

Chapter Tax 11

SALES AND USE TAX

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Tax 11.001 Definitions and use of terms. In this chapter, unless otherwise specified:

(3) "Consumers" are 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.

(5) "Department" means the Wisconsin department of revenue.

(8) "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:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and
- (d) Keeping proper records. (See Tax 11.92)

(12) "Tax" means the 4% Wisconsin sales or use tax.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "_____ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of _____ (specific tangible personal property or a specific service) is taxable", means that:

(a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

(b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.03 Elementary and secondary schools and related organizations. (section 77.54(4), (9) and (9a), Wis. Stats.) (1) DEFINITIONS. (a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in section 119.30, Wis. Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in paragraph (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.

2. School lunches and library and book fines.

3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.

4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, film or other exhibits, lectures and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as

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a collection agent for the seller, whether or not the school receives a commission for such collection. The retailer (e.g., a photographer) is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) **SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS.** Under section 77.54, Wis. Stats., gross receipts from sales to the following organizations are exempt: (a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status. Such organizations include parent-teacher associations and student organizations.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972 through October 3, 1973.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.05 Governmental units. (section 77.51 (3) and 77.54 (9a), Wis. Stats.) (1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following: (a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).

(b) Food and gift stand sales (e.g., sales of tangible personal property such as sandwiches, beverages, candy, cigarettes (effective September 1, 1975), ice cream, confections, tobacco products, postcards, books and novelties). Newspapers and periodicals regularly issued at average intervals not exceeding 3 months are exempt.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.

(e) Sales of electricity, gas and steam by municipal utilities. However, water sold through mains is exempt.

(f) Sales of maps, plat books, photocopies or other printed material.

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units shall not collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.

(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month.

(j) Vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer, including sales of such items by hospitals, sanitoriums and nursing homes to patients, employees or guests.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies. Such sales by vocational, technical and adult education schools are taxable, except for the period from July 1, 1972 through October 3, 1973. Such sales by elementary and secondary schools are exempt.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles (see par (g) above).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

(3) NONTAXABLE RECEIPTS. Gross receipts of governmental units from the following are not taxable: (a) Fees for licenses and permits (e.g., tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits).

(b) Charges for parking motor vehicles and aircraft and docking and storage of boats.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines or charges for a duplicate library card when no charge is made for the original cards.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction, but not any amount reasonably allocable to the use of a facility for recreational purposes.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.

(k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(l) Meals, food, food products or beverages (except soda water beverages and beer) sold by hospitals, sanitoriums and nursing homes to patients, employes or guests; dormitory meals furnished in accordance with any contract or agreement by a public or private institution of higher education; and meals sold to the elderly or handicapped by "mobile meals on wheels" on and after October 4, 1973.

(m) Service charges for snow removal, weed cutting, police officers at social gatherings, service of legal papers (e.g., summons, complaints and civil process) and ushers and door guards.

(n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.

(o) Fees charged for admission to a university student union building.

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officers and clerk of court under sections 59.42, 59.57, 69.24, Wis. Stats., or by a filing officer under section 409.407 (2), Wis. Stats., and fees charged by a register in probate pursuant to section 253.34, Wis. Stats.

(4) PURCHASES. Section 77.54 (9a), Wis. Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under section 66.47, Wis. Stats., sewerage commission organized under section 144.07 (4), Wis. Stats., metropolitan sewerage district organized under sections 66.20 to 66.26, Wis. Stats., or any other unit of government, or any agency or instrumentality of 2 or more units of government within this state. However, the exemption does not apply to governmental units of other states. (a) A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

(b) A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;
2. The seller bills the governmental unit directly; and
3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

(c) Purchases by federal and state chartered credit unions are subject to the sales tax. The use tax shall apply to state chartered credit unions, but not to federally chartered credit unions due to constitutional restrictions.

(d) Purchases (such as for lodging, meals or uniforms) by employees of a governmental unit are not exempt, whether or not the employee is subsequently reimbursed for such purchases by the governmental unit.

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

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

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 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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.09 Medicines. (section 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 subsection (1):

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- (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 subsection (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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

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).

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(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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.27 Warranties. (section 77.51 (11) (a), Wis. Stats.) (1) **RECEIPTS FROM WARRANTIES.** The total gross receipts from a sale of taxable personal property by a retailer, who warrants such property and includes a charge for the warranty in the sales price, are taxable.

(2) **REPAIRS BY RETAILER.** (a) When a retailer does repair work, including supplying parts and services, without charge for a customer under a manufacturer's warranty, the retailer is not subject to tax on either the amount of reimbursement received from the manufacturer for such parts or service or on the value of any part the manufacturer replaces in the retailer's inventory.

(b) Gross receipts from charges by a retailer to a customer for repair parts or service performed under a retailer's or manufacturer's warranty are taxable, including gross receipts from the sale of service contracts. (Charges by a manufacturer for service contracts are taxable to the manufacturer).

(c) A retailer who provides free parts or services or both to a customer in order to maintain good customer relations, although not required to do so under the sales agreement, shall report and remit a use tax measured by the retailer's purchase price of any parts used in providing such free service.

(3) **REPAIRS NOT BY RETAILER.** If a retailer does not repair property under a warranty but instead has another person perform such repairs, that person's gross receipts from the retailer for such repairs are exempt, since the repair parts and service are for resale by the retailer to its customer (payment occurred at the time of the original sale of the property and warranty). Such repairs are exempt whether or not the original sale occurred in this state. The person performing such repairs shall obtain a

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resale certificate from the retailer as evidence of the exempt status of its charges to the retailer.

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

History. Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps. (section 77.51 (4) (k) and (11) (a), Wis. Stats.) (1) **DEFINITIONS.** (a) Section 77.51 (4) provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms include:

"(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property of service."

(b) For the privilege of selling, leasing or renting tangible personal property at retail, a sales and use tax is imposed upon all retailers' gross receipts from the sale, lease or rental of tangible personal property. Section 77.51 (11) (a) (intro.) provides:

" 'Gross receipts' means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise . . . "

(2) **GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS.** Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise.

(a) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in such volume. In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person furnishing such property to the retailer is subject to the use tax on its cost of the property donated.

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(b) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer's tax liability accrues at that time.

(c) *Gifts shipped out-of-state.* When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) *Sales incentive plans.* Persons transferring taxable personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of such property.

(3) **COUPONS AND PREMIUMS.** (a) *Coupons for free property issued and redeemable by manufacturer.* When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for personal property without charge, the transfer of property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon.

(b) *"Cents-off" coupons redeemable by manufacturers.* A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. Such coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon.

(c) *Coupons issued and redeemable by retailers.* When a retailer distributes coupons which its customers may use to obtain free premiums in the form of tangible personal property, there is no tax liability for the premiums if exempt property is given. However, if taxable property is given:

1. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows is to be given as a premium to customers without the customers being required to purchase other property to receive the premium. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer shall report the use tax based on the cost of the property.

2. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows will be given as a premium to a customer when that customer purchases other property which is not subject to the sales tax (e.g., gasoline and exempt food). If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer is required to report the use tax based on the cost of the property.

3. A retailer may use a resale certificate when purchasing taxable property which will be given as a premium to the retailer's customer

when that customer purchases other property which is also subject to the sales tax. Since this transaction is deemed a sale of both the premium and the other property, the retailer may purchase the premium without payment of the sales tax by claiming an exemption for resale.

4. The taxable gross receipts of retailers, who issue "cents-off" coupons which reduce the price of merchandise they sell and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

(4) **COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS.** (a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. For example, coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games. The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of such receipts to the participating retailers.

(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon. Any additional receipts received from the person using the coupons also are taxable.

(c) Except for meals, retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

(5) **TRADING STAMPS.** (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of such material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts shall not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of such stamps.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.29 Leases and rentals of tangible personal property. (sections 77.51 (4) (j), (7) (k) and (11) (c) 5, 77.52 (1) and 77.58 (6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of tangible personal property shall be subject to the sales and use taxes to the same extent that gross receipts from the sale of the same property would be subject to the tax. Because a lease is a continuing sale for the duration of the lease while the leased property is situated in this state (s. 77.51 (4) (j), Wis. Stats.), a lessor shall pay tax on rental receipts for any period of time leased property is in Wisconsin, even though the property

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may have been acquired and/or used previously by the lessee in another state.

(2) **PURCHASES FOR RENTAL.** (a) A lessor's purchase of tangible personal property to be used solely for lease or rental shall be exempt as a purchase for resale.

(b) A lessor's purchase of lubricants, repair parts and repair services on personal property used solely for leasing shall also be exempt as a purchase for resale. However, if the same items are purchased by a renter or lessee, the purchases shall be taxable.

(c) Charges by a lessor to a lessee under a maintenance contract on leased personal property shall be taxable.

