

CR 84-167

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Revisor of Statutes  
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CERTIFICATE

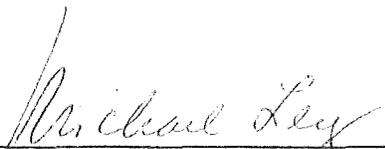
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF REVENUE)

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. 84-167 was duly approved and adopted by this department on March 7, 1985.

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 7<sup>th</sup> day of March, 1985.

  
\_\_\_\_\_  
Michael Ley  
Secretary of Revenue

ML:em  
405101a

5-1-85

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

To repeal Tax 11.10(6); to amend Tax 11.10(3)(c)2, (d) and (e), (4)(d) and (f) and 11.50(4)(d)3 and to create Tax 11.10(5) relating to an upward revision of the occasional sale standards for nonprofit organizations and the establishment of a minimum occasional sales standard applicable to all sellers.

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Analysis by the Department of Revenue

SECTION 1. Rule Tax 11.10(3)(c)2, (d) and (e) are amended to change the occasional sale standard for nonprofit organizations from \$1,000 to \$2,500 of taxable receipts during a calendar year, effective January 1, 1985. The \$1,000 standard has been in effect for approximately 15 years and over this period of time inflation has substantially increased the selling price of items sold by nonprofit organizations; thus placing these organizations in a taxable situation. By raising the exemption standards, more nonprofit organizations will be able to make tax-free sales.

SECTION 2. Tax 11.10(4)(d) and (f) are amended to show that the new \$1,000 standard in sub. (5)(c), after renumbering in Section 3 of this order, applies to the receipts described in these paragraphs.

SECTION 3. Subsection (5) of rule Tax 11.10 is created to change the occasional sale standard for certain sales from \$500 of taxable type gross receipts per calendar year to \$1,000 per year, effective January 1, 1985. This \$500 standard has also been in effect for approximately 15 years and because of price increases has become ineffective and obsolete. Subsection (5) provides that this \$1,000 standard applies to every type of taxable receipt from sales of tangible personal property and taxable services. Previously it only applied to the specific items mentioned in sub. (6) prior to its repeal.

SECTION 4. Tax 11.10(6) is repealed because the new \$1,000 standard for occasional sales is in sub. (5) as described in Section 3.

SECTION 5. Rule Tax 11.50(4)(d)3 is amended to increase the \$1,000 per year auction sale standard to \$2,500 per year to conform to the same increase explained in Section 1.

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Pursuant to the authority vested in the Department by section 227.014(2)(a), Stats., the Department of Revenue hereby repeals, amends and creates rules interpreting ss. 77.51(10) and 77.54(7), Stats. as follows:

SECTION 1. Tax 11.10(3)(c)2, (d) and (e) are amended to read:

Tax 11.10(3)(c)2 The gross receipts from sales of property and services otherwise subject to the tax under s. 77.52(1) and (2), Stats., do not exceed ~~\$1,000~~ \$2,500 within a calendar year.

Tax 11.10(3)(d) Exceeding the \$2,500 standard. Nonprofit organizations with sales exceeding ~~\$1,000~~ \$2,500 annually are taxable on all receipts unless the department of revenue determines that their sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or a partial vocation or occupation. Any organization may request a determination from the department as to whether it qualifies for the exemption. The request should be made in writing, listing items or services sold, unit costs and selling prices, anticipated total gross receipts from all sales activities for the calendar year, the number of days duration of sales throughout the year, and any other information that will assist the department in its determination. Requests for such determinations should be sent to the Wisconsin Department of Revenue, Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902, Madison, Wisconsin 53708.

Tax 11.10(3)(e) Each category treated separately. Each category of sale listed in pars. (a), (b) and (c) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and pay a tax on sales in all categories. If the ~~\$1,000~~ \$2,500 standard described in par. (c) is exceeded, all receipts from sales of property or services described in that paragraph and all subsequent receipts from admissions and meals shall be taxable.

