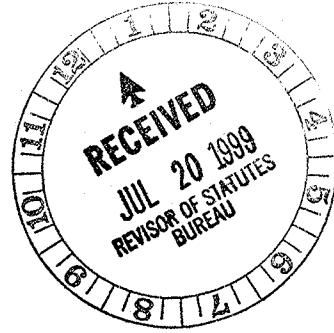


Clearinghouse Rule 99-026

99-026

CERTIFICATE



STATE OF WISCONSIN )

) SS

DEPARTMENT OF REVENUE )

I, Cate Zeuske, Secretary of the Department of Revenue and custodian of the official records, certify that the annexed rule, relating to sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles, was duly approved and adopted by this department on July 16, 1999.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 16 day of July, 1999.

Cate Zeuske
Secretary of Revenue

9-1-99

**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 11.83(8)(b)3.; renumber and amend Tax 11.83(1) and (8)(b)2.; amend Tax 11.26(2)(c) and (d), 11.41(1)(b)2.b. and (3)(b) and (h) and 11.83(8)(b)1., (c)(intro.) and 2. and (d); and create Tax 11.26(2)(h) and (3)(c), 11.32(9) and 11.83(1)(title), (intro.) and (a) and (8)(b)2., relating to the sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles.

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**Analysis by the Department of Revenue**

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

Statutes interpreted: ss. 77.51(4)(a)4. and (b)3. and 7. and (15)(a)4. and (b)4. and 6., 77.53(1m)(a) and 77.54(2), Stats.

SECTIONS 1 AND 3. Tax 11.26(2)(c) is amended and Tax 11.26(3)(c) is created, to reflect the amendment to s. 77.51(4)(a)4. and (15)(a)4., Stats., by 1997 Wis. Act 27, which excludes from gross receipts and sales price motor fuel taxes refunded.

Tax 11.26(2)(d) is amended, to reflect current terminology relating to alternate fuels tax.

SECTION 2. Tax 11.26(2)(h) is created, to add the federal gas guzzler tax not previously listed in the rule.

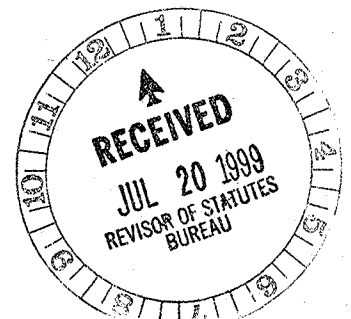
SECTION 4. Tax 11.32(9) is created, to provide the tax treatment of sales of manufactured buildings, as a result of amendments to s. 77.51(4)(b)3. and (15)(b)4., Stats., and the creation of s. 77.51(4)(b)7. and (15)(b)6., Stats., by 1997 Wis. Act 27.

SECTION 5. Tax 11.41(1)(b)2.b. is amended, to clarify that the property manufactured must be destined for sale as tangible personal property to qualify for the manufacturing exemption in s. 77.54(2), Stats.

Tax 11.41(3)(b) and (h) are amended, to reflect proper punctuation per Legislative Council Rules Clearinghouse standards.

SECTIONS 6 THROUGH 11. The following changes are made to reflect the amendment to s. 77.53(1m)(a), Stats., by 1997 Wis. Act 27, allowing the use of an amount per plate per month as the measure of use tax for vehicles assigned to owners of a dealership, and to reflect the increase from \$96 to \$104 per plate per month as the measure of use tax.

Tax 11.83(1) is renumbered Tax 11.83(1)(b) and amended, and Tax 11.83(1)(title), (intro.) and (a) are created, to add a definition of "actively participates."



Tax 11.83(8)(b)1. is amended, subds. 2. and 3. are renumbered 3. and 4. and as renumbered subd. 3.(intro.) is amended, and new subd. 2. is created.

Tax 11.83(8)(c)(intro.) and 2. and (d) are amended.

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SECTION 1. Tax 11.26(2)(c) and (d) are amended to read:

Tax 11.26(2)(c) Any federal stamp tax and manufacturer's or importer's excise tax.

Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel except motor fuel taxes refunded, tires, firearms, sporting goods and air or ship transportation.

(d) A federal, county or municipal fuel tax included in the price of special alternate fuels and general aviation fuel subject to sales tax.

SECTION 2. Tax 11.26(2)(h) is created to read:

Tax 11.26(2)(h) The federal gas guzzler tax imposed under s. 4064 of the internal revenue code.

**Note to Revisor:** Replace the examples following sub. (3)(b) with the following:

**Examples.** Taxes which are not included in a retailer's gross receipts include:

- 1) The room taxes imposed under s. 66.75, Stats., which municipalities or local exposition districts impose on persons furnishing lodging to transients.
- 2) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the internal revenue code.
- 3) The county and stadium sales and use taxes imposed under s. 77.71, Stats.
- 4) The local exposition district food and beverage and rental car taxes imposed under ss. 77.98 and 77.99, Stats.
- 5) The premier resort area taxes imposed under s. 77.994, Stats.
- 6) The state rental vehicle fee imposed under s. 77.995, Stats.
- 7) The federal luxury tax imposed under ss. 4001 through 4007 of the internal revenue code.