(3) **PROPERTY BOTH RENTED AND USED PERSONALLY.** If tangible personal property is purchased by a person who uses it part of the time and rents it out part of the time, the sale of the property to such person shall be taxable. The lessor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(4) **SERVICE VS. RENTAL OF EQUIPMENT.** (a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.

(b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out such equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment, the entire charge is subject to the tax. However, the operator's services shall not be taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.

(c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks and the public service commission and the department of transportation's division of motor vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable.

(5) **CREDIT FOR SALES TAX PAID.** If a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or claim a credit against the tax due on rental receipts from the property involved. (s. 77.51 (11) (c) 5). If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the seller paid sales tax to the state.

(6) **SPECIAL RENTAL SITUATIONS.** (a) *Demurrage.* The charge a gas supplier makes to a customer-consumer, because a gas cylinder is retained beyond a 30 day (or other) period, shall be taxable. Such "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softners.* The gross receipts from rental of a cylinder type water softener which is periodically removed from a customer's premises for recharging and replaced by another unit shall be taxable.

(c) *Chemical toilets.* A lessor's entire charge for the use of chemical toilets used at fairs and other similar events shall be taxable, including cleaning services provided as part of the total charge.

(d) *Mobile homes.* Rental of a mobile home shall be taxable unless the mobile home is converted to real property by hooking it up to utilities and placing it on a foundation on land owned by the lessor. However, even if it is placed on a foundation and hooked up to utilities, a mobile home shall remain tangible personal property if the lessor does not own the realty on which it is located.

(e) *Lease cancellation charge.* A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property shall be taxable. The payment shall be deemed consideration arising from the original lease since it effectively decreases the term of the lease and thereby increases the rental payments for the actual period the property was used.

(f) *Delivery and erection.* Lessors of scaffolding or other tangible personal property who set forth separate charges for transportation, assembly and disassembly shall pay tax on their total gross receipts. A lessee rents property when it is assembled and in place and the charges for transportation, assembly and disassembly shall be deemed part of a lessor's rental receipts.

(g) *Funeral coaches.* An owner of a hearse shall receive taxable gross receipts when the owner furnishes it (with or without a driver) to a funeral director who is responsible for conducting the funeral service. If it is customary or mandatory that the lessee (funeral director) take the operator with the leased vehicle, the entire charge shall be taxable.

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

History: Cr. Register, July, 1977, No. 269, eff. 8-1-77.

Tax 11.30 Credit sales, bad debts and repossessions. (sections 77.51(4)(c), (4r), (11)(b), (c)3 and (d), 77.52(6) and 77.53(4), Wis. Stats.) (1) **CREDIT SALES.** (a) *Sales.* If taxable personal property is sold on credit, the entire amount of the retailer's gross receipts from the sale shall be taxable and shall be reported in the tax return for the period in which the sale is made. A sale involving the transfer of ownership of property is completed at the time and place where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The tax shall be reported on taxable gross receipts on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) *Repossessions.* No deduction from gross receipts shall be made if property sold on credit is repossessed unless the entire consideration paid by the purchaser is refunded or a deduction for worthless accounts is allowable under section 77.51(11)(b)4, Wis. Stats.

(2) **BAD DEBTS.** (a) *Deduction from measure of tax.* A retailer is relieved from the liability for sales tax by sections 77.51(11)(b)4 and 77.52(6), Wis. Stats., or from liability to collect and report use tax by section 77.53(4), Wis. Stats., insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. However, only a retailer who has previously paid sales or use tax to this state

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on such accounts may claim the bad debt deduction. The deduction shall be taken from the measure of tax in the period in which the account is found to be worthless. That period is defined as any time within the retailer's fiscal or calendar year in which the account is written off. However, if the taxpayer is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last annual information return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes, which later become worthless, received on the sale of tangible personal property shall be treated in the same manner as other worthless accounts.

(b) *Recovery of bad debts charged off.* If any accounts found worthless and charged off are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

(c) *Amount deductible.* 1. *Nontaxable receipts.* If an account found worthless and charged off is comprised in part of nontaxable receipts (such as interest, financing or insurance) and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied ratably against the various charges comprising the amount the purchaser contracted to pay.

2. *Expenses of collection.* No deduction is allowable for expenses incurred by the retailer in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(d) *Special situations.* 1. A purchaser of receivables is not entitled to a bad debt deduction for such receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

3. A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property used to fulfill the construction contract.

4. A retailer permitted to report gross receipts on the cash receipts basis may not claim a bad debt deduction.

(e) *Repossessions.* When property on which a receivable exists is repossessed, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, attributable to the cash sales price of the property, is less than the cash sales price upon which sales or use tax was paid.

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

An example of the computation of the net loss described in sub (2) (e) follows: Assume a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$600. A down payment of \$2,000 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totalling \$6,800, the mobile home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession due to rather extensive damage to the mobile home. The deductible bad debt loss upon repossession of the mobile home is computed as follows:

	Cash Sales Price	Sales Tax	Finance Charge	Total
1. Sales price and tax	\$15,000.00	\$600.00		\$15,600.00
2. Down payment allocation (1)	<u>1,923.08</u>	<u>76.92</u>		<u>2,000.00</u>
3. Balance to finance	\$13,076.92	\$523.08		\$13,600.00
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$13,076.92	\$523.08	\$1,360.00	\$14,960.00
6. Payments on contract (2)	<u>5,944.06</u>	<u>237.76</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance - date of repossession	\$7,132.86	\$285.32	\$ 741.82	\$ 8,160.00
8. Wholesale value of repos- session (2)	<u>5,244.76</u>	<u>209.79</u>	<u>545.45</u>	<u>6,000.00</u>
9. Deductible loss	<u>\$1,888.10</u>			\$ 1,888.10
10. Nondeductible loss		<u>\$ 75.53</u>	<u>\$ 196.37</u>	<u>271.90</u>
11. Total loss				<u>\$ 2,160.00</u>
12. Percentage of sales price and tax (Line 1)	96.1538%	3.8462%		100%
13. Percentage of contract balance (Line 5)	87.4126%	3.4965%	9.0909%	100%

(1) The down payment (line 2) is allocated between the total cash sales price of the motor home and the sales tax thereon (line 1) on the basis of the percentage of each to their total (the percentages are shown on line 12).

(2) The payments on the contract (line 6) and the wholesale value on the date of repossession of the property repossessed (line 8) are allocated to the cash sales price, sales tax and finance charges on the basis of the percentage of the contract balance of each to the total contract balance (after allocation of the down payment). The contract balances are shown on line 5 and the percentages thereof are shown on line 13.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.32 "Gross receipts" and "sales price". (sections 77.51 (11)

(a) (intro.) and 4, (b) 1 and (c) 2, and (12) (a) (intro.) and 4, (b) 1 and (c) 1, and 77.61 (3), Wis. Stats.) (1) GENERAL. The amount to which the sales and use tax rate is applied is "gross receipts" for sales tax and "sales price" for use tax. Both "gross receipts" and "sales price" mean the total amount of the sale, lease or rental from retail sales of tangible personal property or taxable services, valued in money, whether received in money or otherwise.

(2) HANDLING AND SERVICE CHARGES. A retailer's gross receipts from charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments and similar charges for services related to retail sales shall be included in gross receipts derived from the sale of taxable personal property or taxable services. However, cancelled order charges are not taxable if there is no transfer of merchandise to a customer.

(3) CASH DISCOUNTS OR PRICE REBATES. (a) Cash discounts allowed by a retailer directly to customers reduce the gross receipts subject to the tax. The customer must receive the discount for the retailer to exclude it from gross receipts. For example, a payment made to a nonprofit organization based on a percentage of the purchases made

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by the group's members is not a cash discount for sales and use tax purposes.

(b) A retail cooperative's rebates to members, which are made after the net profit is determined at the end of a year, are patronage dividends rather than cash discounts, and are not deductible from the cooperative's gross receipts.

(c) Effective June 1, 1975, a manufacturer's cash rebate to a person who purchases tangible personal property from a retailer is not a reduction in the retailer's gross receipts or sales price for the item.

(4) SALES TAX COLLECTED FROM CUSTOMERS. (a) Section 77.51 (11) (a) 4 provides in part that "if a retailer establishes to the satisfaction of the department that the sales tax . . . has been added to the total amount of the sales price and has not been absorbed by him, the total amount of the sales price shall be deemed to be the amount received exclusive of the sales tax imposed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies. For example, if taxable property is sold for \$100 and \$4 of tax is collected for a total of \$104, the tax payable by the retailer is determined by multiplying the tax rate times \$100.

(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible under the bracket system, no part of the retailer's gross receipts shall be treated as tax collected from customers. For example, a vending machine operator whose only receipts are from sales of 10¢ items cannot collect any sales tax from customers, and the tax applies to the total gross receipts.

