provision in the definition of "consumers" to a separate subsection.

SECTION 3. Tax 11.13(1)(a) is revised, to remove a substantive provision from the definition of “continuous.” The removed provision is covered in sub. (5)(b)1.

Tax 11.13(3)(b) is revised, to eliminate a reference to a fee requirement that is no longer applicable, and to add the name of the direct pay permit application form. The note at the end of par. (b) is revised, to include the department’s Internet address.

Tax 11.13(5)(a)2.(intro.) is revised, to provide that Form S-211 may be used as the written document in that subdivision.

Tax 11.13(5)(b)3. and the example following are revised, to eliminate references to obsolete exemption certificates.

An obsolete note at the end of Tax 11.13(3)(a) is removed, and examples and notes following subs. (3)(c), (4)(b) and (5)(b)3. are updated.

SECTION 4. Tax 11.14(6)(a)2. is revised, to reflect that a purchaser is subject to a sales tax rather than a use tax when it gives an exemption certificate claiming resale.

Tax 11.14(13)(a)(intro.) is revised, to update a reference to a subsection in s. Tax 11.001.

Tax 11.14(13)(b) is revised, to correct a typographical error.

SECTION 5. Tax 11.84(1)(b)1. and 2. are revised, to update punctuation, per Clearinghouse standards.

Tax 11.84(1)(c) is revised, to update the name of the division in the Department of Transportation where aircraft are registered.

SECTIONS 6 AND 7. Tax 11.84(2)(c) is renumbered Tax 11.84(2)(c)(intro.) and revised, and pars. (c)1. to 3. are created, to provide an introductory clause and to set forth the taxable items in separate subdivisions.

Tax 11.84(2)(c)4. is created, to reflect the taxability of towing 1) banners that are not provided by the person towing them, 2) hang glider pilots, per the department’s Private Letter Ruling, # W0124006 dated March 22, 2001, and 3) gliders.

SECTION 8. Tax 11.84(4)(a) is revised, to reflect the taxability of towing hang glider pilots as discussed above.

Tax 11.84(4)(c) is revised, to clarify a provision regarding the taxability of advertising banners towed by aircraft.

SECTION 1. Tax 11.001(intro.), (1), (2), (3)(intro.) and (a) to (d), (4), (5) and (6)(intro.), (a) and (b) are renumbered Tax 11.001(1), (2)(a), (b) and (c), (3)(a)1. to 4. and (2)(d), (e) and (f)(intro.), 1. and 2. As renumbered Tax 11.001(1), (2)(a) and (c), (3)(a)1. to 3. and (2)(d) and (e) are 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 sales and use taxes authorized under subch. V of ch. 77, Stats. ~~In this chapter, unless otherwise specified:~~

~~(2)(a) “Consumers” are means persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.~~

~~(c) “Retailer” means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including: has the meaning in s. 77.51(13), Stats.~~

- ~~(3)(a)1. Obtaining a seller’s permit for each place of business in this state;_~~
- ~~2. Filing tax returns and paying tax;_~~
- ~~3. Collecting use tax when applicable and remitting the tax with returns;_and_~~

~~(2)(d) “Stadium tax” means the local professional baseball park district sales or use tax or the local professional football stadium district sales or use tax authorized under subch. V of ch. 77, Stats.~~

~~(e) “Tax” means the Wisconsin sales or use tax in effect under ss. 77.52(1) and (2) and 77.53(1), Stats. “Tax” includes the taxes imposed under s. 77.71, Stats.~~

SECTION 2. Tax 11.001(1)(title), (2)(title) and (intro.) and (3)(title), (a)(intro.) and (b) are created to read:

Tax 11.001(1)(title) APPLICABILITY.

(2)(title) DEFINITIONS.

(intro.) In this chapter, unless otherwise specified:

(3)(title) RETAILERS AND RETAIL SALES.

(a)(intro.) Retailers shall comply with all requirements imposed upon them, including all of the following:

(b) Sales to consumers are retail sales to which either the sales tax or the use tax applies.

