

DEPARTMENT OF REVENUE

138-1  
Tax 11

(2) ITEMS NOT EXEMPT UNDER s. 77.54(6)(b). Gross receipts from the sales of the following items are not within the exemption:

(a) Wrapping equipment such as paper holders, tape dispensers, staplers and string holders.

(b) Coat hangers used on display racks in stores.

(c) Shopping carts or baskets and similar equipment.

(d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property to customers are exempt.

(e) Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers.

(f) Lumber or other material used for bracing, blocking, skidding or shoring items while in transit; and cardboard and paper used to line box cars.

(g) "Valuable containers" such as fondue bowls, steins and popcorn poppers which are filled with cheese or other exempt food items and sold as a gift package. A "valuable container" is a container which has some use by virtue of its shape or design such that the purchaser envisions further use of the container after the contents have been removed. If the container's contents are not subject to the tax and the cost to the seller of the container or containers in a particular package is \$1 or more, the seller shall assign a reasonable part of the retail selling price of the total package to the valuable container or containers and pay a sales tax on that part of the selling price. If the contents of the container or containers are taxable items such candy, the entire gross receipts from the sale of the package are subject to the tax.

(h) Price tags and advertising matter used in connection with the sale of tangible personal property, including counter display cards used for advertising and display purposes.

(i) Tanks on trucks used to deliver merchandise to customers.

(j) From June 1, 1976 to May 19, 1978 only, wrapping materials used in packaging the meat of livestock and poultry supplied by customers, which livestock and poultry have been custom slaughtered and cut to the order of the customers by the user of the wrapping materials. Effective May 20, 1978 and thereafter, packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether such items are used to transfer merchandise to customers, are exempt.

(3) FARMER'S CONTAINER EXEMPTION. (a) Gross receipts from the sales of the following items are within the exemption in s. 77.54 (3m), Stats.:

1. Fruit baskets used by commercial orchards.

2. Grain storage bins purchased by farmers to store unprocessed corn, wheat, oats or other types of grain.

3. Boxes and crates used by a potato or berry farmer.

## Tax 11

4. Animal waste containers or component parts thereof. This includes the usual building materials used to construct an animal waste container.

(b) Gross receipts from sales of the following items are not within this exemption:

1. Silos.
2. Egg cases and crates used by a poultry farm for gathering and storing eggs.
3. Plastic or wooden boxes used by apiaries for the collection and storage of honey.
4. Fruit jars or other containers used for home canning.
5. Gasoline or fertilizer storage tanks used on a farm.

(4) DEPOSITS ON RETURNABLE CONTAINERS. (a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property (e.g., soft drink bottles, beer bottles and milk containers) and refunds of such deposits may be excluded from the computation of taxable gross receipts if they are excluded from gross receipts on the retailer's books of account.

(b) If a retailer's books of account include container deposits in gross receipts and if refunds of such deposits are deducted from gross receipts, the retailer shall use this method of reporting taxable gross receipts on a sales tax return. Under this method, the gross receipts from the deposit are subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

(5) DISPOSABLE ITEMS USED BY RESTAURANTS. (a) Gross receipts from the sales to restaurants, cafeterias, caterers or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, and wrapping materials, and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products and beverages to customers are not subject to the tax.

(6) DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG storage tank or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a reasonable charge is made to the customer for the use of the container and the container is used *exclusively* for such leasing purposes, the gas supplier can issue a resale certificate when such supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer without making a separately itemized charge for its use or charges only a nominal rental, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of such containers or tanks.

(7) CONTAINERS SOLD. If a separate charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used

in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge and is subject to the tax.

(8) GIFT WRAPPING. The amount charged for gift wrapping packages is 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.

In *Dernehl-Taylor Co. v. Department of Revenue* (Wisconsin Tax Appeals Commission, May 26, 1978), it was held that the gross receipts for doggie bags qualify for the exemption under s. 77.54 (6) (b), Stats., because they are used to transfer merchandise to customers.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (a) and (8), r. (5) (b), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 11.16 Common or contract carriers.** (ss. 77.54 (5) (b), (12) and (13) and 77.57, Stats.) (1) MOTOR CARRIERS. (a) Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for: "Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.18 (2) (a)." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (5) (b) and this section means that the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for such tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

(b) Accessories, attachments and parts for exempt vehicles shall be exempt from the sales and use tax. This includes tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units, and their fuel, radios, flag kits, including flags and reflectors, items designed to be used with a vehicle which protect the vehicle's load from the weather, such as fitted tarpaulins and tarpaulin straps, and items used to secure a vehicle's load, such as load holding chains, logistic straps and shoring beams.

(c) The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt vehicles shall be exempt.