SECTION 3. Tax 11.26(3)(c) is created to read:

Tax 11.26(3)(c) Federal and Wisconsin motor vehicle excise taxes refunded.

**Note to Revisor:** Replace the second note at the end of Tax 11.26 with the following:

**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: The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

SECTION 4. Tax 11.32(9) is created to read:

Tax 11.32(9) MANUFACTURED BUILDINGS. (a) Gross receipts and sales price from the sale of a "manufactured building," as defined in s. 101.71(6), Stats., that is tangible personal property when sold, may be reduced by one of the following:

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

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

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

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

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

- \$65,000 is the sales price of the manufactured building by Building Manufacturer to Dealer.

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

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

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

**Note to Revisor:** Replace the first note at the end of Tax 11.32 with the following:

**Note:** Section Tax 11.32 interprets ss. 77.51(4)(a)(intro.) and 4., (b)1., 3., 6. and 7. and (c) 2. and (15)(a)(intro.) and 4., (b)1., 4., 5. and 6. and (c)1. and 77.61(3), Stats.

**Note to Revisor:** In the second note at the end of Tax 11.32, remove the word "and" before part (c) and add the following at the end of the note:

; and (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.

SECTION 5. Tax 11.41(1)(b)2.b. and (3)(b) and (h) are amended to read:

Tax 11.41(1)(b)2.b. The property manufactured is not destined for sale as tangible personal property.

**Note to Revisor:** Replace example 2 following sub. (2)(b) with the following:

2) A manufacturer-contractor is not entitled to the exemption when purchasing tangible personal property consumed, destroyed or losing its identity in the manufacture of building components which it, as a contractor, will affix to real property in a real property construction activity.

(3)(b) Milling cutters.

(h) Wearing apparel for the comfort or welfare of the employe or for the protection of the employe's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants,

coats, and fur-lined boots and jackets.

**Note to Revisor:** In the third note at the end of Tax 11.41, delete the words "in sub (5)."

SECTION 6. Tax 11.83(1) is renumbered Tax 11.83(1)(b) and amended to read:

Tax 11.83(1)(b) ~~DEFINITION.~~ ~~In this section, "motor~~ "Motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck or road machinery as defined in s. 340.01(52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

SECTION 7. Tax 11.83(1)(title), (intro.) and (a) are created to read:

Tax 11.83(1)(title) DEFINITIONS.

(intro.) In this section:

(a) "Actively participates" means the person performs services for the dealership, including selling, accounting, managing and consulting, for more than 500 hours in a taxable year for which the person receives compensation. "Actively participates" does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use or monitoring the finances or operations of the activity in a nonmanagerial capacity.

SECTION 8. Tax 11.83(8)(b)1. is amended to read:

Tax 11.83(8)(b)1. Motor vehicles held for sale which are assigned to and used by a specific dealer employe subject to withholding from federal income tax on wages are subject to

Wisconsin use tax on ~~\$96~~ \$104 per motor vehicle registration plate per month. The \$104 amount is effective January 1, 1999 and is subject to change annually as explained in the notes following sub. (8)(b).

**Note to Revisor:** Remove the note at the end of Tax 11.83(8)(b)1.

SECTION 9. Tax 11.83(8)(b)2. and 3. are renumbered Tax 11.83(8)(b)3. and 4. and as renumbered Tax 11.83(8)(b)3.(intro.) is amended to read:

Tax 11.83(8)(b)3.(intro.) Motor vehicles held for sale and not assigned to and used by a specific dealer employe subject to federal withholding on wages are subject to Wisconsin use tax on the lease value of the motor vehicle computed on a calendar month basis. If a motor vehicle is used by the dealer for a period of less than one calendar month, the amount subject to use tax is the daily lease value calculated by multiplying the applicable monthly lease value by a fraction, the numerator of which is the number of days used by the dealer for a purpose in addition to retention, demonstration or display and the denominator of which is the number of days in the calendar month. Lease value is computed using the internal revenue service lease value table contained in ~~internal revenue service regulation s.~~ 26 CFR 1.61-21(d)(2). In the lease value table, the "automobile fair market value" is one of the following:

SECTION 10. Tax 11.83(8)(b)2. is created to read:

Tax 11.83(8)(b)2. Motor vehicles held for sale which are assigned to and used by persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, are subject to Wisconsin use tax on \$104 per motor vehicle registration plate per month. The \$104 amount is effective January 1, 1999 and is subject to change annually as explained in the notes below.

**Note:** As provided in s. 77.53(1m), Stats., the department will annually adjust the

amount per plate to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the *Wisconsin Tax Bulletin* prior to the January 1, that the change becomes effective.

