

CR 83-220

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

RECEIVED

JUL 13 1984
1:15 PM
Revisor of Statutes
Bureau

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. 83-220 was duly approved and adopted by this department on July 10, 1984.

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 *10th* day of *July*, 1984.



Michael Ley
Secretary of Revenue

ML:em
405101a

110 - 1-84

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

To repeal Tax 11.13(5) and 11.72(3)(c); to renumber Tax 11.13(2); to renumber and amend Tax 11.15(2)(j); to amend Tax 11.11(2)(b), (3)(a) and (b) and (5)(b), 11.12(5)(c), 11.13 (title), 11.30 (2)(a) and (d)(3), 11.65(1)(d), 11.72 (title) and (3)(a) and 11.85(2)(a); to create Tax 11.12(5)(d), 11.13 (2)(b), 11.30(3) and 11.65(1)(g) and (h), and 11.79(4)(d); relating to miscellaneous changes in various sales and use tax rules.

Analysis by the Department of Revenue

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

SECTION 1. Rule Tax 11.11(2)(b) is amended to show clearly that approvals are not required for a municipal waste treatment facility for it to be exempt under s. 77.54(26), Stats. Spelling errors are corrected in par. (3)(a) and (b) and obsolete material is eliminated from par. (5)(b).

SECTION 2 and 3. Rule Tax 11.12(5)(c) is amended to delete natural gas because natural gas used in farming is an exempt fuel during the entire year under s. 77.54(3), Stats. Section 3 creates par. (5)(d) which describes the sales tax status of electricity and natural gas purchased by a farmer, when used in the residence or in a farm machine.

SECTION 4, 5, 6 and 7. Rule Tax 11.13 (title) is amended to add statutory references, including s. 77.52(12), Stats., which indicates when a person is not actively operating as a seller that person must surrender its seller's permit. Rule Tax 11.13(5) is repealed because Chapter 174, Laws of 1979, transferred s. 77.51 (10)(b) to s. 77.51(4g)(h) and also inserted the phrase "requiring the holding of a seller's permit" in the Statute. Therefore, it is no longer necessary to explain the "activity" for which a permit is required. Other relevant interpretations in Tax 11.13(5) have been inserted in sub. (2)(b).

SECTION 8. Rule Tax 11.15(2)(j) is amended to eliminate obsolete information.

SECTION 9. Rule Tax 11.30(2)(a) is amended by eliminating a reference to "annual information" return. This sales tax return was eliminated by Chap. 221, Laws of 1979. A spelling error in sub. (2)(d)3 is also corrected.

SECTION 10. Subsection (3) of Rule Tax 11.30 is created to establish the bad debt writeoff which is allowable in a tax rate period different from the tax rate period in which the sale was reported. This situation arises whenever the tax rate changes. The sales tax rate was increased to 5% from 4% on May 1, 1982 by Chap. 317, Laws of 1981, and the example of a net loss computation is revised to reflect the rate change.

SECTIONS 11 and 12. Additional examples of receipts subject to the sales tax under s. 77.52(2)(a)2, Stats., are added to rule Tax 11.65. Admissions to campgrounds and to pleasure tours and cruises are taxable under s. 77.52(2)(a)2, Stats.

SECTIONS 13 and 14. The Budget Bill, 1983 Wisconsin Act 27, provides new standards for service providers to determine when items may be purchased without tax "for resale". Effective September 1, 1983, s. 77.51(4)(L), (7)(e) and (f) provide that service providers, such as persons providing laundry and dry cleaning services taxable under s. 77.52(2)(a)6, Stats., are subject to tax on items transferred to their customers incidental to the service.

SECTION 15. An additional example of an item not deductible from a lessor's taxable gross rental receipts is added to Tax 11.79(4)(d).

SECTION 16. Rule Tax 11.85(2)(a) is amended to show that an exempt sale does not include a boat sold by a person engaged in the business of selling boats, whether located out-of-state or in Wisconsin. This treats purchases from out-of-state retailers the same as retailers located in Wisconsin.

Pursuant to the authority vested in the Department by section 227.014(2)(a) Stats., the Department of Revenue hereby repeals, renumbers, amends and creates rules interpreting ss. 77.51(11)(b)4, 77.52(1), (2)(a)2 and 6, (7) and (12), 77.54(3), (6)(b), (14m) and (26), Stats., as follows:

SECTION 1. Tax 11.11(2)(b), (3)(a) and (b) and (5)(b) are amended to read:

Tax 11.11(2)(b) Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department of revenue for a property tax exemption under s. 70.11(21), Stats. If there has been no "approval", the contractor or subcontractor may be liable for the sales or use tax on his or her purchases. As described in sub. (3)(d), approvals are not required for municipal waste treatment facilities.