(d) The exemption shall not apply to the following property used by common or contract carriers: automobiles, station wagons, and self-propelled vehicles for off-highway use such as road machinery, fork lifts and other industrial trucks.

(e) Items used for repair, service or maintenance of an exempt vehicle and items used to load or unload property being hauled shall not qualify for the exemption. Such non-exempt items include clean towel service, cleaning supplies, wrenches and repair tools, welding torches and welding gas, battery chargers, moving dollies, barrels and boxes, grinding discs, masking tape and shovels, conveyors, chutes, ramps, walk boards or similar equipment used in loading and unloading a truck or trailer.

(f) If a vehicle purchased without tax is converted to private use, a use tax is due. The tax is measured by the sales price of the vehicle to the purchaser, except that if the taxable use first occurs more than 6 months

after the sale to the purchaser, the measure of the tax may be, at the purchaser's option, either the sales price or the vehicle's fair market value at the time the taxable use first occurs.

(g) Examples of special situations related to this exemption include:

1. *Moving.* A truck purchased to transport pads and packing materials to and from moving jobs qualifies for this exemption.

2. *Timber cutting and log hauling.* Cutting down trees, cutting them into logs and hauling them to a mill as a private business operation voids the exemption, even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

3. *Refuse, garbage or snow hauling.* Trucks purchased for hauling refuse, garbage or snow do not qualify for the exemption.

4. *Milk hauling.* Vehicles of a milk or cheese factory that engages in hauling milk from farms to its plant for processing do not qualify for the exemption.

5. *Towing disabled vehicles.* Towing of vehicles to the repair facility of a garage-wrecker operator is part of a private repair business which is not exempt.

(2) RAILWAY ROLLING STOCK. (a) Section 77.54(12), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor."

(b) The exemption for rolling stock includes:

1. The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt rolling stock.

2. Purchases of any equipment which is operated on railroad rails, except vehicles which may also be used on a highway.

3. Fuel used to heat a caboose, or run a compressor which cools a railway car.

4. A utility's coal cars used to haul coal from mines to the utility.

(c) The exemption does not apply to:

1. Rails, ties and other road building and maintenance materials.

2. Bracing materials, rough lumber and dunnage materials.

3. Ice to refrigerate a railway car.

(3) COMMERCIAL VESSELS. (a) Section 77.54 (13), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor."

(b) The exemption for commercial vessels applies to:

1. Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing which have a document issued by the U.S. customs service showing a net tonnage of 50 tons or more.

2. Items that become a component part of the exempt commercial vessel.

3. The sale or furnishing of repair, alteration, cleaning, painting and maintenance of exempt commercial vessels.

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and

**Next page is numbered 139**

kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, nets, fishing tackle, lumber for dry docking, bracing, blocking and dunnage materials and other materials not incorporated into the vessel.

**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, November, 1978, No. 275, eff. 12-1-78; am. (1) (a) and (d), (3) (b) 1., Register, November, 1981, No. 311, eff. 12-1-81; am. (3) (b) 1., Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.17 Hospitals, clinics and medical professions.** (ss. 77.51 (21), (22) and (22m), 77.52 (2) (a) 1 and 77.54 (14), (20) (c) 4 and (22), Stats.) (1) **GENERAL.** (a) Although professional personnel in hospitals and clinics and other members of medical professions (i.e., physicians, surgeons, oculists, optometrists and podiatrists) regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such property is an incident of a service rather than a retail sale of such property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for medicines furnished by a licensed physician, surgeon or podiatrist to that person's patient for medical treatment. Section 77.54 (22), Stats., provides an exemption for medical appliances and prosthetic devices. The scope of these exemptions is set forth in rules Tax 11.08, 11.09 and 11.45.

(2) **PURCHASES BY HOSPITALS.** Purchases by hospitals are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a Certificate of Exempt Status ("C.E.S.") by the department. When purchasing goods and services a hospital can furnish its C.E.S. number to its supplier, and the supplier may make sales of every type of tangible personal property or services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) **PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS.** (a) Purchases made by medical clinics and physicians are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list must be furnished to patients at the direction of a physician, surgeon or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of such health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	*Artificial eyes and limbs
Alcoholic beverages	Bone pins and plates
Bandages, gauze and cotton	*Crutches and wheel chairs
Bed pans	*Dietary foods