(c) If a vending machine operator sells taxable property at a price such that a sales tax is collectible under the bracket system, part of the gross receipts from such sales shall be deemed to include sales tax if customers are advised that vending machine prices include sales tax.

(5) BRACKET SYSTEM. (a) The following bracket system shall be used by retailers in computing the amount of tax which may be collected from the retailer's customers:

<u>Amount of Taxable Sale</u>	<u>Tax Collectible</u>
\$.01 to \$.12	\$.00
.13 to .37	.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12*	.04

*On sales exceeding \$1.00, the tax equals 4% of each full dollar plus the tax shown above for the applicable fractional part of a dollar. When more than one item is sold in a single transaction, the tax shall be computed on the aggregate sales price of the items sold.

(b) The bracket system method is designed so that the total amount of tax paid by customers shall approximate 4% of a retailer's gross receipts, if the retailer's sales fall equally throughout all the brackets.

(c) The gross sales tax payable by a retailer is 4% of the retailer's taxable gross receipts, regardless of the amount of tax collected from customers.

(d) A retailer shall conspicuously post bracket system cards (showing the tax collectible on the dollar amount of a sales transaction, as set forth in par. (a)) to establish to the satisfaction of the department of revenue that the sales tax has been added to the sales price, unless a receipt is issued separately itemizing the tax.

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

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.38 Fabricating and processing. (sections 77.61 (4) (f) and (h) and 77.52 (2) (a) 10 and 11, Wis. Stats.) (1) TAXABLE FABRICATION. Except for sales for resale described in section 77.52 (13) to (15), Wis. Stats., types of fabrication charges which are taxable, regardless of whether the customer or fabricator furnishes the materials, include charges for the following:

- (a) Printing and imprinting.
- (b) Tailoring a suit.
- (c) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job. The end result of the fabrication is a modification of a previously manufactured article.
- (d) Making curtains, drapes, slip covers or other household furnishings.
- (e) Making a fur coat from pelts, gloves or a jacket from a hide.
- (f) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers (often referred to as "milling").
- (g) Bookbinding.
- (h) Heat treating or plating.
- (i) Firing of ceramics or china.
- (j) Assembling kits to produce a completed article.
- (k) Production of a sound recording or a motion picture.
- (l) Threading pipe, or welding pipe.
- (m) Tanning hides.
- (n) Bending glass tubing into neon signs.
- (o) Laminating identification cards.

(2) TAXABLE PROCESSING. Except for sales for resale described in sections 77.52 (13) to (15), Wis. Stats., types of processing charges which are taxable, regardless of whether the customer or processor furnishes the materials, include charges for the following:

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- (a) A caterer's preparation of food for consumption on or off the premises.
- (b) Dyeing or fireproofing fabric.
- (c) Cutting or crushing stones, gravel or other construction materials.
- (d) Retreading tires.
- (e) Drying, planing or ripping lumber.
- (f) Cleaning used oil.
- (g) Application of coating to pipe.

Note: Sales or use tax may not apply in many cases because the customer is a manufacturer or other business entitled to issue a valid resale certificate to the producer, fabricator or processor. Such customer purchases the service "for resale" without tax. This rule does not impose a tax in such cases.

Tax applies to charges for producing, fabricating or processing tangible personal property for a consideration for consumers, whether or not the consumers furnish, either directly or indirectly, the materials used in the producing, fabricating or processing operation. Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of tangible personal property except sales for resale. Sales or use tax applies to the entire amount charged for such services, including the charge for materials on which the service is performed.

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

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

Tax 11.39 Manufacturing. (sections 77.51 (27) and 77.54 (2) and (6) (a), Wis. Stats.) (1) **DEFINITION.** Manufacturing means an operation at a fixed location complete in itself, or one of a series of operations each at a fixed location, whereby, through the application of machines to tangible personal property by a process popularly regarded as manufacturing, a new article of tangible personal property with a different form, use and name is produced.

(2) **SCOPE OF MANUFACTURING.** (a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

(b) Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities or research and development.

(3) **MANUFACTURERS.** Manufacturers ordinarily include the following:

- (a) Asphalt plants.
- (b) Bakeries
- (c) Battery makers.
- (d) Breweries and soda water bottling plants.

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- (e) Candy factories.
- (f) Cement and concrete plants (but not concrete mixing units mounted on trucks).
- (g) Chemical processing plants.
- (h) Concrete block and tile producers.
- (i) Creameries and instant milk producers.
- (j) Dairies.
- (k) Electric generating companies.
- (l) Flour and feed mills (but not mobile units).
- (m) Food processing plants (canning and freezing).
- (n) Foundries.
- (o) Glass making plants.
- (p) Limestone calcination plants.
- (q) Machine and equipment producers.
- (r) Malting plants.
- (s) Meat packing and processing plants.
- (t) Motor vehicle and aircraft factories.
- (u) Oil refineries.
- (v) Paint factories.
- (w) Paper making plants.
- (x) Printers.
- (y) Sawmills.
- (z) Scrap processors.
- (za) Shoe and clothing factories.
- (zb) Smelting and steel mills.
- (zc) Tanneries.
- (zd) Tool and die making plants.
- (4) NONMANUFACTURERS. Examples of nonmanufacturers are:
 - (a) Automobile and auto parts rebuilders.
 - (b) Contractors.
 - (c) Creosoting plants.
 - (d) Dental labs.
 - (e) Farmers.
 - (f) Fish hatcheries.
 - (g) Freezer and locker plants.

- (h) Highway truckers.
- (i) Hotels.
- (j) Junk and scrap dealers.
- (k) Key shops.
- (l) Laundries and dry cleaners.
- (m) Repairmen.
- (n) Restaurants.
- (o) Television and radio stations.
- (p) Sand and gravel pit operators.
- (q) Tire retreaders.
- (r) Persons engaged in:
 1. Corn shelling.
 2. Performing custom work to the individual order of household consumers.
 3. Experimental and development activities.
 4. Grain drying.
 5. Logging and forestry operations.
 6. Mining.
 7. Paper recycling.
 8. Photography.
 9. Popping corn.
 10. Quarrying and rock crushing operations.
 11. The business of raising and breeding animals.
 12. Real property construction activities.
 13. Typesetting.
 14. Vending machine operations.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.40 Exemption of machines and processing equipment. (sections 77.51(27) and 77.54(6)(a), Wis. Stats.) (1) GENERAL. (a) Section 77.54(6)(a) exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property."

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(b) Section 77.51 (27) provides "For purposes of s. 77.54 (6) (a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

(c) In determining whether a particular machine or piece of processing equipment is included in this exemption, these 2 statutes must be considered together.

(2) **CONDITIONS FOR EXEMPTION AND EXAMPLES.** This exemption shall apply if all the following conditions are met: (a) Machines and processing equipment shall be used *by a manufacturer* in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities. For example, machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor produces tangible personal property.

(b) Machines and processing equipment shall be used *exclusively in manufacturing*. The exemption shall not apply if machines and processing equipment are used partially or totally in nonmanufacturing activities. For example, a forklift truck used partially on a production line to move products from machine to machine and used in a warehouse to move and stack finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used *directly in manufacturing*. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though such machine and equipment are indirectly related to the step-by-step processes. For example, machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications, lighting, safety, fire protection or prevention; research; storage; delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing. Machine foundations are real property improvements rather than personal property.

(3) **OTHER EXAMPLES OF THE EXEMPTION.** Other examples of application of the exemption are as follows: (a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment." Small tools include hand tools such as drills, saws, micrometers and hammers. However, if such items are used partially or totally for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by such manufacturer to produce tangible personal property for sale. For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property destined for sale. For example, a printing press used by a manufacturer exclusively to print labels for its manufactured products is exempt. However, if the press is used partially to print advertising materials and office forms, it is not exempt.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed (e.g., machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities, research, or crating or packaging for shipment).

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant. For example, sweeping compounds are factory supplies rather than processing equipment. Gloves, shoes, coveralls and similar items are personal apparel rather than processing equipment.

(4) **REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT.** The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.41 Exemption of property consumed or destroyed in manufacturing. (sections 77.54 (2) and 77.54 (6) (a), Wis. Stats.) (1) **GENERAL.** (a) Section 77.54 provides in part: "There are exempted from the taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . 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."

(b) As used in section 77.54 (2), Wis. Stats., "manufacture" shall conform to the definition of "manufacturing" in section 77.51 (27), Wis. Stats.

(2) **RELATIONSHIP OF SECTIONS 77.54 (2) AND 77.54 (6) (a).** In construing the exemption provided in section 77.54 (2), it is necessary to refer to another exemption provided in section 77.54 (6) (a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Sections 77.54 (2) and 77.54 (6) (a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by section 77.54 (6) (a) and if they are not, cannot be within the exemption provided by section 77.54 (2).