**Note:** The amount per plate subject to use tax under par. (b)1. and 2. was \$96 for the period September 1, 1995 through December 31, 1996, \$99 for the period January 1, 1997 through December 31, 1997, and \$102 for the period January 1, 1998 through December 31, 1998.

SECTION 11. Tax 11.83(8)(c)(intro.) and 2. and (d) are amended to read:

Tax 11.83(8)(c)(intro.) It is presumed that all dealer plates issued by the department of transportation to a licensed motor vehicle dealer are used each month on motor vehicles assigned to employees subject to withholding for federal income tax purposes or owners who actively participate in the day-to-day operations of the dealership for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par. (b)1. and 2., unless one of the following applies:

2. The motor vehicle to which the dealer plate is assigned is subject to use tax as computed in par.(b)~~2.~~ or 3. or 4.

(d) Transitional provision. For motor vehicles, not assigned to employees or salespersons subject to federal withholding on wages or owners who actively participate in the day-to-day operations of the dealership, that are used by the dealer for a purpose in addition to retention, demonstration and display both prior to September 1, 1995, and on and after September 1, 1995, upon which a sales or use tax was paid on the purchase price of the motor vehicle by the dealer, the imposition of use tax as described in par.(b)~~2.~~3. does not apply.

**Note to Revisor:** In the second note at the end of Tax 11.83, replace the portion of the note beginning with the word "and" before part (h), with the following:

(h) The measure of use tax on motor vehicles as described in sub. (8)(b)1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; and (i) The use of the amount per plate rather than the lease value, as described in sub. (8)(b)2., as the measure of



use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

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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**

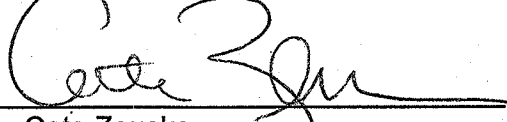
This rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: \_\_\_\_\_

7/16/99

By: \_\_\_\_\_

DEPARTMENT OF REVENUE



Cate Zeuske  
Secretary of Revenue

1126 Adopt - Order

LRB or Bill No./Adm. Rule No.

TAX 11.26, 11.32, 11.41, 11.83

Amendment No. if Applicable

**FISCAL ESTIMATE  
DOA-2048 N(R10/94)**

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**

Sales and Use Tax Treatment of Refunded Motor Fuels, Manufactured Buildings and Motor Vehicles

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

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

Decrease Costs

Local:  No Local Government Costs

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

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

5. Types of Local Governmental Units Affected:

- Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This rule reflects changes made in the sales and use tax treatment of refunded motor fuel taxes, manufactured buildings, and motor vehicles used by motor vehicle dealers by 1997 Wisconsin Act 27. It also clarifies existing rules and makes stylistic changes to conform to Legislative Council Rules Clearinghouse standards. It has no fiscal effect.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department Of Revenue Dennis Collier, (608) 266-5773	Yeang-Eng Braun <i>Yeang Eng Braun</i> (608) 266-2700	9/23/98



**State of Wisconsin • DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933  
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

July 19, 1999

Gary L Poulson Deputy Revisor  
131 W Wilson St Ste 800  
Madison WI 53703-3233

Re: Clearinghouse Rule 99-026

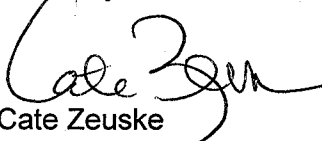
Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles.

These materials are filed with you pursuant to s. 227.20(1), Stats.

The rule order has also been e-mailed to you. If you have any questions regarding the rule order, please contact Mark Wipperfurth at 266-8253 or [mwipperf@dor.state.wi.us](mailto:mwipperf@dor.state.wi.us).

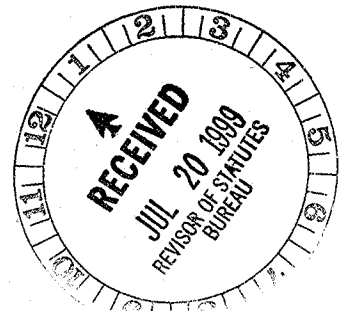
Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules\1126 Adopt - Revisor

Enclosure

cc: Douglas J. La Follette, Secretary of State  
Commerce Clearinghouse, Inc.  
Research Institute of America, Inc.





**State of Wisconsin • DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933  
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*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

July 19, 1999

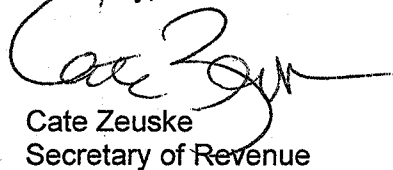
Douglas La Follette Secretary of State  
30 W Mifflin St 10th Fl  
Madison WI 53703

Dear Secretary La Follette

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 99-026.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,



Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules\1126 Adopt – Secretary of State

Enclosure

cc: Deputy Revisor