## Tax 11

Beds and linens	*Disposable syringes containing insulin
Compresses and dressings	Dye
Cosmetics	*Hearing aids and parts
Deodorants and disinfectants	Medical oxygen
Diaphragms	Medicines
Distilled water	*Needles and syringes used by diabetics (effective November 19, 1975)
Enema kits	Oral contraceptives
Instruments	Pacemakers
Laboratory equipment and supplies	Prescription drugs
Medical equipment	Prophylactics
Office equipment and supplies	Rubbing alcohol
Oxygen tanks	Suppositories
Paper products	Sutures
Printed material	Vaccines
Rib belts and supports	Vaginal creams and jellies
Soda water beverages	Vitamins
Soap	
Splints and cast materials	
Uniforms and gowns	
X-ray film and machines	

(4) SALES BY HOSPITALS, HOSPITAL AUXILIARIES, CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS. (a) The gross receipts from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for rooms, medical services and other items including charges for anesthesia and anesthesia supplies, bandages applied in the hospital, blood and blood plasma, dressings applied in the hospital, intravenous solutions, laboratory tests, oxygen, radiation and x-ray treatment.

2. Hospitals' sales of meals, food, food products and beverages to patients, staff or visitors.

(b) The gross receipts from the sales of the following are taxable:

1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.

3. Sales of tangible personal property or taxable service by a clinic, which sales are not directly related to the rendition of medical services.

4. Sales of meals and other tangible personal property by an organization affiliated with a hospital (e.g., if a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, gross receipts from this business are taxable).

5. An optometrist's sales of nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses and other types of tangible personal property ordinarily taxable when sold at retail, unless the gross receipts from such sales are less than \$1,000 within a calendar year. Optometrists whose receipts from taxable items equal or exceed \$1,000 annually shall register with the department and obtain a seller's permit. Those whose receipts from taxable items are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable items.

(5) **HOSPITAL DEFINITION.** Section 50.33 (1), Stats., provides the definition of hospital which is to be used for sales tax purposes.

**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 this rule.

**History:** Cr. Register, May, 1978, No. 269, eff. 6-1-78; am. (4) (a) 1. and cr. (4) (b) 5., Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.18 Dentists and their suppliers.** (ss. 77.52 (1) and 77.54 (14) and (22) (c), Stats.) (1) **DENTISTS.** Charges by dentists for dental services are not subject to the sales tax. In addition, charges by dentists for artificial teeth, fillings, bridges, crowns or inlays are not subject to the tax.

(2) **EXEMPT SALES TO DENTISTS.** The gross receipts from the following sales to dentists are not taxable: medicines (such as nitrous oxide, oxygen or novocain), gold, silver, other alloys used to fill teeth, cement, crowns, inlays, fillings and other items of tangible personal property sold to dentists which are installed in a patient's mouth and are intended to remain there. The labor charge of a dental supplier to fabricate such items also is not taxable.

(3) **TAXABLE SALES TO DENTISTS.** Equipment, materials and supplies sold to dentists which are used to conduct their business provided these items are not included in the list of exempt sales in part (2) above.

**Note:** The interpretations in this rule are effective under the general sales and use tax law effective September 1, 1969. In *Dept. of Revenue v. Milwaukee Refining Corp.*, 80 Wis. 2d 44 (1977), the Wisconsin Supreme Court held that gold bars sold to dentists who use the gold in the course of rendering their professional services are not subject to the sales and use tax.

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

**Tax 11.19 Printed material exemptions.** (ss. 77.52 (2) (a) 11, 77.54 (9a), (15) and (25) and 77.55 (1), Stats.) (1) **GENERAL.** All retail sales of tangible personal property, including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This rule describes exemptions which commonly apply to sales of printed material.

(2) **STATUTES.** (a) Section 77.52 (2) (a) 11 imposes the sales and use tax on certain services. However, an exemption (effective March 15, 1970) is provided for the printing or imprinting of tangible personal property furnished by consumers, which property will be subsequently transported outside the state for use outside the state by the consumer for advertising purposes.

(b) Section 77.54 (15) provides an exemption for newspapers and periodicals (effective September 1, 1969) and shoppers guides (effective July 1, 1978).

(c) Section 77.54 (25) (effective May 21, 1972) provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.

(3) **NEWSPAPERS AND PERIODICALS DEFINED.** (a) The exemption for "newspapers" applies to those publications which are commonly understood to be newspapers and which are printed and distributed periodi-



## Tax 11

cally at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1), Stats., qualifies for the sales tax exemption. Advertising supplements are not subject to the tax if they are:

1. Printed by a newspaper and distributed as a component part of one of that newspaper's publications.

2. Printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper.

(b) A "newspaper" does not include handbills, circulars, flyers, or the like, advertising supplements not described in par. (a) which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within par. (a). Advertising is not considered news of a general character and of a general interest.

(c) The exemption for "periodicals" is limited to publications which appear at stated intervals, each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To qualify for the exemption, the publication must qualify for the second class mail rate or as a controlled circulation publication under U.S. postal laws and regulations.