(3) **EXAMPLES OF PERSONAL PROPERTY WITHIN SECTION 77.54 (2) EXEMPTION.** (a) The following property is within the exemption provided by section 77.54 (2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining manufacturing machinery during the manufacturing process.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) **EXAMPLES OF PERSONAL PROPERTY NOT WITHIN SECTION 77.54 (2) EXEMPTION.** (a) The following property is not within the exemption provided by section 77.54 (2), although such property may be exempt under section 77.54 (6) (a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in rule Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by section 77.54 (2) even though

such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. Since "fuel" is not defined in section 77.54(2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

(a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

(b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.45 Sales by pharmacies and drug stores. (sections 77.51(21) and (22) and 77.54(14), (22) and (28), Wis. Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in paragraph (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.
3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast materials.
5. Oxygen tanks.

(3) **EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES.** The exemption for medical appliances and prosthetic devices under ss. 77.54(22) and (28), Wis. Stats., shall apply to sales of the following:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

(b) Trusses, supports, shoes, braces and elastic hose only when specially fitted or altered to fit a particular person. "Altered" includes the bending of metal stays but does not include adjusting straps or seams.

(c) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pace-makers, and other equipment worn as a correction or substitute for any functioning part of the body. This exemption shall not apply to wigs or hair pieces, to garments designed to restrict or enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not "worn" by a person.

(d) Crutches and wheelchairs for the use of invalids and crippled persons, 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.

(e) Apparatus or equipment for the injection of insulin.

(f) Parts for and services to the exempt items listed in this subsection.

(4) **MEDICARE CLAIMS.** The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

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

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

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

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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 CHARGE.** 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) became effective September 15, 1970. Prior to that date the tax was based on \$2 per person per night.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

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 subsection (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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.48 Landlords, hotels and motels. (sections 77.51 (7) (n) and (24) and 77.52 (2) (a) 1 and 9, Wis. Stats.) (1) LANDLORDS. (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales or use tax applies to a landlord's purchases of all such items. The gross receipts from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats

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are taxable. If a separate charge is made for such parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking or storage.

(2) **HOTELS AND MOTELS.** The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business (such as a trucking company, railway or airline) to be used by its employees for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the use to which the room is put. For example, the rental of a motel sleeping room by a salesman from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all such items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department of revenue for reasonableness.

(b) In computing the ratio in paragraph (a), tangible personal property includes property subject to the sales tax, such as furniture, furnishings equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment. For example, if the investment (valued at undepreciated original cost) on the effective date of a lease is \$100,000 for tangible personal property and \$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ($\$100,000 \div \$500,000$) to the gross lease receipts for each sales tax reporting period.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

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Tax 11.49 Service station and fuel oil dealers (sections 77.52 (2) (a) 10 and 77.54(3), (5), (9a) and (11), Wis. Stats.) (1) **TAXABLE SALES.** Sales by service station operators and fuel oil dealers subject to the sales tax include the following: (a) The sale of furnace or heating fuel to residential, industrial or commercial customers.

(b) The repair, service, cleaning, painting, towing, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor.

(c) The towing of motor vehicles if the towing is related to the repair, service or maintenance of the vehicle. The following services are not considered taxable towing services:

1. Towing vehicles from "no parking" zones.
2. Towing a demolished vehicle to a junk yard.
3. House moving or relocating a mobile home.

(d) Retail sales of tangible personal property (e.g., motor oil, anti-freeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks) by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(2) **EXEMPT SALES.** Sales by service station operators and fuel oil dealers not subject to the sales tax include the following: (a) Sales of gasoline and special fuel (e.g., diesel and L.P. fuel) which are subject to the Wisconsin motor vehicle fuel taxes under Chapter 78, Wis. Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate (Form S-207) to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee must report and pay the special fuel tax. On special fuel sold or used for off-highway purposes, the licensee is required to pay the sales or use tax, unless the fuel is used in farm tractors or farm machines used directly in farming.

(b) Sales made directly to governmental units of this state, schools or any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes. Sales to employes of these entities are not exempt, even though the entity may reimburse the employe for the expenditure. (c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in section 71.18(2) (a), Wis. Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

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

(e) Sales of aircraft fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce. Sales of jet fuel to persons who are not certified or licensed carriers are subject to the sales or use tax, but their purchases of aviation gasoline shall be exempt under paragraph (a).

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase without tax ("for resale") repair parts and materials used in such work which are physically transferred to their customers (e.g., auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods).

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.50 Auctions. (sections 77.51 (4) (intro.) and (a), (7) (b) and (e) and (10) (e), Wis. Stats.) (1) STATUTE. Section 77.51 (7) (b), Wis. Stats., provides that every person engaged in the business of making sales at auction of tangible personal property owned by the person making the sale or others is a "retailer". The definition of "retail sale" contained in s. 77.51 (4) (a), Wis. Stats., includes any sale at an auction.

(2) THE RETAILER. If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are responsible for reporting the sales tax on auction receipts even if the owner of the property has a Seller's Permit.

(3) TAXABLE AUCTION RECEIPTS. Taxable receipts from auctions include gross receipts from:

(a) Auction sales held regularly at an established place of business, such as an auction house or auction barn. The household goods exemption does not apply to such sales.

(b) Auctions held regularly on radio, television, or CATV. The household goods exemption does not apply to such auctions.

(c) Auctions sponsored on an annual or other regular basis by non-profit organizations or others. The household goods exemption does not apply to such auctions.

(d) Auction sales of heavy equipment and going-out-of-business auction sales of retail stores, motels, wholesalers, manufacturers, contractors and service enterprises. The household goods exemption does not apply to such sales.

(e) Auction sales of antiques (effective on and after July 31, 1975) and works of art except when sold with other household goods of which they were a part.

(f) Auction sales of professional or business inventories or equipment even though they may consist of household goods.

(g) Sheriffs' sales and other auction sales made pursuant to orders of a Wisconsin court.

(h) All other auction sales are not specifically exempt under the law.

(4) **EXEMPT AUCTION RECEIPTS.** Gross receipts from the following auction sales are exempt: (a) Auction sales of personal farm property or household goods which are not held at regular intervals. Such auctions are generally held on the property owner's premises.

1. Household goods. "Household goods" includes tangible personal property which is associated with maintaining a household and is for family use. For example, household goods includes furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus, auction sales of goods removed from a family home (such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars) are not taxable. Items which are not considered "household goods" include:

a. Highway motor vehicles or trailers, snowmobiles, mini bikes, bicycles, aircraft, boats and other sporting goods.

b. Professional or business inventory equipment.

2. Personal farm property. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property used by a farmer to till the soil and raise crops. "Personal farm Property" does not include riding horses or other recreational animals or equipment for them, highway vehicles, boats, snowmobiles, mini bikes and bicycles.

(b) Sales for resale or sales which are otherwise exempt. If such a sale is made at an auction, the person conducting the auction should obtain a properly completed resale or exemption certificate from the purchaser.

(c) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

(d) One-day auction sales by religious, charitable, educational or civic organizations and other nonprofit organizations which conduct a fund raising event, if: 1. The auctioneer is not the retailer, (because the auctioneer's services are donated); and

2. The organization is not engaged in a trade or business and not otherwise required to have a seller's permit; and

3. Gross receipts from the auction sale of tangible personal property and taxable services do not exceed \$1,000.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.51 Grocers' guidelist. (section 77.54(20), Wis. Stats.) (1) **GENERAL.** All sales of tangible personal property are taxable except when Register, January, 1978, No. 265

a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption necessary for the home preparation of meals. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages (including bases or concentrates to produce soft drinks and fruit drinks), beer, intoxicating liquors, candy, paper products and detergents. The following lists shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

(2) GUIDELISTS. (a) *Taxable sales by grocers.* Gross receipts from the sale of the following are taxable:

