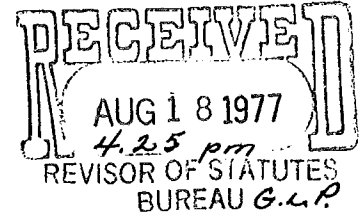


TAX II

CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE)



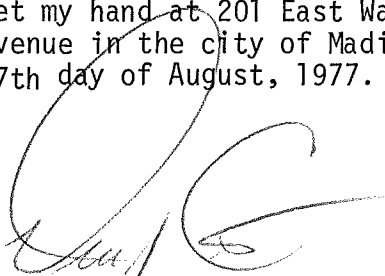
TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Dennis J. Conta, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on August 17, 1977. These rules relate to the following:

- 1) Repealing and updating obsolete and outdated income tax rules.
- 2) Medical appliances, prosthetic devices and aids (sales and use tax).
- 3) Medicines (sales and use tax).
- 4) Taxes besides sales tax in "gross receipts" and "sales price" (sales and use tax).
- 5) Summer camps (sales and use tax).
- 6) Commercial photographers and photographic services (sales and use tax).
- 7) Background music (sales and use tax).
- 8) Sales of ice (sales and use tax).
- 9) Industrial gases, welding rods and fluxing materials (sales and use tax).

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 201 East Washington Avenue in the city of Madison, this 17th day of August, 1977.



Dennis J. Conta

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES


Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a) and 227.014(2), Wis. Stats., the Department hereby adopts the following 9 rules as shown on the attached copy:

- 1) A revisor-type rule, repealing and updating obsolete income tax rules.
- 2) Section Tax 11.08, "Medical appliances, prosthetic devices and aids".
- 3) Section Tax 11.09, "Medicines".
- 4) Section Tax 11.26, "Other taxes in taxable gross receipts and sales price".
- 5) Section Tax 11.46, "Summer camps".
- 6) Section Tax 11.47, "Commercial photographers and photographic services".
- 7) Section Tax 11.64, "Background music".
- 8) Section Tax 11.80, "Sales of ice".
- 9) Section Tax 11.81, "Industrial gases, welding rods and fluxing materials".

The rules contained herein shall take effect on October 1, 1977.

Date this 17th day of August, 1977.

DEPARTMENT OF REVENUE
BY:



Dennis J. Conta
Secretary of Revenue

REVISOR-TYPE RULE

SECTION 1. Section Tax 1.07 of the Wis. Adm. Code is repealed.

NOTE: Chapter 39, Laws of 1975 changed s. 71.02(2)(b) to eliminate the election to use the current Internal Revenue Code.

SECTION 2. Section Tax 2.03 of the Wis. Adm. Code is amended by inserting between the Form 4 line and the Form 4A line the following:

"Form 5. Optional return of income for the calendar or fiscal year. (To be used only by corporations whose entire net income is taxable in Wisconsin)."

NOTE: This new optional form has been in use since 1975.

SECTION 3. Section Tax 2.04 of the Wis. Adm. Code is amended to read:

2.04 Information returns; forms WT-9, 9b and 9X for corporations.

(Sections 71.04(1) and 71.10(1), (8m) and (8n), Wis. Stats.)

(1) All corporations carrying on activities within this state, whether taxable or not under this chapter 71, Wis. Stats., shall file with the department of revenue, on or before January 31 of each year on forms WT-9 or 9b or on such other forms as may be approved by the department, statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not; ~~Provided that Salaries~~

(2) Salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in section 71.19(1) Wis. Stats.

(3) Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9.

(4) Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments of all rents and royalties on property regardless of location, and payments to residents and non-residents of Wisconsin of rents and royalties on property located in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b or other approved forms. The forms

~~herein-referred-to~~ must be filed on the date indicated ~~regardless-of~~
~~the-fact-that~~ even if the corporation keeps its records on a fiscal
year other than a calendar year.

(5) Payments of interest, dividends, rents or royalties of less
than \$100 to any one individual need not be reported.

(6) Each corporation must file with forms ~~87-07~~, 9b or approved
substitute forms, forms 9X showing the number of reports made on
forms ~~87-07~~, 9b or approved substitute forms. (See also Wis. Adm.
Code section Tax 2.05). Items required to be reported on forms WT-9
or 9b may be disallowed as deductions from the corporation's gross
income upon failure to make proper report thereof.