(d) The newspaper and periodical exemption does not apply to books complete in themselves, even those issued at stated intervals (for example, books sold by the Book of the Month Club or similar organizations); paperback books, a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The exemption also does not apply to catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price/order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

(4) PRINTED ADVERTISING MATERIALS FOR OUT-OF-STATE USE. (a) Effective May 21, 1972 printed advertising materials such as catalogs and their mailing envelopes may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54 (25), Stats., when such materials are purchased and stored for the purpose of subsequently transporting the same outside the state by the purchaser for use thereafter solely outside this state. The exemption applies to catalogs designed to be used by a retailer's potential customers.

(b) The exemption does not apply to materials shipped to Wisconsin addresses. It also does not apply to parts price lists, parts stock order books, order forms, and stocking and purchasing guides designed to be used by wholesalers and retailers. Matchbooks, calendars and playing cards also do not qualify for the exemption.

(5) **EXEMPT PURCHASERS.** Sales of printed material to governmental units, public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from such organization is retained. Sales to persons holding a certificate of exempt status can be shown to be exempt by recording the certificate number on the bill of sale.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except: (a) where other dates are shown; and (b) the second class mail standard described in sub. (3) was effective August 1, 1974.

**History:** Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**Tax 11.26 Other taxes in taxable gross receipts and sales price.** (s. 77.51 (11) (a) 4, (12) (a) 4 and (26), 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 s. 139.02, Stats.

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

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

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

(e) The cigarette tax imposed by s. 139.31 or 139.33, Stats.

(f) The Canadian or any other country's export gallonage tax on fuels.

(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:

## Tax 11

(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 s. 66.75, 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; am. (2) (d) and (e) and cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.27 Warranties.** (s. 77.51 (11) (a), 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 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.** (s. 77.51 (4) (k) and (11) (a), Stats.) (1) DEFINITIONS. (a) Section 77.51 (4) provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms include:

Register, January, 1983, No. 325

## DEPARTMENT OF REVENUE

146-5

Tax 11

	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 repossession (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".** (ss. 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), 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 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.

## Tax 11

(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 the retailer, 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.

*Example:* If taxable property is sold for \$100 and \$5 of tax is collected for a total of \$105, 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.

*Example:* A vending machine operator whose only receipts are from sales of 5¢ items is unable to 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 the tax which may be collected from the retailer's customers.

<u>Amount of Taxable Sale</u>	<u>5% Tax Collectible</u>
\$ .01 to \$ .09	\$.00
.10 to .29	.01
.30 to .49	.02
.50 to .69	.03
.70 to .89	.04
.90 to 1.09	.05

On sales exceeding \$1.00, the tax equals 5% of each full dollar plus the tax shown above for the applicable fractional part of a dollar.

(b) The bracket system method is designed so that the total amount of tax paid by customers approximates the tax payable by the retailer on the retailer's taxable gross receipts, if the retailer's taxable sales fall equally throughout all the brackets. When more than one taxable item is sold in a single transaction, the tax shall be computed on the aggregate sales price of the taxable items sold.

(c) The gross sales tax payable by a retailer is the tax rate under s. 77.52 (1) or (2) times 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. The 4% tax rate was in effect from September 1, 1969 through April 30, 1982. Effective May 1, 1982 the tax rate is 5%. The bracket system used during the period the tax rate was 4% is as follows:

AMOUNT OF TAXABLE SALE	4% TAX COLLECTIBLE
\$ .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.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (4) (a) and (b), (5) (b) and (c), r. and recr. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.38 Fabricating and processing.** (ss. 77.51 (4) (f) and (h) and 77.52 (2) (a) 10 and 11, Stats.) (1) **TAXABLE FABRICATION.** Except for sales for resale described in s. 77.52 (13) to (15), 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.