SECTION 2. Tax 11.10(4)(d) and (f) are amended to read:

Tax 11.10(4)(d) Sales Unless exempt under sub. (5)(c) sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of such property.

Tax 11.10(4)(f) Sales Unless exempt under sub. (5)(c) sales by persons engaged primarily in the business of making nontaxable sales of personal property, such as manufacturers, wholesalers and grocers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

SECTION 3. Tax 11.10(5) is created to read:

Tax 11.10(5) SALES WHICH ARE OCCASIONAL SALES. The following sales are exempt occasional sales:

(a) Auction sales of personal farm property and household goods.

(b) Sales by a sole proprietor, who is required to be a holder of a seller's permit, of tangible personal property which has not been used in the course of the person's business and is not the type of property sold in the course of the person's business. However, all tangible personal property sold by a corporation or partnership holding or required to hold a seller's permit shall be considered to be used or sold in the course of the organization's business activities and is taxable.

Note: Example. Taxpayer operates a service station as a sole proprietor and holds a seller's permit for the purpose of selling cigarettes and repairing motor vehicles. The gross receipts from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the gross receipts from the sale of a desk and refrigerator which were used in the service station's business activities are subject to the sales tax.

(c) Sales of tangible personal property or taxable services by a person not otherwise required to hold a seller's permit, if the total taxable gross receipts of tangible personal property and taxable services are less than \$1,000 during the calendar year. However, purchases of tangible personal property or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person, except when the person is able to claim exemption under s. 77.54(9a), Stats.

Note: Examples. (1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fisherman, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (c).

(2) Sales of soft drinks by employe groups are not taxable if the gross receipts from soft drink sales do not exceed \$1,000 per year. These groups are deemed consumers and suppliers' sales to them are taxable retail sales.

Note to Revisor: The "Note" at the end of Tax 11.10 should be revised to read as follows:

Note: The interpretations in s. Tax 11.10 are effective under the general sales and use tax law on and after September 1, 1969 except that sub. (5)(b) became effective on March 1, 1979 and the \$2,500 standard in sub. (3)(d) and the \$1,000 standard in sub. (5)(c) are effective on January 1, 1985. Prior to January 1, 1985 the standard in sub. (3)(d) was \$1,000 per year and the standard in sub. (5)(c) was \$500 per year for persons who had gross receipts from sales of fishing bait; soft drinks; garage, lawn or rummage sales; lawn maintenance and landscaping services; parking; firewood and books.

SECTION 4. Tax 11.10(6) is repealed.

SECTION 5. Tax 11.50(4)(d)3 is amended to read:

Tax 11.50(4)(d)3 Gross receipts from the auction sale of tangible personal property and taxable services do not exceed ~~\$1,000~~ \$2,500 during the year as provided in s. Tax 11.10(3).

Note to Revisor: The "Note" at the end of Tax 11.50 should be revised to read:

Note: The interpretations in s. Tax 11.50 are effective under the general sales and use tax law on and after September 1, 1969, except that the standard in sub. (4)(d)3 was increased from \$1,000 to \$2,500, effective January 1, 1985.

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The rules, amendments and repeals contained in this order shall take effect on January 1, 1985.

Dated: *March 7, 1985*

DEPARTMENT OF REVENUE  
By: *Michael Ley*  
Michael Ley  
Secretary of Revenue



State of Wisconsin \

DEPARTMENT OF REVENUE

OFFICE LOCATED AT  
125 SOUTH WEBSTER STREET

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POST OFFICE BOX 8933  
MADISON, WISCONSIN 53708

March 11, 1985

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MAR 15 1985

Revisor of Statutes  
Bureau

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

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue amending rules Tax 11.10 and 11.50.

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

Sincerely,

A handwritten signature in cursive script that reads "Michael Ley".

Michael Ley  
Secretary of Revenue

ML:em  
405201a

Enclosures

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