Tax 11.11(3)(a) Tangible personal property which becomes a component part of an industrial waste treatment facility ~~qualified~~ qualifies for the sales and use tax exemption if the facility has been approved for property tax exemption by

the department of revenue as provided in s. 70.11(21), Stats. Sections Tax 6.40 and 12.40 describe how an "approval" may be obtained for public utilities and other commercial and industrial concerns, respectively.

Tax 11.11(3)(b) The property tax exemption approvals for public utility, industrial and commercial waste treatment facilities are effective January 1 of each year. Any approvals issued prior to January 1, which apply to contemplated construction must of necessity be "~~tenative~~ tentative approvals" based on the information presented to the department by the applicant.

Tax 11.11(5)(b) ~~Prior to July 31, 1975, an entire municipal sanitary sewer, including its collection system, qualified for the sales and use tax exemption. On and after July 31, 1975, only~~ Only the central waste treatment plant which actually treats the sewage qualifies for the exemption.

SECTION 2. Tax 11.12(5)(c) is amended to read:

Tax 11.12(5)(c) The exemptions under s. 77.54(3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52(2)(a), Stats. (~~e.g., including~~ including telephone, laundry, dry cleaning, and photographic services ~~and electricity and natural gas, except that beginning November 1, 1979 sales of electricity and natural gas for residential or farm use are exempt if billed during the period November 1 to April 30, each year~~).

SECTION 3. Tax 11.12(5)(d) is created to read:

Tax 11.12(5)(d) A farmer's purchases of electricity and natural gas for residential use, and electricity for use in farming, are exempt under s. 77.54(30), Stats., if billed during the period November 1 through April 30 each year. Natural gas sold to farmers for use in farm machines is exempt under s. 77.54(3), Stats., during the entire year.

SECTION 4. Tax 11.13 (title) is amended to read:

Tax 11.13 (Title) SALE OF A BUSINESS OR BUSINESS ASSETS. (ss. 77.51(4g)(h) and (10)(a), 77.52(12) and 77.54(7), Stats.)

SECTION 5. Tax 11.13(2) is renumbered (2)(a).

SECTION 6. Tax 11.13(2)(b) is created to read:

Tax 11.13(2)(b) A person who operates at more than one business location each of which requires the holding of a seller's permit, and who ceases to operate at one of the business locations, and sells the assets at that location, cannot qualify for the occasional sale exemption.

Note: Permits issued by the department are general in nature and can be used to sell any kind of tangible personal property or taxable services at one location. One permit is required under the statute for each location at which a person has business operations which require the holding of a seller's permit.

SECTION 7. Tax 11.13(5) is repealed.

SECTION 8. Tax 11.15(2)(j) is renumbered 11.15(1)(c)12 and amended to read:

Tax 11.15(1)(c)12 ~~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~~ 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.

Note to Revisor: The "Note" at the end of Tax 11.15 should be revised to read as follows:

Note: The interpretations in s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for meat packaging and shipping materials became effective on May 20, 1978 pursuant to Chapter 368, Laws of 1977.

SECTION 9. Tax 11.30(2)(a) and (d)3 are amended to read:

Tax 11.30(2)(a) Deduction from measure of tax. A retailer is relieved from the liability for sales tax by ss. 77.51(11)(b)4 and 77.52(6), Stats., or from liability to collect and report use tax by s. 77.53(4), Stats., insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. However, only a retailer who has previously paid sales or use tax to this state on ~~such~~ the accounts may claim the bad debt deduction. The deduction shall be taken from the measure of tax in the period in which the account is found to be worthless. That period is defined as any time within the retailer's fiscal or calendar year in which the account is written off. However, if the taxpayer is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last ~~annual information~~ return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes, which later become worthless, received on the sale of tangible personal property shall be treated in the same manner as other worthless accounts.

Tax 11.30(2)(d)3 A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property used to ~~fulfill~~ fulfill the construction contract.

SECTION 10. Tax 11.30(3) is created to read:

Tax 11.30(3) TAX RATE CHANGE. If a deduction for bad debts is being claimed in a period when the tax rate is different from the tax rate in effect when the sale or sales were reported on tax returns, an adjustment to the deduction shall be made to compensate for the tax rate differential.

Note: Example: If tax was reported on a \$1,000 sale when the tax rate was 4%, \$40 tax was reported. If a bad debt deduction is taken for the sale in a 5% tax rate period, only 80% of the \$1,000, or \$800, may be taken as a bad debt, resulting in a tax credit of \$40. Four percent divided by five percent equals 80%.

Note to Revisor: The "Note" at the end of Tax 11.30 should be revised to read as follows:

Note: The interpretations in Tax 11.30 are effective under the general sales and use tax law on and after September 1, 1969, except that the 4% tax rate was increased to 5% on May 1, 1982.