## Tax 11

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

(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.**

**Next page is numbered 147**

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 11.50 Auctions.** (ss. 77.51 (4) (intro.) and (a), (7) (b) and (e) and (10) (e), Stats.) (1) STATUTE. Section 77.51 (7) (b), 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), 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.** (s. 77.54 (20), Stats.) (1) GENERAL. All sales of tangible personal property are taxable except when 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.	Cigars.	Foil (aluminum and similar products).
Albums.	Cleaning equipment and supplies.	Frames.
Amonia.	Cleansers.	Fuel and lubricants.
Anti-acid products.	Clocks.	Fudgesicles.
Anti-freeze.	Clothes lines.	Furniture polish.
Appliances.	Clothespins.	Games.
Ash trays.	Clothing.	Garden needs.
Aspirin.	Cocktail mixes.	Garbage bags and cans.
Auto supplies.	Cod liver oil.	Gifts (non-food).
Baby needs (except food).	Cold remedies.	Ginseng.
Bags (all kinds).	Coloring extracts.	Glassware.
Bakeware.	Combs and brushes.	Gloves.
Baskets.	Confections.	Glue.
Barbeque supplies.	Cough drops.	Greeting cards.
Batteries.	Cracker jacks.	Grooming aids.
Beauty aids.	Crayons.	Gum.
Beer.	Dental aids.	Hair care products.
Beer making supplies.	Deodorants.	Hardware.
Binders (notebook).	Detergents.	Heated foods and beverages (1).
Bird food and supplies.	Dinnerware.	Health and beauty aids.
Bleach.	Disinfectants.	Hosiery.
Blueing.	Distilled spirits.	Household equipment and supplies.
Bobby pins and rollers.	Dixie cups.	Ice (cube and block).
Books.	Dog food and supplies.	Ice cream bars.
Bowl cleaner.	Dolls.	Ice cream in cones.
Breath mints.	Drain cleaners.	Internal remedies.
Brooms.	Drug sundries.	Intoxicating liquor.
Brushes.	Dry cleaners.	Insect and pest control products.
Bubble bath.	Dye.	Iron tablets.
Cameras and supplies.	Electrical supplies.	Jewelry.
Cake decorations (non-edible).	Eskimo pies.	Kool aid and similar items.
Calcium tablets.	Facial tissues.	Kotex and similar items.
Candied fruits.	Farm and garden implements.	Laundry products.
Candy.	Feminine hygiene needs.	Lawn furniture.
Candy apples.	Fermented malt beverages.	Life savers.
Canning and freezer supplies.	Fertilizers.	Light bulbs and fuses.
Can openers.	Fiddle faddle.	Lozenges.
Carbonated beverages.	Film.	Lunch boxes.
Cat food.	First aid products.	Lye.
Charcoal and starter.	Fizzes.	Lysol.
Chewing gum.	Flash bulbs.	
Cigarettes	Flatware.	
(Effective 9-1-75).	Floor care products.	
Cigarette lighter	Flowers and seeds.	
fluid, wicks, flints.	Food coloring.	
	Foot care products.	

## Tax 11

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

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

Apple cider, sweet.	Cakes, Hostess and similar items.	Citrus fruits.
Baby food.	Canned foods.	Cocoa.
Bakery goods.	Catsup.	Coffee and coffee substitutes.
Baking chocolate.	Cereal and cereal products.	Condiments.
Baking powder and soda.	Certo and other peccins.	Cones, ice cream cups.
Barbeque sauces.	Cheese.	Cookies and crackers.
Berries.	Chicken.	Cooking oils.
Biscuit mix.	Chinese food.	Cream.
Boullion cubes.	Chip dip.	Desserts and toppings.
Bread and rolls.	Chips, potato, corn and similar items.	Dietary foods (4).
Brownies.	Chocolate, instant and baking.	Dinners, frozen.
Butter.		Doughnuts.
Cake mixes and flour.		

Dressing.	Magazines.	Puddings.
Dried fruits.	Malted milk powder.	Raisins.
Dried milk products.	Maraschino cherries.	Ravioli.
Eggs.	Marshmallows.	Relishes.
Federal food stamp receipts.	Mayonnaise.	Rice.
Fish and fish products.	Meal.	Rolls and biscuits.
Flavoring extracts.	Meat and meat products.	Saccharin. —
Flour.	Meat extracts and tenderizers.	Salad dressing.
Fritos.	Melons.	Salt and salt substitutes.
Frozen desserts.	Meritene.	Salted nuts.
Frozen fruit juices (3)	Milk and milk products.	Sardines.
Frozen fruits and vegetables.	Mustard.	Seafoods.
Frozen pizza.	Newspapers.	Seasonings.
Frozen TV dinners.	Noodles.	Sherbet.
Fruit.	Nuts, except candy coated.	Shortening.
Garlic.	Oil, cooking, salad.	Soup.
Gelatin.	Oleomargarine.	Spaghetti products.
Gravy extracts and mixes.	Olives.	Spices.
Grits.	Pancake mix.	Spreads.
Hash.	Peanuts, in shell or not.	Sugar.
Honey.	Peanut butter.	Sweeteners.
Ice cream, pints or larger.	Pepper.	Syrup.
Jams.	Pickles.	Tea and ice tea.
Jellies.	Pie and pie fillings.	Turkey.
Jello.	Pie crust and mixes.	Vanilla and vanilla extract.
Juices, pure fruit (3).	Potato chips.	Vegetable juices.
Lobster.	Potato salad.	Vegetables.
Luncheon meats.	Poultry and poultry products.	Vinegar.
Macaroni.	Preserves.	Waffle mix.
	Pretzels.	Yeast.
		Yogurt, other than par. (a) items.