Adhesive tape.	Carbonated beverages.	Facial tissues.
Albums.	Cat food.	Farm and garden implements.
Amonia.	Charcoal and starter.	Feminine hygiene needs.
Anti-acid products.	Chewing gum.	Fermented malt beverages.
Anti-freeze.	Cigarettes (Effective 9-1-75).	Fertilizers.
Appliances.	Cigarette lighter fluid, wicks, flints.	Fiddle faddle.
Ash trays.	Cigars.	Film.
Aspirin.	Cleaning equipment and supplies.	First aid products.
Auto supplies.	Cleansers.	Fizzes.
Baby needs (except food).	Clocks.	Flash bulbs.
Bags (all kinds).	Clothes lines.	Flatware.
Bakeware.	Clothespins.	Floor care products.
Baskets.	Clothing.	Flowers and seeds.
Barbeque supplies.	Cocktail mixes.	Food coloring.
Batteries.	Cod liver oil.	Foot care products.
Beauty aids.	Cold remedies.	Foil (aluminum and similar products).
Beer.	Coloring extracts.	Frames.
Beer making supplies.	Combs and brushes.	Fuel and lubricants.
Binders (notebook).	Confections.	Fudgesicles.
Bird food and supplies.	Cough drops.	Furniture polish.
Bleach.	Cracker jacks.	Games.
Blueing.	Crayons.	Garden needs.
Bobby pins and rollers.	Dental aids.	Garbage bags and cans.
Books.	Deodorants.	Gifts (non-food).
Bowl cleaner.	Detergents.	Ginseng.
Breath mints.	Dinnerware.	Glassware.
Brooms.	Disinfectants.	Gloves.
Brushes.	Distilled spirits.	Glue.
Bubble bath.	Dixie cups.	Greeting cards.
Cameras and supplies.	Dog food and supplies.	Grooming aids.
Cake decorations (non-edible).	Dolls.	Gum.
Calcium tablets.	Drain cleaners.	Hair care products.
Candied fruits.	Drug sundries.	Hardware.
Candy.	Dry cleaners.	Heated foods and beverages (1).
Candy apples.	Dye.	Health and beauty aids.
Canning and freezer supplies.	Electrical supplies.	Hosiery.
Can openers.	Eskimo pies.	

Household equipment and supplies.	Paint and paint supplies.	Sponges.
Ice (cube and block).	Paper products (tissues, plates, cups, towels, napkins and writing paper).	Starch.
Ice cream bars.	Peanuts (candy coated).	Stationery.
Ice cream in cones.	Pens and pencils.	Steel wool.
Internal remedies.	Pepto bismol.	Stockings.
Intoxicating liquor.	Pet food and supplies.	Sun glasses.
Insect and pest control products.	Plastic utensils.	Sun tan lotion.
Iron tablets.	Polishes.	Tableware.
Jewelry.	Popcorn (raw or popped).	Taffy apples.
Kool aid and similar items.	Popsicles.	Tape.
Kotex and similar items.	Pots and pans.	Thermos bottles.
Laundry products.	Powder (face and body).	Thread.
Lawn furniture.	Raisins (candy coated).	Tobacco products.
Life savers.	Razors and blades.	Toilet tissue.
Light bulbs and fuses.	Records.	Tonics.
Lozenges.	Roloids.	Tools.
Lunch boxes.	Root beer and extracts.	Tooth brushes.
Lye.	Rotisseries.	Toothpaste and powders.
Lysol.	Rubber bands.	Toothpicks.
Manicure needs.	Salt (water softener).	Toys.
Mason jars.	Sandwiches (hot or cold).	Tums.
Matches.	Sanitary goods.	Utensils.
Medicinal preparations.	School supplies.	Wash cloths.
Milk of magnesia.	Scissors.	Waste baskets.
Mineral tablets.	Sewing aids.	Watches.
Nail polish and remover.	Shampoo and rinse.	Water (spring and distilled).
Nails.	Shaving supplies.	Water conditioners.
Napkins.	Shelf coverings.	Waxes.
Notebooks.	Shoe laces and polishes.	Wax paper.
Nursery stock.	Soaps.	Wearing apparel.
Nuts (chocolate coated).	Soda water beverages (2).	Wine making supplies.
Pails.	Soft drinks (2).	Wrap (foil and waxed paper).
		Writing supplies.
		Yogurt bars, cones and sundaes.
		Zippers.

(b) *Exempt sales by grocers.* Gross receipts from the sale of the following are exempt:

Apple cider (sweet).	Barbeque sauces.	Cake mixes and flour.
Baby food.	Berries.	Cakes (Hostess and similar items).
Bakery goods.	Biscuit mix.	Canned foods.
Baking chocolate.	Boullion cubes.	Catsup.
Baking powder and soda.	Bread and rolls.	Cereal and cereal products.
	Brownies.	
	Butter.	

Certo and other peccans.	Gravy extracts and mixes.	Pickles.
Cheese.	Grits.	Pie and pie fillings.
Chicken.	Hash.	Pie crust and mixes.
Chinese food.	Honey.	Potato chips.
Chip dip.		Potato salad.
Chips (potato, corn and similar items).	Ice cream (pints or larger).	Poultry and poultry products.
Chocolate (instant and baking).	Jams.	Preserves.
Citrus fruits.	Jellies.	Pretzels.
Cocoa.	Jello.	Puddings.
Coffee and coffee substitutes.	Juices (pure fruit) (3).	Raisins.
Condiments.	Lobster.	Ravioli.
Cones (ice cream cups).	Luncheon meats.	Relishes.
Cookies and crackers.	Macaroni.	Rice.
Cooking oils.	Magazines.	Rolls and biscuits.
Cream.	Malted milk powder.	Saccharin.
Desserts and toppings.	Maraschino cherries.	Salad dressing.
Dietary foods (4).	Marshmallows.	Salt and salt substitutes.
Dinners (frozen).	Mayonnaise.	Salted nuts.
Doughnuts.	Meal.	Sardines.
Dressing.	Meat and meat products.	Seafoods.
Dried fruits.	Meat extracts and tenderizers.	Seasonings.
Dried milk products.	Melons.	Sherbet.
Eggs.	Meritene.	Shortening.
Federal food stamp receipts.	Milk and milk products.	Soup.
Fish and fish products.	Mustard.	Spaghetti products.
Flavoring extracts.	Newspapers.	Spices.
Flour.	Noodles.	Spreads.
Fritos.	Nuts (except candy coated).	Sugar.
Frozen desserts.	Oil (cooking, salad).	Sweeteners.
Frozen fruit juices (3).	Oleomargarine.	Syrup.
Frozen fruits and vegetables.	Olives.	Tea and ice tea.
Frozen pizza.	Pancake mix.	Turkey.
Frozen TV dinners.	Peanuts (in shell or canned, salted or not).	Vanilla and vanilla extract.
Fruit.	Peanut butter.	Vegetable juices.
Garlic.	Pepper.	Vegetables.
Gelatin.		Vinegar.
		Waffle mix.
		Yeast.
		Yogurt (pints or larger).

(c) *Explanations of some items noted above.* As indicated in (a) and (b) above:

1. "Heated Food" means those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

2. Sales of soda water beverages, bases, concentrates and powders which may be reconstituted into soft drinks, and fruit juice drinks, punches and nectars which have additives known as extenders are taxable. Extenders commonly used are citric acid, peel oil and artificial color.

3. Sales of pure fruit juices as defined in Chapter 97 (Statutes of 1967) are not taxable. Fruit juices are the clean, unfermented liquid product obtained by the first pressing of fresh ripe fruits. The only permissible additives are sugar and one of the preservatives such as sodium benzoate, sorbic acid or sodium sorbate. Frozen concentrates conforming to the above description are also tax exempt.

4. "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, and compressed or concentrated foods taken in wafer form which can be identified as food because of higher concentrated food values of carbohydrates and proteins. For example, a protein concentrate used by persons engaged in athletic activities is an exempt food. Dietary foods do not include patent medicines, tonics, vitamins and medical-type preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form used for medicinal or remedial purposes. The sales of such items are taxable.

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

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.52 Coin-operated vending machines and amusement devices. (sections 77.51 (17) and (24), and 77.52 (1) and (2) (a) 2, 6, 7 and 10, Wis. Stats.) (1) **DEFINITION.** In this rule, "operator" means:

(a) A person who owns property sold through a coin-operated vending machine or device, has the right of access to the machine or device for stocking or restocking or for removing the gross receipts, or who, in general, has control over the machine or device and its contents; or

(b) A person who is responsible for providing laundry, dry cleaning, photographic, photocopy or other taxable services through vending machines.

(2) **SELLER'S PERMITS.** (a) Operators of coin-operated vending machines or devices dispensing taxable tangible personal property or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each operator.

(b) A notice must be affixed to each coin-operated machine or device showing the operator's name, address and seller's permit number.

(3) **TAXABLE RECEIPTS.** Taxable receipts include gross receipts from:

(a) Coin-operated machines dispensing tangible personal property such as:

1. Chewing gum, candy, cigarettes (effective September 1, 1975), peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, tobacco products (not including cigarettes), handkerchiefs, combs and hygienic products; and

2. Fruit, milk, bakery goods, eggs, salads, cookies, crackers and all other foods and beverages for on-premise consumption. The total gross

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receipts from sales of food and beverages through vending machines shall be presumed derived from on-premise consumption and therefore taxable, unless the operator has records showing the portion of gross receipts from sales made for off-premise consumption involving exempt food.

(b) The license to use or the rental of coin-operated machines which are personal property or which provide a taxable service, such as hair drying machines, shoe shine machines and bowling ball cleaning machines.

