

CR 82-207

CERTIFICATE

RECEIVED

NOV 2 1983

10:00 am
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Michael Ley, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed Order relating to Clearinghouse Rule No. 82-207 was duly approved and adopted by this department on October 28, 1983.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 28th of October, 1983.



Michael Ley
Secretary of Revenue

ML:psw
405101

1-1-84

ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, AMENDING AND CREATING RULES

To repeal Tax 11.52(4)(c); to amend Tax 11.16(1)(b) and (d) and (2)(b)2, 11.19(2)(c) and (4)(b), 11.32(3)(c), 11.50(3)(e), 11.52 (2)(a) and (3)(a)1, 11.68(5)(d), (6)(a)2 and 12 and (10)(b); to repeal and recreate Tax 11.16(1)(e); to create Tax 11.15(2)(k), 11.16(1)(h) and (i), and 11.26(2)(g); relating to miscellaneous changes in sales and use tax rules.

Analysis by the Department of Revenue

The changes in this Order affect sales and use tax rules.

SECTION 1. Subsection (2)(k) of rule Tax 11.15 is created to establish the sales tax status of movers' purchases and sales of containers. This change reflects the decision of the Wisconsin Tax Appeals Commission in Leicht Transfer & Storage Co., Inc. v. Department of Revenue dated November 29, 1979, which held that a mover's boxes and other containers do not qualify for the exemption from tax in s. 77.54(5)(b), Wis. Stats.

SECTION 2. Rule Tax 11.16(1)(b) is expanded to add items which qualify for exemption under s. 77.54(5)(b), Stats.

SECTION 3. The definition of an automobile and station wagon for sales tax purposes is the definition found in ch. 340 of the statutes.

SECTION 4. Rule Tax 11.16(1)(e) is repealed and recreated to reflect the decision in the Leicht Transfer & Storage Co., Inc. court case. This paragraph identified equipment associated with the repair, service or maintenance, or the loading and unloading of exempt vehicles, which equipment was described as taxable when purchased by movers. Some changes in the rule are necessary to reflect the court's decision that certain equipment used to load and unload exempt vehicles is also exempt.

SECTION 4m. 1983 Wisconsin Act 27 provides that property which is transferred by a service provider in conjunction with the furnishing of the service and which is incidental to the service is considered to be consumed by the service provider and is subject to sales tax when purchased by the service provider. Tax 11.16(1)(h), as created in the rule, provides that a moving company is the consumer of corrugated boxes, containers and related packing materials transferred in conjunction with moving or transporting a customer's goods.

Tax 11.16(1)(i) provides that motor carriers whose annual gross receipts from sales of tangible personal property, such as boxes and used equipment, and taxable services are \$1,000 or less need not obtain a Seller's Permit and remit sales tax on such nominal sales. Instead, the carriers may pay a sales tax to their suppliers or a use tax to the department on their purchases of such items. For example, a mover meeting this \$1,000 standard need not remit sales tax on its over-the-counter sales of corrugated boxes and related packing materials, but instead may pay a tax on its purchases of such items.

SECTION 5. Tax 11.16(2)(b)2 is amended to show an industrial firm's switching locomotives qualify for the exemption for rolling stock in s. 77.54(12), Stats.

SECTION 6. Tax 11.19(2)(c) is amended to eliminate a date that is no longer relevant. Rule Tax 11.19(4)(b) is expanded to add items that do not qualify for the exemption for printed advertising materials for out-of-state use in s. 77.54(25), Stats.

SECTION 7. Chapter 20, Laws of 1981, added a new excise tax for tobacco products to s. 139, Stats. This new tax is included in a retailer's taxable gross receipts and sales price for sales tax purposes.

SECTION 8. Rule Tax 11.32(3)(c) is amended by eliminating a date that is no longer relevant and adding a reference to taxable services.

SECTIONS 9, 10 and 11. Dates in 1975 are no longer related to administering the sales and use tax law and they are being eliminated. In addition Tax 11.52(2)(a) is revised to properly spell the word "machine". The term "not including cigarettes" is eliminated because sales of cigarettes became taxable in 1975.

SECTION 12. Rule Tax 11.68 is revised to incorporate information which has been provided to taxpayers regarding the application of the sales and use tax to construction contractors. "Coating" is misspelled in Tax 11.68(10)(b) and that is corrected.

Pursuant to the authority vested in the Department by section 227.014, Stats., the Department of Revenue hereby repeals, amends and creates rules contained in Chapter Tax 11 which interpret Chapter 77, Subchapter 3, Stats., as follows:

SECTION 1. Tax 11.15(2)(k) is created to read:

Tax 11.15(2)(k). Corrugated boxes and other containers and related packing materials purchased by movers for use in transporting a customer's goods.

Note To Revisor: Insert the following note immediately after s. Tax 11.15(2)(k):

NOTE: In a decision dated November 23, 1979 in the case of Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue the Wisconsin Tax Appeals Commission held that corrugated boxes and related packing materials used by Leicht to transport a customer's property from one location to another do not come within the exemption in s. 77.54(6)(b), Stats. This decision was affirmed by the Dane County Circuit Court on May 19, 1980, by the Court of Appeals, District IV on May 26, 1981.