(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 ch. 97 (Stats. 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; am. (2) (b), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 11.52 Coin-operated vending machines and amusement devices.** (ss. 77.51 (17) and (24), and 77.52 (1) and (2) (a) 2, 6, 7 and 10, 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 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.

DEPARTMENT OF REVENUE

164-1  
Tax 11

(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.

**Next page is numbered 165**

(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 Temporary events.** (ss. 77.52 (7), (8), (9), (10), (11), (12), and (19), 77.58 and 77.61 (2), Stats.).

(1) **DEFINITIONS.** In this section: (a) 1. "Concessionaire" includes any person conducting games at temporary events such as coin pitch, pop-in,

## Tax 11

ring toss, short range basketball, guess your weight, fish pond, and tip the bottle. Further examples include persons selling snack foods and other tangible personal property from stands at temporary events such as ice cream, cotton candy, candy apples, sno cones, popcorn, frozen delight, jewelry, photos, hats, signs or kitchenware.

2. "Concessionaire" does not include:

a. A person operating amusement rides, traveling vaudeville performances, menageries, or objects of curiosity shows.

b. A person selling meals or beverages including lunches, sandwiches or beer.

c. A person in subpar. a. or b. who also operates as a concessionaire.

(b) "Concessionaire permit" means a permit for a temporary event conducted by a concessionaire which is valid for only one temporary event for the duration of the event.

(c) "Mobile seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at any temporary event conducted by the permittee within the state but which is valid at only one event at a time. Except for its use at more than one place of operations, all provisions of s. 77.52 (7), (8), (9), (10), (11) and (12), Stats., apply to it.

(d) "Temporary event" means an activity at one place of operation for a brief duration where taxable sales are made. A place of operation includes a fair, carnival, circus, festival or portable roadside stand.

(e) "Temporary seller's permit" means a permit issued under ss. 77.52 (7) and (19), Stats., which is valid at only one temporary event for the duration of the event.

(2) PERMITS FOR TEMPORARY EVENTS. (a) Each person who conducts business as a retailer at a temporary event shall hold one of the following:

1. Mobile seller's permit.
2. Temporary seller's permit.
3. Concessionaire permit.

(b) Any retailer, including a concessionaire, intending to conduct business at temporary events may apply for and hold a mobile seller's permit. Retailers who are not concessionaires may acquire either a mobile seller's permit or a temporary seller's permit for temporary events. Concessionaires who do not hold a mobile seller's permit shall acquire a concessionaire permit for a temporary event.

(c) A concessionaire who is not a resident of Wisconsin shall furnish the department with the name and address of his or her agent in this state upon whom may be served any process, notice or demand required or allowed by statutes to be served upon the applicant.

(3) SECURITY. Application for permits referred to in this section shall be on such forms as prescribed by the department. The applicant shall be subject to security requirements of s. 77.61 (2), Stats., except that for events of 7 consecutive days or less retailers holding concessionaire permits shall deposit security of \$10 per concession for each event begin-



ning prior to January 1, 1982 and \$25 per concession for each event beginning on or after that date and deposits for events which exceed 7 consecutive days shall be \$10 per concession for each event beginning prior to January 1, 1982 and \$50 per concession for each event beginning on and after that date.

**Note:** The revision to this section is effective on February 1, 1982 and the increases in security deposits are effective on that date.

(4) RETURNS. (a) Sales and use tax returns due from persons holding permits referred to in this section shall be subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the return and shall be due as follows:

1. Mobile seller's permittee: Quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under s. 77.58 (1), (2) and (19), Stats., and shall include on such return gross receipts from all temporary events and other taxable transactions of the permittee during the quarter.

2. Temporary seller's permittee: Per event, within 10 days after the close of the event for which the permit was issued.

3. Concessionaire permittee: Annually, on or before January 31 of the next succeeding calendar year, and including on such return the gross receipts from all concessionaire events conducted by the permittee during the calendar year.

(b) Concessionaire and temporary seller permittees may claim the security deposited in cash for the event or events reported on as a credit against the tax due, unless the department notifies the permittee otherwise.

(5) VIOLATION. Under s. 77.52 (12), Stats., any person who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

**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, 1975, No. 234, eff. 7-1-75; renum. from Tax 11.01, Register, January, 1978, No. 265, eff. 2-1-78; r. and recr., Register, January, 1982, No. 313, eff. 2-1-82.

