

ORDER OF THE DEPARTMENT OF REVENUE

REPEALING, AMENDING AND CREATING RULES

To amend Tax 11.14(7)(a)4, 11.15(8), 11.49(2)(a) and (e), 11.57 (2)(a) and (4)(a), 11.67(3)(n), 11.84(2)(a)2 and (3), 11.96(4) and 11.98(1) (intro.); repeal and recreate Tax 11.96(1) and (3); relating to miscellaneous changes in rules dealing with sales and use taxes.

Analysis by the Department of Revenue

SECTION 1. Rule Tax 11.14(7)(a)4 is amended to show that exempt entities located in other states can qualify for the exemption in s. 77.54(9a), Stats.

SECTION 2. Rule Tax 11.15(8) is amended to provide that gift wrapping charges are taxable, whether performed by the seller of the property wrapped or some other person. This reflects the Department's long-standing interpretation.

SECTION 3. Rule Tax 11.49(2)(a) is amended to add "general aviation fuel" to the types of fuel exempt under s. 77.54(11), Stats. This statute exempts fuel which is subject to an excise tax under Chapter 78, Stats. Chapter 20, Laws of 1981, created a new definition of and imposed an excise tax on "general aviation fuel", but exempted from the excise tax such fuel sold to air carrier companies.

Rule Tax 11.49(2)(e) describes the sales tax exemption in s. 77.54(5)(a), Stats., for fuel sold to air carrier companies, and is amended to reflect the new "general aviation fuel" terminology and to cite the statutory reference for the exemption. In addition, the reference to "jet fuel" is deleted, since general aviation fuel, which includes jet fuel, qualifies for the exemption under s. 77.54(11), Stats., if it is subject to excise tax.

SECTION 4. Subsection (2)(a) of rule Tax 11.57 is amended to clarify the fact that natural gas, electric and water connection and reconnection charges are not taxable.

Tax 11.57(4)(a) is amended to reflect the change in the exemption language in s. 77.54(6)(c) made by Ch. 20, Laws of 1981, effective October 1, 1981. This broadened the exemption language from "coal, oil, gas and nuclear material" to all "fuel".

SECTION 5. Rule Tax 11.67(3)(n) is amended, as a result of the Wisconsin Supreme Court's decision in Horne Directory, Inc. v. Department of Revenue, dated December 1, 1981. The Court ruled in this decision that a person who solicits advertising for telephone directories in Wisconsin is not required to pay the use tax on directories purchased from an out-of-state printer, if the printer ships the directories directly to subscribers in Wisconsin.

SECTION 6. Subsection (2)(a)2 of rule Tax 11.84 is amended to reflect the new exemption for general aviation fuel inserted in s. 77.54(11) by Chapter 20, Laws of 1981, effective January 1, 1982. Subsection (3) indicates the exemption in s. 77.54(5)(a) for certified or licensed air carriers does not apply to persons having air worthiness certificates which merely show that their aircraft meets certain safety standards. This reflects the department's long-standing interpretation.

SECTIONS 7, 8 and 9. Rules Tax 11.96 and 11.98 are amended to show that Chapter 20, Laws of 1981, increased the interest rate on unpaid sales taxes that are not delinquent from 9% to 12% per year. In addition, obsolete material is deleted or moved to a footnote.

Pursuant to the authority vested in the Department by section 227.014. Stats., the Department of Revenue hereby amends and repeals and recreates rules interpreting 77.52(1), 77.54(5)(a), (6)(c), (9a) and (11), and 77.60(1) and (2), Stats., as follows:

SECTION 1. Tax 11.14(7)(a)4 is amended to read:

Tax 11.14(7)(a)4 Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization holding a Certificate of Exempt Status (C.E.S.).

Sales to organizations holding a C.E.S. also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale.

A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals which is located out-of-state, may use the Certificate of Exemption (Form S-207) to purchase without tax even though it has not been issued a Wisconsin Certificate of Exempt Status.

SECTION 2. Tax 11.15(8) is amended to read:

Tax 11.15(8) Gift Wrapping. The amount charged ~~by-retailers~~ for gift wrapping packages purchased ~~at-their-place-of-business~~ is taxable.

SECTION 3. Tax 11.49(2)(a) and (e) are amended to read:

Tax 11.49(2)(a) Sales of gasoline, general aviation fuel and special fuel ~~(e.g.,~~ including 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~~ is required to 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.

