

## 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 11.01 Sales and use tax return forms.** (s. 77.58, Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

- (a) Form S-010. For occasional sales of motor vehicles.
- (b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.
- (c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (d) Form S-012A (also called "ST-12A"). The annual information return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (e) Form S-013. For concessionaires. (Annual return).
- (f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).
- (g) Form S-015. For occasional bingo sales.
- (h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.
- (i) Form S-001U. For occasional and non-Wisconsin sales of boats.

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(j) Form S-050U (also called "UT-5"). For consumers other than persons holding a Wisconsin seller's permit, retailers having a use registration certificate and nonresident contractors.

(k) Form SU-051. For nonresident contractors having a use tax liability who do not have a Wisconsin seller's permit.

(l) Form A-R-1 (Department of Transportation form). For the occasional sale of aircraft.

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.
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.** (ss. 77.51 (5), 77.52 (1), 77.53 (1) and 77.54 (2), 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 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.

Register, November, 1978, No. 275

**Tax 11.83 Motor vehicles.** (ss. 77.51 (7) (am), 77.53 (16) and (18), 77.54 (5) (a) and (7) and 77.61 (1), 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 s. 340.01 (52), 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").

(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.** (ss. 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) , 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, 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) , 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, 1989.

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

**Tax 11.86 Utility transmission and distribution lines.** ss. 77.51 (5), 77.52 (2) (a) 10 and 77.52 (2) (a) 11, Stats.) (1) **PERSONAL PROPERTY.** "Tangible personal property", as defined in s. 77.51 (5), Stats., includes overhead telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the poles, transformers, towers (but not foundations), pipes, conduits, sleeves or other overhead property by which such lines are supported or in which they are contained or connected, if erected or installed under easement or license (including authorizations under ss. 86.16 and 182.017, Stats.) on land owned by a person other than the utility (such lines and facilities located above ground level being herein collectively referred to as "overhead utility facilities"). The term "tangible personal property", as defined in s. 77.51 (5), Stats., does not include underground telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the foundations, pipes, conduits, sleeves or other underground property by which such lines are supported or in which they are contained or connected (such lines and facilities being herein sometimes collectively referred to as "underground utility facilities").

(2) **REAL PROPERTY.** (a) The lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land are part of the realty. However, transformers, circuit breakers and other equipment installed to control the flow of electricity remain personal property after installation.

(b) Concrete foundations (including anchors), crushed rock and backfill whether or not on land owned by the utility, are deemed part of

the realty, and materials used in construction or forming the same are taxable when purchased by the contractor.

(3) **TAXABLE AND NONTAXABLE TRANSACTIONS.** (a) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance of overhead utility facilities which are personal property as described in subs. (1) and (2) are subject to the sales and use tax. For example, the gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion thereof, and from a sale "in place" of such a facility, if installed under easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of such property may be purchased without tax for resale. Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to the sales and use tax; however, the materials used in the construction or installation of such underground facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(b) A contractor performing a "lump sum contract" for the construction of an overhead utility facility, which is personal property as described in subs. (1) and (2), may not reduce gross receipts by the amount of related expenses, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and unloading and hauling materials. These payments are costs of performing the contract and do not affect the amount of taxable gross receipts.

(c) When a contractor enters into an agreement to construct or repair an overhead utility facility, which is personal property as described in subs. (1) and (2), the total charge for such construction or repair is taxable even though a portion of the total charge consists of hourly charges for the use of equipment.

(d) When equipment for the construction or repair of a utility line is rented to a utility, the rental charge is taxable. If an operator is included with such equipment and it is customary or mandatory that the utility accept the operator with the equipment, the entire charge for the equipment and operator is taxable. A rental agreement exists only if the utility employs the crew other than the equipment operator and provides on-the-job supervision; otherwise, the entire charge for the repair, service, maintenance or installation of the utility line is subject to the tax if so indicated in par. (c).

(4) **NONTAXABLE SERVICES.** (a) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line or in the maintenance of an existing line are not taxable.

(b) A separate charge for removing an existing utility line is not taxable.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1970. Therefore, a contractor's gross receipts from the installation of utility transmission and distribution lines in fulfillment of contracts entered into (or formal written bids made) on or after September 1, 1970 are subject to this rule. If the contractor became obligated to perform the contract on or after September 1, 1969 and

before September 1, 1970, a retailer's sales of materials to the contractor or utility on or after September 1, 1969 for use in the job are taxable.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78.