**Tax 11.54 Temporary amusement, entertainment or recreational events or places** (ss. 77.51 (7) (c), 77.52 (7), (19) and 77.61 (2), 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.

(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 s. 77.51 (3), Stats., and in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate,

166-2

WISCONSIN ADMINISTRATIVE CODE

Tax 11

representative appointed by order of any court or otherwise acting on behalf of others.

retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

(b) Contractors are retailers of:

1. Property which retains its character as personal property after sale and installation. (See subs. (4) and (6).)

2. Labor or services furnished in installing tangible property which retains its character as personal property after installation. (See subs. (4) and (6).)

3. Labor and material furnished in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of items of real property which retain their character as tangible personal property for repair purposes. (See sub. (10) for a description of such property.)

4. Tangible personal property sold.

(c) Contractors are consumers of tangible personal property they use when engaged in real property construction activities, such as altering, repairing or improving real property.

(2) **REAL PROPERTY CONSTRUCTION CONTRACTORS.** (a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in such activities as building, electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry and cement work, plastering and tile and terrazzo work.

(b) A retailer may also be a real property contractor, such as a department store which sells and installs tangible personal property which becomes a part of real property after installation (e.g., a hot water heater or water softener sold and installed in a purchaser's residence).

(3) **PURCHASES BY CONTRACTORS.** (a) Under s. 77.51 (18), Stats., contractors who perform real property construction activities are the consumers of building materials which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax.

(b) Property which a construction contractor will resell as personal property may be purchased without tax for resale. Such property includes personal property furnished as part of a real property construction activity when the personal property retains its character as personal property after installation. (See subs. (4) and (6).)

(c) Machinery and equipment (such as road building equipment, tunnel shields, construction machines, cement mixers and trucks), tools (such as power saws and hand tools), and supplies (such as machine lubricating and fuel oils, form lumber and industrial gases) purchased by a construction contractor for the contractor's use are generally either

## Tax 11

consumed in the process of construction or are removed when the project is completed. The contractor is the consumer of such personal property and shall pay the tax on its purchases of such property.

(4) **CLASSIFICATION OF PROPERTY AFTER INSTALLATION.** (a) Contractors shall determine whether a particular contract or transaction results in an improvement to real property or in the sale and installation of personal property. In determining whether personal property becomes a part of real property, the following criteria shall be considered (See Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc. (1976), 72 Wis. 2d60):

1. Actual physical annexation to the real property.
2. Application or adaptation to the use or purpose to which the real property is devoted; and
3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

(b) Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others. Examples are boilers, furnaces, stand-by generators, pumps, substations and transformers. When such property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

(5) **PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY.** A construction contractor is the consumer of personal property, such as building materials, which is incorporated into or becomes a part of real property, and sales of such personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

- (a) Boilers and furnaces for space heating.
- (b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals and incinerators.
- (c) Cemetery monuments.
- (d) Buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors (including computer room floors), partitions and movable walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, and heating, cooling and ventilation systems.
- (e) Fixed (year-around) wharves and docks.

(f) Improvements to land including retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection.

- (g) Planted nursery stock.
- (h) Residential water heaters, water softeners, intercoms, incinerators and garage door opening equipment (except portable equipment).
- (i) Silos and grain elevators.
- (j) Swimming pools (wholly or partially underground).
- (k) Storage tanks constructed on the site.
- (l) Traffic signals, and street and parking lot lighting.
- (m) Truck platform scale foundations.
- (n) Walk-in cold storage units becoming a component part of a building.

(6) **PROPERTY PROVIDED UNDER A CONSTRUCTION CONTRACT WHICH REMAINS PERSONAL PROPERTY.** (a) Contractors shall obtain a seller's permit and report for taxation gross receipts from the sale and installation of personal property, furnished under a construction contract, which retains its character as personal property after installation. Examples of such property are:

1. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.

2. Communication equipment (such as intercoms, pneumatic tube systems, and music and sound equipment) in business, industrial or commercial buildings, schools and hospitals, but not in apartment buildings, convalescent homes or other residential buildings. Prior to August 1, 1975 such property was either personal property or real property, depending upon the degree it was attached to real property.

3. Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment, and related easily movable property attached to the structure in schools, laboratories and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

4. Machinery, equipment, tools, appliances, process piping and wiring used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items.

5. Office, bank and savings and loan association furniture and equipment, including office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, camera security equipment and vault doors (vault doors were not considered personal property until August 1, 1975).

6. Personal property used to carry on a trade or business (e.g., fixtures and equipment installed in stores, taverns, night clubs, restaurants, ice arenas, bowling alleys, hotels and motels, barber and beauty shops, figure salons, theaters and gasoline service stations). Prior to August 1, 1975 service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but such property was personal property if the personal property and land were owned by different persons. After that date underground tanks are real property regardless of the ownership of the land to which they are attached.