An example of the computation of the net loss described in sub (2)(e) follows: Assume at the time when the tax rate is 5% a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$750. A down payment of \$2,150 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totalling \$6,800, the mobile home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession due to rather extensive damage to the mobile home. The deductible bad debt loss upon repossession of the mobile home is computed as follows:

	<u>Cash Sales Price</u>	<u>Sales Tax</u>	<u>Finance Charge</u>	<u>Total</u>
1. Sales price and tax	\$15,000.00	\$750.00		\$15,750.00
2. Down payment allocation (1)	<u>2,047.62</u>	<u>102.38</u>		<u>2,150.00</u>
3. Balance to finance	<u>\$12,952.38</u>	<u>\$647.62</u>		<u>\$13,600.00</u>
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	<u>\$12,952.38</u>	<u>\$647.62</u>	<u>\$1,360.00</u>	<u>\$14,960.00</u>
6. Payments on contract (2)	<u>5,887.45</u>	<u>294.37</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance - date of repossession	\$ 7,064.93	\$353.25	\$ 741.82	\$ 8,160.00
8. Wholesale value of repossession (2)	<u>5,194.81</u>	<u>259.74</u>	<u>545.45</u>	<u>6,000.00</u>
9. Deductible loss	<u>\$ 1,870.12</u>			<u>\$ 1,870.12</u>

	<u>Cash Sales Price</u>	<u>Sales Tax</u>	<u>Finance Charge</u>	<u>Total</u>
10. Nondeductible loss		<u>\$ 93.51</u>	<u>\$ 196.37</u>	<u>\$ 289.88</u>
11. Total loss				<u>\$ 2,160.00</u>
12. Percentage of sales price and tax (Line 1)	95.2381%	4.7619%		100%
13. Percentage of contract balance (Line 5)	86.5801%	4.3290%	9.0909%	100%

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

(2) The payments on the contract on line 6 and the wholesale value on the date of repossession of the property repossessed on line 8 are allocated on the basis of the contract balances on line 5. The percentages thereof are shown on line 13.

SECTION 11. Tax 11.65(1)(d) is amended to read:

Tax 11.65(1)(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught. The charge for the privilege of hunting in shooting preserves, pheasant farms and fenced area bird and animal farms is also taxable, even if the charge is based in whole or in part on the number of game birds or animals taken.

SECTION 12. Tax 11.65(1)(g) and (h) are created to read:

Tax 11.65(1)(g) The receipts from the sale or furnishing of access to campgrounds are taxable, whether the fees are collected on a daily, weekly, annual or other basis.

Tax 11.65(1)(h) The sale of admissions to pleasure tours and cruises, including a cruise originating in Wisconsin by boat on a body of water on the border of Wisconsin, is taxable regardless of whether a portion of the cruise takes place on out-of-state waters.

Note to Revisor: The "Note" at the end of Tax 11.65 should be revised to read:

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except that bingo receipts became taxable under ch. 156, Laws of 1973, effective December 30, 1973.

SECTION 13. Tax 11.72 (title) and (3)(a) are amended to read:

Tax 11.72 (Title) LAUNDRIES, DRY CLEANERS, AND LINEN AND CLOTHING SUPPLIERS. (ss. 77.51(4)(L), (7)(e) and (f) and (24)(a) and 77.52(2)(a)6, Stats.)

Tax 11.72(3)(a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and must pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags which they use for laundering, dry-cleaning or identification purposes. They also must pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. The tax applies to the gross receipts on the sale of these items to such purchasers.

SECTION 14. Tax 11.72(3)(c) is repealed.

Note to Revisor: The "Note" at the end of Tax 11.72 should be revised to read:

Note: The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except that pursuant to

1983 Wisconsin Act 27, effective September 1, 1983, laundries and dry cleaners became the consumers of, and must pay tax on the purchases of, hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins.

SECTION 15. Tax 11.79(4)(d) is created to read:

Tax 11.79(4)(d) Dispatch service.

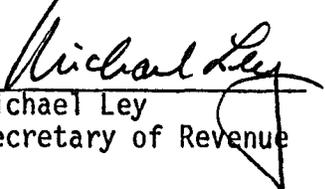
SECTION 16. Tax 11.85(2)(a) is amended to read:

Tax 11.85(2)(a) A boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may be sold at retail as an exempt occasional sale if the transferor ~~does not hold a seller's permit~~ is not engaged in the business of selling tangible personal property or taxable services.

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

Dated: July 10, 1984

DEPARTMENT OF REVENUE

By: 
Michael Ley
Secretary of Revenue

407504



State of Wisconsin \

DEPARTMENT OF REVENUE

July 12, 1984

OFFICE LOCATED AT
125 SOUTH WEBSTER STREET

MAILING ADDRESS
POST OFFICE BOX 8933
MADISON, WISCONSIN 53708

Orlan L. Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

RECEIVED

JUL 13 1984

Revisor of Statutes
Bureau

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue amending various sales and use tax rules.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,

Michael Ley
Secretary of Revenue

ML:em
405201a

Enclosures

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.