(c) Coin-operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

(4) **NONTAXABLE RECEIPTS.** Receipts from the following are not taxable: (a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin-operated, self-service machines.

(b) Coin-operated storage lockers, pay toilets and scales.

(c) Sales of cigarettes prior to September 1, 1975.

(5) **REPORTING AND RECORD KEEPING.** (a) The gross receipts of vending machine and amusement device operators are subject to the sales tax. Thus gross receipts include, for example, receipts from items selling for one, five and ten cents and more. No deduction shall be permitted for the cost of the property sold, materials used, labor or service cost, or any other expense (including commissions paid to place machines in an establishment).

(b) Sales tax collected from customers may be deducted from gross receipts before computing the tax payable, if the tax is collected under the bracket system and customers are advised of the amount of sales tax they are paying by a sign posted on the machine. If no tax is collected under the bracket system, no deduction shall be allowed.

(c) Each operator shall maintain adequate and complete records including: 1. The location of each machine;

2. The serial number of each machine;

3. Purchases and inventories of all merchandise sold through machines;

4. Receipts from sales of exempt merchandise; and

5. Purchase records of all machines and the cost of all supplies of which the machine operator is deemed to be the user or consumer (for example, a vending machine or juke box, including repairs and parts therefor and records used in the juke box).

(6) **SALE, LEASE OR RENTAL OF MACHINES.** (a) Receipts from the sale, lease, rental or license to use coin-operated machines and attachments, parts and supplies therefor are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

(b) Machines purchased exclusively for rental to others may be purchased by the lessor without tax if the lessor gives a resale certificate to the lessor's supplier. If the lessor intends making any use of the machines other than rental, a resale certificate shall not be given. In either event, the lessor's rental receipts are taxable.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.53 Concessionaires (sections 77.52 (7), (19) and 77.61 (2), Wis. Stats.). (1) Each person desiring to engage in or conduct business as a concessionaire at a fair, carnival, circus or other temporary location shall file with the department of revenue an application for a temporary seller's permit for each concession on a form prescribed by the department. At the time of filing such application he shall pay to the department a security deposit to protect the revenue of the state, which deposit for each concession shall be \$10, regardless of the number of days a particular concession is operated at the event. At such time he shall also furnish the department with the name and address of his agent in this state upon whom any process, notice or demand required or permitted by law to be served upon him may be served.

(2) A temporary seller's permit shall be valid only for the duration of the event for which it is issued.

(3) Each person granted one or more temporary seller's permits in a calendar year shall, on or before January 31 of the succeeding year, file a concessionaire's annual sales tax return. On such return the security deposited during the calendar year may be claimed as a credit against the tax due.

(4) Examples of "concessionaires" are persons conducting the following businesses at such events: nickel pitch, pop in, ring toss, short range, basketball, guess your weight, jewelry stand, fish pond, photo stand and tip the bottle. Further examples include persons selling ice cream, cotton candy, candy apples, sno cones, popcorn, or frozen delight from stands at such events.

(5) For purposes of this rule, "concessionaire" does not include:

(a) A person who holds a permanent seller's permit for operating amusement rides, traveling vaudeville performances, menageries or object of curiosity shows;

(b) A person selling meals (including lunches or sandwiches).

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

History: Cr. Register, 1965, No. 114, eff. 7-1-65; am. Register, May, 1966, No. 125, eff. 6-1-66; am. (1), Register, June, 1976, No. 234, eff. 7-1-76; renum. from Tax 11.01, Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.54 Temporary amusement, entertainment or recreational events or places (sections 77.51 (7) (c), 77.52 (7), (19) and 77.61 (2), Wis. Stats.). (1) "Admission" for the purpose of this rule means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions are subject to sales tax.

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(2) "Places of amusement, entertainment or recreation" for the purpose of this rule include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(3) Pursuant to section 77.51 (3), Wis. Stats., and as used in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of section 77.51 (7) (c), Wis. Stats., if said entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(5) As retailers such entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to section 77.52(7), Wis. Stats., and may be required to post security as provided in section 77.61 (2), Wis. Stats. Such retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax. Further, it does not apply to churches or other nonprofit groups which operate within the occasional sale limitations of section 77.51 (10) (c), Wis. Stats.

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

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76; renun. from Tax 11.02; Register, January, 1978, No. 266, eff. 2-1-78.

Tax 11.61 Veterinarians and their suppliers. (sections 77.51 (7) (m) and (o) and 77.52 (2) (a) 10, Wis. Stats.) (1) VETERINARIANS. (a) Charges made by veterinarians which shall be exempt from the sales tax include charges for the following professional services for animals:

1. Medical services.
2. Hospitalization services.

(b) Charges made by veterinarians which shall be subject to the sales tax include charges for the following activities for animals:

1. Boarding.
2. Grooming.
3. Clipping.

(c) Sales of tangible personal property by veterinarians which shall be taxable include the following:

1. Leashes, collars and other pet equipment.
2. Pets.
3. Pet food.

(2) (a) Sales to veterinarians of medicines for animals and sales of other tangible personal property to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax. Prior to June 24, 1974 sales to veterinarians of medicine for animals were taxable if the medicine was to be used or furnished by a veterinarian in the performance of services, but were exempt if they were purchased for resale independent of the performance of such service.

(b) If the tax on sales to veterinarians is not collected by a supplier (for example, because the supplier is located out-of-state and is not required to be registered with the department), the veterinarian shall be responsible for and shall report and pay a use tax on such purchases directly to the department.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (2) (a), Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.62 Barbers and beauty shop operators. (section 77.51 (7) (i) and 77.52 (2) (a) 10, Wis. Stats.) (1) NONTAXABLE SALES AND SERVICES. (a) Barbers and beauty shop operators are engaged primarily in a service occupation and charges for services on human beings shall be exempt from the sales tax.

(b) Barbers and beauty shop operators shall *not* be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt as such occasional sellers shall pay sales or use tax to their suppliers on all purchases, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property (such as hair pieces) for resale without paying tax by issuing to their supplier a properly completed resale certificate.

(2) TAXABLE SALES AND SERVICES. (a) Barbers and beauty shop operators are the consumers of the materials and supplies which are used in performing their services and shall pay sales tax to their suppliers on such purchases.

(b) Over the counter sales by barbers or beauty shop operators of packaged cosmetics, hair tonics, lotions, wigs, falls, toupees or other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property shall be subject to the sales tax. Unless a barber or beauty shop operator falls within the occasional sales standard set

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forth in subsection (1) (b), the person shall be responsible for collecting and remitting to the department the tax on all such sales or charges.

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

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 11.63 Radio and television stations. (sections 77.51 (4), 77.52 (2) (a) 11 and 77.54 (23m), Wis. Stats.) (1) **NONTAXABLE SERVICES.** Gross receipts from the sale of the following services are not subject to the sales and use tax.

(a) Air time.

(b) Advertising.

(2) **TAXABLE SALES.** (a) Gross receipts from charges imposed by a radio or television station for art work, slides, films, tapes or other tangible personal property which such station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. Such gross receipts are taxable even though a station may retain possession of the tangible personal property because "sale" is defined to include the transfer of not only title to and possession of tangible personal property, but also the transfer of enjoyment of tangible personal property. If an advertiser maintains any control over the tangible personal property prepared or produced such as the right to determine when the property will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property.

(b) Gross receipts from a radio or television auction are subject to the sales and use tax.

(c) If a radio or television station advertises on behalf of out-of-state persons to sell merchandise (such as records or books), the station is the retailer of such merchandise and must pay sales tax on such sales if:

1. The advertising message does not clearly identify the out-of-state source of the merchandise; or

2. The merchandise orders are sent directly to the station which accounts for the gross receipts.

(3) **NONTAXABLE PURCHASES.** The gross receipts from the sale, lease or rental of motion picture films or tape, and advertising materials related thereto, to a motion picture theater or radio or television station are exempt from the sales and use tax under section 77.54 (23m). Sales of sound tapes to radio stations are included in this exemption.

(4) **TAXABLE PURCHASES.** Radio and television stations are consumers of equipment, materials and supplies used to conduct their businesses and shall pay sales or use tax on purchases of such tangible personal property except as provided in subsection (3).

(5) **BROADCASTING TOWERS.** Commercial broadcasting towers constituting the transmission antenna system of a radio or television station are deemed real estate improvements for sales and use tax purposes if installed on land owned by the station. Contractors engaged in construction of such broadcasting towers are the consumers of building materials used by them in constructing, altering or repairing such towers and must pay tax on the cost of such materials.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.65 Admissions. (section 77.52 (2) (a) 2, Wis. Stats.) (1) **TAXABLE SALES.** (a) The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses, carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs and flying clubs. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment or recreational facilities to members are charges for the privilege of obtaining access to such clubs and are taxable receipts of the clubs.