SECTION 2. Tax 11.16(1)(b) is amended to read:

Tax 11.16(1)(b). Accessories, attachments, ~~and~~ parts and supplies for exempt vehicles ~~shall be~~ are exempt from the sales and use tax under s. 77.54(5)(b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, 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, and items designed to be used with a vehicle which protect or secure the vehicle's load from the weather, including such as tape, fitted tarpaulins and ,tarpaulin straps, furniture pads and covers, and items used to secure a vehicle's load, such as load holding chains, logistic straps and shoring beams. This exemption does not include corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. (h).

Note to Revisor: Insert the following note immediately after s. Tax 11.16(1)(b).

NOTE: In a decision dated May 19, 1980 in the case of Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue the Dane County Circuit Court reversed the November 23, 1979 decision of the Wisconsin Tax Appeals Commission and held that van equipment and supplies that are exempt under s. 77.54(5)(b), Stats., include furniture pads, covers, packing supplies, tape, pianoboards, ladders, walkboards, straps, lining paper and corrugated boxes. The Court also stated that "It must be kept in mind that it is undisputed that all of the items are assigned to and carried on the vans." The Court of Appeals District IV, affirmed the Circuit Court's decision. Under this interpretation, the only corrugated boxes and packing materials that qualify for exemption under s. 77.54(5)(b), Stats. are those that are assigned to and carried on an exempt van and that are not transferred to a customer.

SECTION 3. Tax 11.16(1)(d) is amended to read:

Tax 11.16(1)(d). The exemption shall not apply to the following property used by common or contract carriers: automobiles as defined in s. 340.01(4), Stats., station wagons as defined in s. 340.01(61), Stats., and self-propelled vehicles for off-highway use such as road machinery, fork lifts and other industrial trucks.

SECTION 4. Tax 11.16(1)(e) is repealed and recreated to read:

Tax 11.16(1)(e). Equipment and supplies acquired by a carrier for the repair, service or maintenance of its exempt vehicle are not exempt, including clean towel service, cleaning supplies, repair tools, welding torches and welding gas, battery chargers, grinding discs and masking tape.

SECTION 4m. Tax 11.16(1)(h) and (i) are created to read:

Tax 11.16(1)(h). The transfer to a customer of corrugated boxes, containers and related packing materials in conjunction with moving or transporting a customer's goods is incidental to the selling, performing or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

Note to Revisor: Add the following footnote immediately following par. (h):

Note: The treatment of par.(h) first applies to transfers on or after September 1, 1983 under the provisions of 1983 Wisconsin Act 27.

Tax 11.16(1)(i). Motor carriers shall not be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property or taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a

seller's permit. Persons who register may purchase tangible personal property for resale without paying tax by issuing to their supplier a properly completed resale certificate or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

SECTION 5. Tax 11.16(2)(b)2 is amended to read:

Tax 11.16(2)(b)2. Purchases of any equipment which is operated on railroad rails, including an industrial firm's switching locomotives used to switch freight cars on its own property, except vehicles which may also be used on a highway.

SECTION 6. Tax 11.19(2)(c) and (4)(b) are amended to read:

Tax 11.19(2)(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.

Tax 11.19(4)(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, display racks, or 3-dimensional plastic items designed to be used by wholesalers and retailers. Matchbooks, calendars, calendar pads, desk pads, folders, binders, envelopes which do not contain exempt advertising material and playing cards also do not qualify for the exemption.

SECTION 7. Tax 11.26(2)(g) is created to read:

11.26(2)(g). The tobacco products tax imposed under s. 139.76 and 139.78, Stats.

SECTION 8. Tax 11.32(3)(c) is amended to read:

Tax 11.32(3)(c). ~~Effective-June-1, 1975, -a~~ A manufacturer's cash rebate to a person who purchases tangible personal property or taxable services from a retailer is not a reduction in the retailer's gross receipts or sales price of the item.

SECTION 9. Tax 11.50(3)(e) is amended to read:

Tax 11.50(3)(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.

SECTION 10. Tax 11.52(2)(a) and (3)(a)1 are amended to read:

Tax 11.52(2)(a). Operators of coin-operated vending ~~machines~~ 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.

Tax 11.52(3)(a)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

SECTION 11. Tax 11.52(4)(c) is repealed.

SECTION 12. Tax 11.68(5)(d), (6)(a)2 and 12, and (10)(b) are amended to read:

Tax 11.68(5)(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 attached in any way to realty, 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.

Tax 11.68(6)(a)2. Communication equipment, including ~~(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.~~

Tax 11.68(6)(a)12. Utility transmission and distribution lines installed above ground on land owned by others ~~(see rule Tax-11-86)~~ as provided in s. Tax 11.86(1), and oil and gas pipeline pumping station equipment.

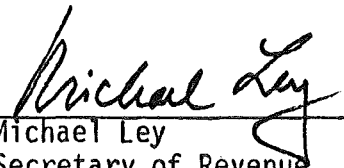
Tax 11.68(10)(b). A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, ~~easting~~ coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on such service, numerous items that in other circumstances 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.

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: *Oct 28, 1983*

By: 

Michael Ley
Secretary of Revenue