NOTE: (1) Section 71.07 was amended in 1975 to make
all income of resident individuals, estates
and trusts taxable.

(2) This rule will permit the use of approved sub-
stitute forms in lieu of official forms.

SECTION 4. Section Tax 2.06 of the Wis. Adm. Code is amended to read:

2.06 Information returns required of partnerships and persons
other than corporations. (Sections 71.10(8m), (8n) and (15) and
71.11(25), Wis. Stats.) Information returns reporting remuneration paid
for services, whether or not within the definition of "wages" in
section 71.19(1), Wis. Stats., must be filed on or before January 31
of each year on forms ~~WT-97-07~~, 9b or on such other form as may be
approved by the department. Form WT-7 (Employer's Annual Reconciliation
of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9
or other approved forms. Informational returns reporting other items
such as interest paid or rent paid must be filed on or before April 15
of each year on forms 9b or on such other form as may be approved by
the department. Items required to be reported on informational returns
will be disallowed as deductions from gross income if not properly
reported. Such returns should be mailed to the Department of Revenue,
P.O. Box 59, Madison, Wisconsin 53701 or delivered at 4638 University
Avenue, Madison.

NOTE: Amended to permit the filing of approved substitute
forms in lieu of official forms.

SECTION 5. Section Tax 2.07 of the Wis. Adm. Code is repealed
and recreated to read as follows:

Tax 2.07 Income tax returns of liquidated or dissolved corporations.
(Section 71.10(1), Wis. Stats.) The officers of a corporation which has
been liquidated or dissolved during the income year shall file a
corporate franchise or income tax return for such year and for any year
thereafter in which there is corporate income. The franchise tax applies
only to those corporations that are actually doing business in Wisconsin
after the close of the period covered by the franchise tax return.
Corporations which cease to do business in the income year covered
by the return must file an income tax return to account for their final

operation. A corporation which has liquidated or dissolved during the income year shall include the following information in its final return:

- (1) A copy of its plan of liquidation or reorganization.
- (2) The section of chapter 71 under which it liquidated or reorganized.
- (3) The disposition of the assets. If the assets were sold, indicate the selling price, adjusted cost basis at the time of sale, gain or loss realized on the sale and the date of the sale.
- (4) A list of the shareholders, their addresses and the amount received by each shareholder from the distribution or distributions. (The list should be submitted in addition to the required Forms 9b).
- (5) The date of the final distribution.

NOTE: The information specified in this rule is necessary for the audit of the final return of a corporation.

SECTION 6. Section Tax 2.11 of the Wis. Adm. Code is repealed.

NOTE: Section 71.09(3), Wis. Stats. was amended, changing the requirement that tax tables be published in the rules of the department to having them published in its instructional booklets.

SECTION 7. Section Tax 2.87 of the Wis. Adm. Code is repealed.

NOTE: Since 1972, the depreciation deduction for corporations has been limited to that allowed under the Internal Revenue Code. Under the I.R.C., contributions for line extensions are not income but are used to reduce the basis of depreciable property.

SECTION 8. Section Tax 3.06 of the Wis. Adm. Code is repealed.

NOTE: Rendered obsolete by enactment of s. 71.045.

SECTION 9. Section Tax 3.20 of the Wis. Adm. Code is repealed.

NOTE: Redundant since incorporated in s. 71.04(2) in 1976.

SECTION 10. Section Tax 3.23 of the Wis. Adm. Code is repealed.

NOTE: Federal income taxes are no longer allowed as a deduction to corporations.

SECTION 11. Section Tax 3.28 of the Wis. Adm. Code is repealed.

NOTE: No longer necessary since s. 71.04(15)(a) was enacted.

SECTION 12. Section Tax 3.31 of the Wis. Adm. Code is amended by changing the statutory reference after the rule's title from "71.04(2)" to "71.04(15)".

SECTION 13. Section Tax 3.32 of the Wis. Adm. Code is repealed.

NOTE: This rule is unnecessary since the enactment of s. 71.04(15).

SECTION 14. Section Tax 3.42 of the Wis. Adm. Code is repealed.

NOTE: This rule is unnecessary since the enactment of s. 71.04(15).

MEDICAL APPLIANCES, PROSTHETIC DEVICES AND AIDS

Section Tax 11.08 of the Wis. Adm. Code is adopted to read:

Tax 11.08 MEDICAL APPLIANCES, PROSTHETIC DEVICES AND AIDS. (Section 77.54(22), Wis. Stats.) (1) DEVICES FOR HANDICAPPED PERSONS.