(c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing, card playing, hayrides, hunting, fishing, and horseback or pony riding are taxable.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught.

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(e) A person who provides boat, tackle, bait and guide service provides a combination of recreational items which is subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the gross receipts from conducting bingo games. The tax is remitted to the bingo control board, rather than the department of revenue.

(2) NONTAXABLE SALES. The following are nontaxable admissions:

(a) The dues of civic, fraternal, religious, patriotic and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment or recreational facilities to their members.

(b) Admissions to museums of history, art or science, and to auto or trade shows, if professional entertainment is not provided at the show.

(c) Admissions to antique shows unless the admission charge can be used as a credit against the price of merchandise purchased.

(d) Entry fees in contests if the primary motive of the majority of the persons entering the contest is "business" and not "recreation". Generally, entry fees are not taxable for:

1. Professional golfers entering a major tournament.
2. Professional riders entering a rodeo.
3. Professional stock car drivers entering an auto race.
4. Large snowmobile races where the entrants are primarily manufacturers' representatives.

(3) PRIZE MONEY. Bowling alley proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable gross receipts the amount advertised and set aside for prize money.

(4) "DONATIONS". (a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment must be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation must be obvious that admittance is not restricted to those making a donation. A set amount for the donation (through newspaper publicity or signs at the entrance), a turnstile or restrictive device that must be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

(b) When a charge to a patron bears little or no relationship to the actual value received, such as \$100 per ticket for fund raising dinner dance, the tax may be based on reasonable value of the tangible personal property and taxable services received.

(5) LOCATION OF EVENT. The receipts from sales of tickets of admissions to places of amusement or athletic events which take place in Wisconsin are taxable, even though some of the tickets may be sold out-of-

state. For example, all sales of University of Wisconsin football tickets for games played in Wisconsin are taxable. However, if the University of Wisconsin, as agent, sells tickets for the University of Michigan, the receipts are not subject to the Wisconsin sales tax.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.66 Communication and CATV services. (sections 77.51 (28), 77.52 (2) (a) 4 and 12 and 77.54 (24), Wis. Stats.) (1) **TAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are taxable: (a) Intrastate telegraph service.

(b) Telephone services, except interstate service, directory advertising and coin-operated telephone service. All intrastate toll services provided on or after July 31, 1975 and billings for exchange service made on or after that date are taxable.

(c) Two-way voice communication services over telephone or radio (commonly referred to as mobile telephone service). Nonmechanical telephone answering services are not taxable.

(d) One-way paging service effective July 31, 1975.

(e) Cable television system service, including installation charges, effective October 1, 1975.

(2) **PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing such services. The tax applies to the sale of such property to them. However, section 77.54 (24), Wis. Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices or telephone companies, used in transmitting traffic and operating signals".

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

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.67 Service enterprises. (section 77.51 (4) (intro.) and (h), (5), (7), (11) (a) and (c) and 77.52 (1), Wis. Stats.) (1) **GENERAL.** When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which furnishes without separate charge as an incidence to the service.

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(2) RECEIPTS AND PURCHASES OF PERSONS PROVIDING SERVICES. (a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales, and the tax applies to the total gross receipts therefrom without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax. However, if the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge attributable to the taxable services.

(3) SPECIAL SITUATIONS. (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject to the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) *Artistic expressions.* Sales of works of art, such as paintings and sculptures, are taxable.

(d) *Interior decorator's fee.* 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered (such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply) and there is no sale of tangible personal property involved with the transaction.

(e) *Research and development.* 1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed

product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(g) *Architects.* Fees paid to architects to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by customers (e.g., architects, engineers or business firms). These charges are taxable because the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing (tangible personal property) for use by the customer.

(i) *Enuresis alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(k) *Community antenna systems (Cable TV).* Effective October 1, 1975, services by a cable television company are subject to the tax. Persons offering such services are consumers of the tangible personal property they purchase or rent. Thus, sales of tangible personal property to these persons are subject to the tax. For further information see rule Tax 11.66.

(l) *Taxidermists.* Taxidermists perform service on tangible personal property. Gross receipts from such service are subject to the tax.

(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. Such persons are the consumers of the tangible personal property they purchase, except for the wax transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to such operators.

(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of such service, provide telephone books to telephone companies or their subscribers, are the consumers of and must pay tax on all the telephone books they distribute in Wisconsin.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.69 Financial institutions. (section 77.51(4)(k)) (1) **EX-EMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(2) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.

(h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

(3) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards,

plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) **DEFINITION.** In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) **SPECIAL PROVISIONS.** (a) Sales to federal and state chartered credit unions, banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.70 Advertising agencies. (sections 77.51 (4) (intro.) and (h), 77.52(1) and (2), Wis. Stats.) (1) **NONTAXABLE SERVICES.** Charges by advertising agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

(a) Writing original manuscripts or news releases.

(b) Writing copy to be used in media advertising.

(c) Consultation, market research and compiling statistical or other information.

(d) Recommendations for advertising themes or merchandising plans.

(e) Obtaining media space and time.

(f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.

(2) **TAXABLE SALES.** (a) Tax applies to an agency's gross receipts from the sale of tangible personal property located or used in Wisconsin whether the transfer is to the advertiser or to a third party at the direction of or on behalf of the advertiser. This applies to advertiser clients located both inside and outside Wisconsin. The sale of tangible personal property normally occurs when the advertising agency bills the client for

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the property and the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client. For example, an agency's billing to a client for finished art transferred to another Wisconsin business is taxable.

(b) Tax applies to an advertising agency's total retail sales price of tangible personal property, without any deduction for any cost element which becomes a part of the sales price. Such elements include preliminary art work, consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though such costs may be separately itemized in a billing to a client.

(c) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(d) The total sales price of the following items or services are subject to the tax:

1. Retail sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

2. Charges for photographic services or photostats.

3. Charges for producing, fabricating, processing, printing or imprinting tangible personal property for consumers for a consideration, even though the consumers may furnish the materials used in the producing, fabricating, processing, printing or imprinting of the tangible personal property.

4. Charges for "finished art". "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes and includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced. The tax applies to sales of finished art whether it is used to produce a taxable item or an exempt item (e.g., periodical), or is used to provide an advertising service by placing advertising in an advertising media (such as newspapers, magazines, other publications and radio or television stations).

(3) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee", "retainer", "service charge", or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable items is taxable in accordance with the ratio between the charges.

(4) PURCHASES BY AGENCIES. (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that it resells before use, or that becomes physically an ingredient or component part of tangible personal property which it produces and sells.

(b) An advertising agency is the consumer of all tangible personal property not purchased for resale or not becoming physically an ingredient or component part of tangible personal property sold by such agency.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.78 Stamps, coins and bullion. (section 77.51 (5), Wis. Stats.) (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

- (a) Cancelled United States and foreign postage stamps.
- (b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.
- (c) Uncancelled foreign postage stamps.
- (d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.
- (e) Foreign coins and paper currency when sold or traded as collectors' items.
- (f) United States coins and paper currency when sold or traded as collectors' items above their face value.
- (g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.
- (h) Commemorative medals.

(2) **NONTAXABLE SALES.** Retail sales of the following tangible personal property are not subject to the sales and use tax:

- (a) United States postage stamps, coins and paper currency sold at face value.
- (b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.
- (c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.
- (d) Foreign coins and paper currency in current circulation, when sold at face value and when acquired as a medium of exchange.

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

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 11.79 Leases of highway vehicles and equipment. (sections 77.51 (4) (intro.) and (j), (7) (k) and 77.58 (6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under subsection (1), the cost of the following items may be deducted if they meet the conditions in subsection (3):

- (a) Motor fuel.

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(b) Vehicle license fees.

(c) Federal highway use taxes.

(d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in subsection (2) may be deducted if:

(a) The charge is reasonable.

(b) The charge is separately stated in the lease agreement, billing or invoice.

(c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in subsection (2).

(d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under subsection (1), the cost of the following may not be deducted:

(a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.

(b) Maintenance or repair charges incurred by the lessor.

(c) Interest and other financing costs incurred by the lessor.

(5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

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

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Tax 11.80 Sales of ice. (section 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.

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(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 section 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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

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 non-manufacturing 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.