SECTION 3. Tax 11.13(1)(a), (3)(b) and (5)(a)2.(intro.) and (b)3. are amended to read:

Tax 11.13(1)(a) "Continuous" use of a direct pay permit means that the purchase without tax applies to the purchase being made from the retailer and subsequent purchases from that retailer and is considered a part of each order given to the retailer. ~~The continuous use of the direct pay permit remains in force until the continuous use is voided by the direct pay permit holder.~~

(3)(b) Persons who wish to obtain a direct pay permit shall apply to the department using ~~the form prescribed by the department. A \$5 fee is required upon application.~~ form S-101, "Application for Direct Pay Permit."

Note to Revisor: 1) Remove the note at the end of Tax 11.13(3)(a).

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

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

3) In the example at the end of Tax 11.13(3)(c), replace the year "1995" with "2002" twice.

4) Replace the note at the end of Tax 11.13(4)(b) with the following:

Note: The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902.

(5)(a)2.(intro.) A form S-211, "Wisconsin Sales and Use Tax Exemption Certificate," or other written document containing , either of which contains all of the following:

(b)3. While the use of a direct pay permit is continuous, all purchases from a retailer, except those in sub. (6)(a) and (b), shall be made using the direct pay permit even though a

~~resale certificate, manufacturer's exemption certificate, certificate of exemption or other exemption~~ an exemption certificate requiring different documentation may apply.

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

Example: On July 1, 2002, Company A begins using its direct pay permit when purchasing tangible personal property from Company B. Company A provides a written statement to Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or taxable services, except those described in sub. (6) (a) and (b), by Company A from Company B on or after July 1, 2002, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, no other exemption certificate may be used.

SECTION 4. Tax 11.14(6)(a)2. and (13)(a)(intro.) and (b) are amended to read:

Tax 11.14(6)(a)2. If a purchaser gives an exemption certificate claiming resale for property acquired and then makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The ~~use~~ sales tax shall be reported and paid by the purchaser with the tax return for the period in which the property is first so stored or used.

(13)(a)(intro.) The certificate for a construction contract entered into before the effective date of a county tax, or a stadium tax as defined in s. Tax ~~11.001(4)~~ 11.001(2)(d), form S-207CT-1, is used by contractors to purchase building materials without the county or stadium tax. The certificate shall be used by a contractor only if the following 3 conditions are met:

(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 ~~singed~~ signed by the contractor.

SECTION 5. Tax 11.84(1)(b)1. and 2. and (c) are amended to read:

Tax 11.84(1)(b)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;

2. The aircraft was previously registered in Wisconsin in the transferor's name; ~~and~~.

(c) Section 77.61(1)(a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of ~~aeronautics~~ motor vehicles. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state.

SECTION 6. Tax 11.84(2)(c) is renumbered Tax 11.84(2)(c)(intro.) and amended to read:

Tax 11.84(2)(c)(intro.) *Other taxable receipts*. The gross receipts from charges for ~~aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.~~ the following are taxable:

SECTION 7. Tax 11.84(2)(c)1. to 4. are created to read:

Tax 11.84(2)(c)1. Aerial photographs and maps.

2. Sightseeing flights.

3. Carrying a skydiver.

4. Towing a banner that is not provided by the person towing it, towing a hang glider pilot or towing a glider.

SECTION 8. Tax 11.84(4)(a) and (c) are amended to read:

Tax 11.84(4)(a) ~~Transporting~~ Except as provided in sub. (2)(c), transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(c) Advertising promotions such as ~~sky writing~~ skywriting and banner towing if the person towing the banner also provides it, except when the aircraft is leased to a person who provides a pilot.

Note to Revisor: Replace the note at the end of Tax 11.96(2)(b) with the following (there are no changes to the text of Tax 11.96):

Note: An ordinance to adopt or repeal a county sales and use tax or a premier resort area tax should be mailed to Wisconsin Department of Revenue, Office of the Secretary, Mail Stop 624A, PO Box 8933, Madison WI 53708-8933 or delivered to 2135 Rimrock Road, Madison, Wisconsin.

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.

Final Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Michael L. Morgan
Secretary of Revenue

E:Rules/11001 Adopt - Order