Tax 11.49(2)(e) Sales of aircraft general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54(5)(a), Stats. ~~Sales of jet fuel to persons who are not certified or licensed carriers are subject to sales and use tax, but their purchases of aviation gasoline shall be exempt under paragraph (a).~~

Note to Revisor: The "Note" at the end of the rule should be revised to read as follows:

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law and after September 1, 1969. Sales of jet fuel to persons who were not certified or licensed carriers were subject to the sales or use tax prior to January 1, 1982.

SECTION 4. Tax 11.57(2)(a) and (4)(a) are amended to read:

Tax 11.57(2)(a) Connection or reconnection charges for natural gas, electricity and water.

Tax 11.57(4)(a) ~~Coal, oil, gas and nuclear material~~ Fuel converted to electric energy, gas or steam by utilities (s. 77.54(6)(c), Stats.).

Note to Revisor: The "Note" at the end of the rule should be revised to read as follows:

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except for subsection (1)(e) and (1) which became effective on February 1, 1979 and subsection (4)(a) which provides an exemption for all fuel converted to electrical energy, gas or steam by utilities. Prior to October 1, 1981 only coal, oil, gas and nuclear fuels were exempt.

SECTION 5. Tax 11.67(3)(n) is amended to read:

Tax 11.67(3)(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~~ shall pay tax on all the telephone books they accept delivery of in Wisconsin and then distribute in Wisconsin.

Section 6. Tax 11.84(2)(a)2 and (3) are amended to read:

Tax 11.84(2)(a)2 The sale and delivery in Wisconsin 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. Sales of general aviation fuel subject to taxation under Chapter 78, Stats., are exempt from the sales and use tax. ~~Federal-fuel-taxes are part of the "sales price" of jet-fuel subject to the sales tax.~~

Tax 11.84(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~~ the 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~~ the 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. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

Note to Revisor: The "Note" at the end of the rule should be revised to read as follows:

Note: The interpretations in s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except that an exemption for general aviation fuel was inserted in s. 77.54(11) by Chapter 20, Laws of 1981, effective January 1, 1982. Prior to January 1, 1982 sales of aircraft jet fuel, including the state and federal fuel taxes in the price of such fuel, were subject to the tax.

SECTION 7. Tax 11.96(1) and (3) are repealed and recreated to read:

Tax 11.96(1) INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT. Unpaid sales or use taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

Tax 11.96(3) DELINQUENT TAXES. Delinquent sales or use taxes shall include interest at the rate of 1.5% per month from the date on which the taxes became delinquent until the taxes are paid.

SECTION 8. Tax 11.96(4) is amended to read:

Tax 11.96(4) EXTENSION PERIODS. If an extension of time is granted for filing a sales or use tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 6% 12% per year ~~during any extension period occurring prior to October 31, 1976 and at the rate of 9% per year during any extension period on or after November 1, 1975.~~ However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent and shall be subject to delinquent interest under sub. (3) from the end of the extension period until paid.

NOTE TO REVISOR: Delete the Note at the end of Tax 11.96 and substitute the following:

NOTE: 1. For unpaid non-delinquent sales or use taxes due prior to November 1, 1975, interest was computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

2. For unpaid non-delinquent sales or use taxes due on or after November 1, 1975 and assessed by the Department of Revenue before August 1, 1981, interest was computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

3. Sales or use taxes which were delinquent before November 1, 1975 were subject to delinquent interest at the rate of 1% per month from the date the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until paid.

SECTION 9. Tax 11.98(1) (intro.) is amended to read:

Tax 11.98(1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 9% 12% per year effective for all determinations, assessments or other actions for additional tax made by the department on or after August 1, 1981 when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

Note to Revisor: The "Note" at the end of the rule should be revised to read as follows:

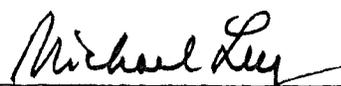
Note: The interpretations in s. Tax 11.98 are effective under the general sales and use tax law on and after September 1, 1969, except that the secretary could reduce the delinquent interest rate from 18% to 9% for determinations made prior to August 1, 1981.

The rules, amendments and repeals contained in this order shall take effect as provided in s. 227.026(1)(intro.), Wis. Stats.

WISCONSIN DEPARTMENT OF REVENUE

Dated: April 14, 1983

By:


Michael Ley
Secretary of Revenue