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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.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 11.82 Mailing lists and mailing services. (sections 77.51 (5), 77.52 (1), 77.53 (1) and 77.54 (2), Wis. Stats.) (1) **MAILING LISTS.** (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use

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or other consumption of mailing lists, including the rental of or the granting of a license to use such lists.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing such lists. However, any tangible personal property becoming a component part of mailing lists when such mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to such property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for such property. However, addressing does not include such tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax shall not apply to charges for services rendered in preparing material for mailing (including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations) if such charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing such services. Consequently, they must pay the tax when purchasing such property.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.83 Motor vehicles. (sections 77.51 (7) (am), 77.53 (16) and (18), 77.54 (5) (a) and (7) and 77.61 (1), Wis. Stats.) (1) DEFINITION. In this rule, "motor vehicle" means a self-propelled vehicle (e.g., automobile, truck, truck-tractor and motorcycle) designed for and capable of transporting persons or property on a highway. In this rule, "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, and road machinery as defined in section 340.01 (52), Wis. Stats. "Motor vehicle" does not include a vehicle which is not self-propelled such as a trailer or semitrailer.

(2) RETAILERS' TAXABLE GROSS RECEIPTS. A retailer's taxable gross receipts include: (a) Gross receipts from the sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value (a "trade-down").

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(b) Gross receipts from charges for delivery, handling, preparation and any warranty.

(c) Gross receipts from equipment and accessories sold with a motor vehicle.

(d) Gross receipts from charges for all parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments (e.g., a radio or air conditioner).

(3) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS. (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent or child of the transferor; and the motor vehicle has been previously registered in this state in the name of the transferor; and the transferor is not a motor vehicle dealer. A son-in-law or daughter-in-law is not allowed this exemption.

(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of such interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

(4) PURCHASES BY NONRESIDENTS. (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of this state (including members of the armed forces) who will not use such vehicles or trucks (for which the truck bodies were made) in this state other than in their removal from this state are exempt. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle is subject to the tax.

(c) A motor vehicle purchased by a nonresident of Wisconsin 90 days or more before bringing such vehicle into this state, in connection with a change of residence to this state, is not subject to the Wisconsin use tax.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (5).

(5) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside this state and registered in this state generally is subject to the Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made sales tax paid the

other state or the District of Columbia shall be applied as a credit against and deducted from the Wisconsin use tax. This credit shall not apply to taxes paid to another country, to municipalities in other states or to motor vehicle registration fees.

(6) **TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir (s) of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser is required to pay the tax to the department of transportation at time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable.

(7) **VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS.** (a) If salespersons use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson a reasonable amount for such use and such charge is subject to the tax. In lieu of making such charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis effective January 1, 1973:

1. In the case of motor vehicles licensed in the name of the retail dealer, the tax shall be \$1.35 per month.

2. In the case of motor vehicles being operated with retail dealer plates, the tax shall be 35¢ per month for each plate issued to the dealer.

(b) Retail dealers shall not report on the basis prescribed in par. (a) for service vehicles such as wreckers or pick-up trucks, or autos used by customers when their car is being repaired. Wholesalers, distributors, brokers or manufacturers may not report on this basis.

(8) **SALES BY DEALERS TO THEIR SALESPERSONS.** Effective September 1, 1972, when a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons, the transaction is subject to the sales tax. Vehicles acquired in this type of taxable transaction after September 1, 1972 are not subject to the special method of reporting described in sub. (7). However, vehicles purchased by salespersons prior to September 1, 1972 are subject to such special provisions, and the tax is \$1 per month through December 1972 and \$1.35 per month thereafter.

(9) **HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration shall not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with the state. Such heavy equipment dealers may purchase motor vehicles for resale without tax.

(10) **MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (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 which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. Such property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle are subject to tax. Such property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Examples of 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.

(c) A supplier cannot accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, *except* when the purchaser:

1. Inventories such property;
2. Certifies that the purchaser sells significant amounts of the property over-the-counter to walk-in trade; and
3. The purchaser specifies on the resale certificate each type of item the purchaser sells over-the-counter.

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

From September 1, 1969 through December 31, 1972, the tax payable by motor vehicle dealers in lieu of other methods of computing the tax, as described in (7) (a) 1 and 2 of this rule, was \$1 per month in the case of motor vehicles licensed in the name of the retail dealer and 25¢ per month in the case of motor vehicles operated with dealer plates.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.84 Aircraft. (sections 77.52 (2) (a) 9, 77.54 (5) (a) and (7) and 77.61 (1)) (1) **GENERAL.** (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent or child of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor does not hold and is not required to hold a Wisconsin seller's permit.

(c) Section 77.61 (1) (a), Wis. Stats., provides that no aircraft shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid. 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. The tax applies to aircraft registered or customarily hangared or both in this state, even though such aircraft also may be used out-of-state.

(2) **TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.

2. The sale of aircraft jet fuel, oil, equipment, parts and supplies sold and delivered in Wisconsin for operation of aircraft, regardless of where the aircraft is flown or used. Federal fuel taxes are part of the "sales price" of jet fuel subject to the sales tax.

3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52(2) (a) 9, Wis. Stats., imposes the tax on "Parking or providing parking space for aircraft for a consideration. . . except when provided by a governmental unit." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational. For example, an aircraft kept in a hangar and available for normal use is parked, but an aircraft kept in a hangar with its wings off is stored rather than parked.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor (tie down) parking are taxable, except when provided directly by a governmental unit to the owner of the aircraft. The gross receipts of a nongovernmental operator of a hangar from the rental of hangar space for aircraft are subject to the sales tax whether or not such operator leases the hangar from a governmental unit.

(c) *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.

(3) **EXEMPT SALES OF AIRCRAFT.** Section 77.54 (5) (a), Wis. Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use such aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption.

(4) **NONTAXABLE SERVICES.** Gross receipts from the following services or fees shall not be taxable:

(a) 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.

(b) Flight instruction when the fees for such instruction are separately stated from the charge for the rental of the aircraft.

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

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in this business may purchase weed killers, fertilizer and seed without tax for resale, if these items are separately itemized on the invoice to the farmer.

(f) Landing fees.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 11.91 Successor's liability. (section 77.52(18), Wis. Stats.) (1) **DESCRIPTION OF SUCCESSOR.** (a) A purchaser or assignee of the business or stock of goods of any retailer liable for sales or use tax shall be personally liable for the payment of such sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation shall be created and shall acquire the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for the sales tax of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A mortgagee who forecloses on a loan to a retailer owing delinquent sales tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(2) **EXTENT OF LIABILITY.** (a) If there shall be no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) **PROCEDURES FOR PURCHASER.** (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. The letter requesting the certificate shall include the real name; business name and seller's permit number (if

known) of the prior operator. The department shall have sales tax returns for all periods during which the predecessor operated before it can issue the certificate.

(c) By statute, the department has 60 days from the date it receives the request or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under section 77.59, Wis. Stats.

(d) The department's failure to mail the notice of liability within 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

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

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

Tax 11.92 Records and record keeping. (sections 77.52(13), 77.60(8), 77.61(4)(a) and (9), Wis. Stats.) (1) GENERAL. All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in this state tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices (which shall contain a posting reference), cash register tapes, credit memoranda (which shall carry a reference to the document evidencing the original transaction) or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. Such records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property (including any services that are a part of the sale or lease) made within Wisconsin irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by

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exemption certificates, if the supplier retains a copy of the exempt entity's purchase order. Sales to organizations holding a certificate of exempt status (e.g., religious or charitable organizations) can be shown to be exempt by recording the exemption certificate number on the seller's copy of the bill of sale. All other exempt sales must be supported by an exemption certificate signed by the purchaser and retained by the seller, unless the merchandise sold is specifically exempted by statute regardless of use (such as groceries). Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in a manner in which they readily can be related to the transactions for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in this state.

(2) **MICROFILM RECORDS.** Microfilm (including microfiche) reproductions of general books of account (such as cash books, journals, voucher registers and ledgers) and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing (ADP) tax accounting system shall have the capability of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents (such as sales invoices, purchase invoices, exemption certificates, credit memoranda) shall be readily available.

(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.
2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Wis. Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until such tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

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

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

Tax 11.94 Wisconsin sales and taxable transportation charges. (sections 77.51 (4) (intro.) and (d) and (4r), and 77.52 (1).) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (4r), Wis. Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is *not* a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employes or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

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(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (4) (d), Wis. Stats., applies to a situation where tangible personal property is delivered to a purchaser in this state by an owner of the property or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a Wisconsin manufacturer ships or turns over such property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller (who had received the original order from the Wisconsin purchaser), the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a Wisconsin manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) TAXABLE TRANSPORTATION CHARGES. (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

(b) An example of the correct computation of the tax when a seller charges the purchaser for delivery of the taxable tangible personal property follows:

Selling price of merchandise	\$100.00
Delivery charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 4% (\$110 x 4%)	<u>4.40</u>
Total	\$114.40

(c) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no such allocation is made, the total delivery charge shall be taxable.

(d) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax based on the "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(e) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller. For example, if the "delivered price" of a carload of lumber is \$6,000 (including transportation) and the purchaser pays the transportation charges directly to the common carrier and deducts the payment

from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.