**Tax 11.87 Meals, food, food products and beverages.** (ss. 77.51 (4) (b) and (f), (11) (c) 2, (12) (c) 1 and 77.54 (20), Stats.) (1) **DEFINITIONS.** In this rule: (a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

(b) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) **TAXABLE SALES.** (a) *General.* Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. For example, when a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food (or heated beverages) are taxable. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

(c) *Food components of meals.* Food items which comprise or are components of a meal (for example, a basket of chicken with cole slaw and french fries) shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

(d) *Caterers.* Meals, food, food products and beverages sold by caterers shall be taxable.

1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute the sale of taxable food. Any rental charges made by a caterer for items such as tableware, tablecloths or other tangible personal property, whether or not separately stated on the bill, shall be includable in the consideration paid and shall be taxable.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers (such as dishes, silverware, plastic eating utensils, straws, napkins, tablecloths, punch fountains, coffee silver service and glassware) which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing food or beverages to their customers, or used in conjunction with providing catering service. However, the following items may be

purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for such use: tents, public address systems, portable dance floors, portable bars, chairs and tables.

(e) *Vending machine sales.* A vending machine operator has a "premise" as defined in s. 77.54(20)(c)6, Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for such service, the entire amount shall be taxable.

in full to the employe, shall be exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer.

2. On and after May 5, 1976, a flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller is a part of the selling price of such meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

3. However, prior to May 5, 1976, a flat percentage service charge added to customer's bill by a private club was not taxable if: a. The charge was imposed under the club's bylaws;

b. The total amount collected was paid directly to food service employes; and

c. The amount was not part of employes' wages that brought them up to the legal minimum wage.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Meals to employes.* Sales of meals to employes by an employer for a specific charge shall be taxable. 1. A specific charge shall be deemed made for meals if any one of the following conditions shall be met: a. The employe shall pay cash for meals consumed.

b. An actual, specific charge for meals shall be deducted from an employe's wages.

c. An employe shall receive meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.

d. An employe shall have the option to receive cash for meals not consumed.

2. In the absence of any of the following foregoing conditions, a specific charge shall not be deemed made when: a. A value shall be assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA (social security) or union contract purposes.

b. An employe who shall not consume available meals shall have no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies (e.g., airlines or railways) to a customer while operating in or over Wisconsin for a specific charge shall be taxable. Such meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage shall not be separately stated to the customer, the tax shall apply to purchases of such meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for such items, the place of business shall be considered selling directly to the members and not to the organization. The sales shall, therefore, be subject to the tax, even if the organization shall collect from the members and pay the seller, and retain a portion of the collections for its own

purposes. In such situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. However, when an exempt religious, charitable or educational organization shall pay for food and beverages out of its own funds, and shall provide such items to members or others without charge, the sale of such items by a retailer to the organization shall not be subject to the tax. If such exempt organizations hold a Certificate of Exempt Status issued by the department, they shall give the retailer their certificate number to claim the exemption.

(3) **EXEMPT SALES.** The following meals shall be exempt: (a) *Health care facilities.* Meals, food, food products, or beverages sold by hospitals, sanitoriums, nursing homes or day care centers registered under chapter 48, Wis. Stats. ("Hospital" is defined in section 50.33(1), Wis. Stats. "Nursing Home" is defined in section 146.30, Wis. Stats. "Sanitorium" means an institution for the recuperation and treatment of victims of physical or mental disorders.) However, if an affiliated organization sells such items, the exemption shall not apply. For example, if the ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at such coffee shop are taxable.

(b) *"Meals on wheels".* Effective on and after October 4, 1973, meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education, effective for the fall semester of 1973.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of pre-packaged ice cream, ice milk, sherbet or yogurt (pint, quart, gallon or larger sizes), whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of ice cream, ice milk, sherbet or yogurt, or cones, sundaes, sodas, shakes and frozen chocolate bars made from these products shall be taxable.

(4) **SPECIAL SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food. For example, a restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

**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, March, 1978, No. 267, eff. 4-1-78.

**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 Register, July, 1978, No. 271

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 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 employees 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.

(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