Section 77.54(22)(a), Wis. Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays.

(2) PROSTHETIC DEVICES, APPLIANCES AND AIDS. Section 77.54(22)(b), Wis. Stats., exempts gross receipts from the sale of "Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body." "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to garments designed to restrict or enhance the body's shape for cosmetic purposes, or to wigs or hair pieces.

(3) EYE GLASSES. Section 77.54(22)(d), Wis. Stats., exempts gross receipts from the sale of "Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser." This exemption does not include the sale of non-prescription eye glasses (including sun glasses), optical tools and supplies, eyeglass cases, eye shields, chains, clips or other accessories associated with eye glasses. Frames for prescription glasses are exempt.

(4) CRUTCHES AND WHEELCHAIRS. Section 77.54(22)(e), Wis. Stats., exempts gross receipts from the sale of "Crutches and wheelchairs for the use of invalids and crippled persons." This exemption includes open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.

(5) REPAIR PARTS AND SERVICE. Gross receipts from the sale of repair parts and service for exempt property are exempt.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

MEDICINES

Section Tax 11.09 of the Wis. Adm. Code is adopted to read:

Tax 11.09 MEDICINES. (Sections 77.51(21) and 77.54(14), Wis. Stats.)

(1) DEFINITION. For the exemption in section 77.54(14), "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use.

(2) EXAMPLES OF MEDICINES. Medicines include the following items described in sub.(1):

- (a) Bone pins.
- (b) Dyes.
- (c) Insulin (furnished by a registered pharmacist).
- (d) Liquids.
- (e) Oxygen for medicinal purposes.
- (f) Oral contraceptives.
- (g) Pacemakers.
- (h) Pills.
- (i) Powders.
- (j) Salves and ointments.
- (k) Suppositories.
- (l) Sutures.
- (m) Vaccines.
- (n) Vitamins.
- (o) Other medicinal preparations consumed orally, injected or applied.
- (p) Other articles permanently implanted in the human body which remain or dissolve in the body.

(3) ITEMS WHICH ARE NOT MEDICINES. Items which are not described in sub. (1) and which are not medicines include:

- (a) Alcoholic beverages, soda water beverages or distilled water.
- (b) Auditory, prosthetic, ophthalmic or ocular devices or appliances.
- (c) Medical supplies (such as bandages, compresses, dressings, pads, splints and supports).
- (d) Medical instruments or equipment.
- (e) Cast materials.
- (f) Intra-uterine devices.
- (g) Oxygen tanks.

(4) EXEMPT SALES OR USE OF MEDICINES. Medicines shall be exempt if: (a) Prescribed by a licensed physician, surgeon, podiatrist or dentist for treatment of a human being and dispensed on prescription filled by a registered pharmacist in accordance with law.

(b) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being.

(c) Furnished by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment of the patient.

(d) Furnished by a hospital for treatment of any person by the order of a licensed physician, surgeon, dentist or podiatrist. For this exemption, "hospital" has the meaning described in section 140.24, Wis. Stats., and does not include nursing homes.

(e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(5) TAXABLE SALES OF MEDICINES. Taxable sales of medicines include:

(a) Retail sales for use in laboratories.

(b) Retail sales for use on domestic animals.

(6) TAXABLE USE OF MEDICINES. Persons who sell medicines are subject to the use tax on samples furnished without charge to hospitals, physicians, surgeons, podiatrists or dentists.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

OTHER TAXES IN TAXABLE GROSS RECEIPTS AND SALES PRICE

Section Tax 11.26 of the Wis. Adm. Code is adopted to read:

Tax 11.26 Other Taxes in Taxable Gross Receipts and Sales Price.
(Section 77.51(11)(a)4, (12)(a)4 and (26), Wis. Stats.) (1) GENERAL
RULE. (a) Tangible personal property sold at retail often is subjected
to many direct and indirect taxes prior to reaching a retailer. Such
taxes are commonly included in the price the retailer pays for the
property and are not separately identifiable as taxes. Occasionally,
however, a tax is either separately passed on to a retailer or is
imposed at the retail level of activity, but is different from and in
addition to the sales tax. Such tax may be imposed by this state, the
federal government or a municipality.