## Tax 11

7. Shades, curtains, drapes, venetian blinds and associated hardware.
8. Radio, television and cable television station equipment, but not broadcasting towers installed on their owner's land.
9. Mobile homes located in a mobile home park on land owned by a person other than the mobile home owner.
10. Advertising signs, except their underground concrete foundations. However, prior to August 1, 1975 advertising signs were real property if erected on and securely attached to the owner's land.
11. Buildings and standing timber sold for removal.
12. Utility transmission and distribution lines installed on land owned by others (see rule Tax 11.86), and oil and gas pipeline pumping station equipment.
13. Commercial and industrial incinerators which do not become an integral part of the building.
14. Seating in auditoriums and theaters, and theater stage lights and projection equipment.

(b) If a few items of tangible personal property (minor in cost in relation to the total amount of a contract) are sold as part of a contract which includes construction of a building or other structure and no separate charge is made for such personal property, the cost of such property to the construction contractor shall be used as the measure (e.g., gross receipts) subject to sales tax. If a separate charge is made for any such item, it is subject to the tax, but not less than on its cost. For example, a refrigerator or drapes may be included in the contract to construct a new house.

(7) PROPERTY PURCHASED BY A PERSON WHO PERFORMS BOTH CONSTRUCTION CONTRACTING AND RETAIL SELLING, WHEN DESTINATION OF PROPERTY PURCHASED IS UNKNOWN AT TIME OF PURCHASE. Section 77.51 (18), Stats., provides in part that "A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which he has sound reason to believe he will sell to customers for whom he will not perform real property construction activities involving the use of such property." However, some construction contractors who also sell construction supplies at retail do not know when they purchase such supplies whether they will be consumed in construction contracts or resold to others. In such instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give a resale certificate to suppliers and thereby purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and pay the tax on the sales price to customers. If the property is used in fulfillment of a construction contract, the contractor shall pay a use tax on its purchase price.

(b) Pay sales tax to suppliers on all property purchased. If such property is later consumed in fulfilling a construction contract, the tax obligation is taken care of. If the property is resold at retail, the contractor shall remit sales tax on such retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

(8) **PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY.** (a) The sales tax exemption provided to governmental units and other exempt entities (such as churches and nonprofit hospitals) does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair or improve real property for the exempt entity. Gross receipts from sales of such building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation. For example, a contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or government building. A contractor also shall pay the tax on its purchases of pumps and other equipment for use at a municipal well or at a water or sewerage lift or pumping station, since such property becomes a part of realty after installation.

(b) A contractor may purchase without tax for resale tangible personal property which retains its character as personal property after installation (as described in sub. (6)), even though the resale of such property by the contractor is exempt when the property is sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. Such property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. This exemption does not apply to property which becomes a part of real property as described in sub. (5) and par. (a).

(9) **USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN.** (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside this state for use in Wisconsin, the contractor shall pay the Wisconsin use tax, but may claim a credit against this use tax for any sales or use tax paid in the state where the purchase was made.

(b) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

(10) **CONSTRUCTION AND REPAIR SERVICES.** (a) A contractor who performs real property construction activities shall not add tax to any charge for labor or material, since gross receipts from such activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of such materials, thereby becoming a cost of doing business.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on such service, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of any items listed in par. (c) or other items of tangible personal property shall register as a retailer and pay the tax on gross receipts from the performance of such services.

(c) Section 77.52 (2) (a) 10, Stats., provides in part that ". . . the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item

## Tax 11

is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, juke boxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration, but not of limitation, bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation, lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

(d) Charges for tangible personal property (such as a repair part) incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible personal property incorporated into it is deemed purchased by the contractor for resale and therefore may be purchased without tax. For example, if a contractor is engaged to repair a refrigerator (whether free-standing personal property or built-in so as to be a part of real property) in a home, the repair service and any charge for parts are taxable.

(11) REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES. Section 77.51 (11) (c) 4, Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52 (2) (a) 10, Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless of the extent to which fastened to, connected with or built into real property. Among such items are furnaces and boilers used for space heating. In view of these statutes, charges for services and repair parts for *repair* of tangible personal property covered by both statutes (such as a furnace boiler) are taxable, but charges for services in totally *replacing* such property are not taxable. In the no-tax situation, the replacement personal property is taxable when sold to the contractor installing it, but the contractor's charge for the replacement service is not 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, November, 1978, No. 275, eff. 12-1-78.

**Tax 11.69 Financial institutions.** (s. 77.51 (4) (k)) (1) EXEMPT SALES. Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's