(b) In determining the measure of sales and use taxes, certain
separately stated or separately passed on taxes are included in gross
receipts and the sales price, while others are not. However, the same
taxes that are included or excluded from gross receipts are also
included or excluded from sales price. Thus, the treatment of such
taxes for sales and use tax purposes is identical, even though the
measure of tax for each is gross receipts and sales price, respectively.

(2) TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES
PRICE. The following taxes shall be included in a retailer's gross
receipts and sales price: (a) The fermented malt beverage tax imposed
by section 139.02, Wis. Stats.

(b) The taxes imposed upon intoxicating liquors (including wine)
by section 139.03, Wis. Stats.

(c) Any federal stamp tax and manufacturer's or importer's excise
tax. Presently there are federal excise taxes on tires, inner tubes,
tread rubber, certain trucks, truck parts, firearms, ammunition,
lubricating oils, fishing equipment, cigarettes, beer, and intoxicating
liquor (including wine).

(d) The federal fuel tax included in the price of special fuels
subject to the sales tax (e.g., sales for use in aircraft, boats and other
non-highway use).

(e) The cigarette tax imposed by section 139.31, Wis. Stats.

(3) TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE.
The following taxes shall be excluded from a retailer's gross receipts or
sales price: (a) The federal communications tax imposed upon intrastate
telegraph service and telephone service.

(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax (e.g., the tax provided in section 66.75, Wis. Stats., which municipalities are permitted to impose upon hotel and motel operators who furnish lodging to transients).

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

SUMMER CAMPS

Section Tax 11.46 of the Wis. Adm. Code is adopted to read:

Tax 11.46 SUMMER CAMPS. (Sections 77.52(1) and (2)(a)1, Wis. Stats.)
(1) DEFINITIONS. In this rule: (a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual (e.g., the YMCA and Boy Scouts of America).

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) TAXABLE RECEIPTS. Receipts from the following are taxable:
(a) Meals or other tangible personal property sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(3) EXEMPT RECEIPTS. Receipts from the following are exempt:
(a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Groceries sold to campers, such as for cookouts.

(4) COMBINED CHARGES. An allocation between taxable and exempt receipts must be made when a single (combined) charge is made for all the privileges extended by a camp. Adequate records must be kept and maintained to enable the proper allocation; otherwise, the total charge shall be taxable. (a) If there is no separate charge for meals, gross receipts from the sale of meals may be determined by adding 10% (to cover overhead costs) to the cost of the food and labor for food preparation.

(b) If there is no separate charge for lodging; gross receipts from lodging furnished by private camps to any person residing for a continuous period of less than one month shall be presumed to be \$3 per person per night.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that the amount shown in sub. (4)(b) is effective September 15, 1970. Prior to that date the tax is based on \$2 per person per night.

COMMERCIAL PHOTOGRAPHERS AND PHOTOGRAPHIC SERVICES

Section Tax 11.47 of the Wis. Adm. Code is adopted to read:

Tax 11.47 Commercial photographers and photographic services.
(Sections 77.52(2)(a)7 and 77.54(2), Wis. Stats.) (1) TAXABLE GROSS RECEIPTS. Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services include gross receipts from: (a) Taking, reproducing and selling photographs.

(b) Processing, developing, printing and enlarging film.

(c) Enlarging, retouching, tinting or coloring photographs.

(d) Processing exposed film into color transparencies, mounted or unmounted.

(e) Reproducing copies of documents, drawings, photographs, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

(f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) AMOUNTS INCLUDED IN GROSS RECEIPTS. (a) Gross receipts subject to the tax include charges for photographic materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from gross receipts subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES.

(a) Commercial photographers and others providing photographic services may purchase, without paying sales or use tax, any item which becomes a component part of an article destined for sale if a properly completed exemption certificate is given the seller. Such items include:

1. Mounts, frames and sensitized paper used in the finished photograph and transferred to the customer.

2. Film (i.e., colored transparencies and movie film) in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

3. Containers, labels or other packaging and shipping materials used to transfer merchandise to customers.

(b) Photographers and others providing photographic services are required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. Such items include:

1. Chemicals.
2. Trays.
3. Film (other than noted in sub. (3)(a)2).
4. Plates.
5. Proof paper.
6. Cameras.
7. Other photographic equipment.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

BACKGROUND MUSIC

Section Tax 11.64 of the Wis. Adm. Code is adopted to read:

Tax 11.64 Background music. (Section 77.51(4)(intro) and (j), Wis. Stats.) (1) **GENERAL.** Persons in the business of providing background music commonly utilize one or both of the methods set forth below. The sales and use tax consequences depend upon the method used.

(2) **MUSIC PLAYED AT CENTRAL STUDIO.** The gross receipts from the furnishing of background music to business, industry and others from a central studio over telephone circuits or by FM radio are not subject to the sales or use tax. The persons who provide such service are the consumers of the tapes, tape players, transmitters and other tangible personal property used to provide the service, and their purchases of these items, as well as telephone services from the telephone company, are taxable. However, the gross receipts from equipment leased or rented to the customer as part of providing this service are taxable, and an ~~exemption for resale may be claimed on the purchase of such leased or rented equipment,~~ if the equipment is used exclusively for lease or rental.

(3) **MUSIC PLAYED BY CUSTOMER.** The gross receipts from the lease, rental, hire or license to use all tangible personal property comprising a background music system are taxable when the system is located on a customer's (e.g., lessee's or licensee's) premises and is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment and other tangible personal property to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, since rental is the equivalent of a resale.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

SALES OF ICE

Section Tax 11.80 of the Wis. Adm. Code is adopted to read:

Tax 11.80 Sales of Ice. (Sections 77.52(1) and 77.53(1), Wis. Stats.) (1) Ice is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale. For example, ice used for refrigeration purposes is consumed in the process of refrigeration; whereas, ice used in drinks is purchased for resale by the seller of the drink.

(2) Examples of taxable sales of ice (including dry ice) are:

(a) Sales through vending machines.

(b) Sales to restaurants, taverns, grocery stores and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(c) Sales to railroads or commercial fishermen for use in refrigerating railway cars or vessels.

(3) Examples of nontaxable sales of ice are:

(a) Sales to restaurants, taverns and soda fountains to be used exclusively in drinks (exempt as sales for resale).

(b) Sales to manufacturers, producers or food processors for use inside the shipping cases of merchandise being transferred to a customer (exempt as "shipping material" under section 77.54(6)(b), Wis. Stats.).

(c) Ice sold to manufacturers which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

(4) (a) If ice is sold to a person who will use it both for a taxable purpose (ex., refrigeration) and nontaxable purpose (ex., for resale), the total charge shall be divided between taxable and nontaxable use. The tax is then payable on the ice to be used in a taxable manner. If no division is made, the tax applies to the total sale.

(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax under s. 77.53 (1), Wis. Stats.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

INDUSTRIAL GASES, WELDING RODS AND FLUXING MATERIALS

Section Tax 11.81 of the Wis. Adm. Code is adopted to read:

Tax 11.81 Industrial gases, welding rods and fluxing materials.
(Section 77.54(2), Wis. Stats.) (1) GENERAL STATEMENT. The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54(2), Wis. Stats., exempts from the sales tax "The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity." Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

(a) Exempt if they become ingredients or components of tangible personal property destined for sale; or

(b) Exempt if they are consumed, destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or

(c) Taxable if they are sold to a person who consumes them in a nonmanufacturing activity.

(2) INDUSTRIAL GASES. Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen.

(a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

1. Carbon dioxide used to produce dry ice or carbonated soft drinks.

2. Gases such as neon, helium or argon used as a filler in the production of light bulbs and tubes.

3. Hydrogen used in hydrogenating vegetable oils.

4. Acetylene used as a base in the manufacture of synthetic materials.

5. Oxygen used in the chemical industry for oxidation processes, when not used as a fuel to produce heat.

(b) Taxable sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces.
2. Acetylene or other gases used in torches in the manufacture of tangible personal property.

(c) Taxable sales of gases to nonmanufacturers, whether or not used by the purchaser as fuel, include:

1. Acetylene or other gases used by automobile body shops or by other repair establishments.
2. Gases used in mining or quarrying.
3. Nitrogen used by telephone companies in underground cables.

(3) WELDING RODS (stick electrode or filler rods). Since welding rods (stick electrode or filler rods) are physically transferred and become a part of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property destined for sale or in repairing tangible personal property for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of such rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) FLUXING MATERIALS. Fluxing materials sold to a manufacturer for use in manufacturing tangible personal property destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own production machinery or equipment (a nonmanufacturing activity) they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.