

## Chapter Tax 11

## SALES AND USE TAX

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**Tax 11.001 Forward and definitions.** (subchs. III and V, ch. 77, Stats.) Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to county sales and use taxes authorized under subch. V of ch. 77, Stats. In this chapter, unless otherwise specified:

(3) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

(5) "Department" means the Wisconsin department of revenue.

(8) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and
- (d) Keeping proper records. (See Tax 11.92)

(12) "Tax" means the Wisconsin sales or use tax in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "\_\_\_\_\_ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of \_\_\_\_\_ (specific tangible personal property or a specific service) is taxable", means that: (a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

(b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (12), Register, January, 1983, No. 325, eff. 2-1-83; emerg. am. (intro.), eff. 3-24-86; am. (intro.), Register, October, 1986, No. 370, eff. 11-1-86.

**Tax 11.002 Permits, application, department determination.** (ss. 77.52(7), (8), (9) and (12), 77.61(2) and 227.0105, Stats.) (1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate or consumers use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department of revenue will act on the application.

(2) PERMITS AND CERTIFICATES REQUIRED. (a) SELLER'S PERMIT. Every individual, partnership, corporation or other organization making retail sales or rentals of tangible personal property or selling, performing or Register, October, 1986, No. 370

furnishing taxable services at retail in this state shall have a seller's permit, unless the seller is exempt from taxation.

(b) Use tax registration certificate. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit or who is not engaged in business in this state but elects to collect use tax for the convenience of its Wisconsin customers shall have a use tax registration certificate.

(c) Consumers use tax registration certificate. Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a consumers use tax registration certificate.

(3) APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES. A person required to have a seller's permit or one of the use tax certificates described in sub. (2) shall file an "Application for Permit", Form A-101, with the department of revenue at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required. Form A-101 may be obtained at any department of revenue office, or by writing the department at P.O. Box 8902, Madison, Wisconsin 53708 or by telephone at (608) 266-2776.

(4) REVIEW AND ACTION BY DEPARTMENT. The department or revenue shall review and make a determination on an application for a seller's permit or use tax certificate described in this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that security is required or that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85.

**Tax 11.01 Sales and use tax return forms.** (s. 77.58, Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

(a) Form MV-1. For occasional and dealer sales of motor vehicles, motor homes, trailers and semitrailers.

(b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.

(c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.

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- (e) Form S-013. For concessionaires. (Annual return).
- (f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).
- (g) Form S-015. For occasional bingo sales.

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(h) Form S-174. For determination of taxable status of temporary seller and reporting of tax liability.

(i) Form S-001U. For occasional and non-Wisconsin sales of boats.

(j) Form S-050U (also called "UT-5"). For consumers other than persons holding a Wisconsin seller's permit, retailers having a use registration certificate and nonresident contractors.

(k) Form SU-051. For nonresident contractors having a use tax liability who do not have a Wisconsin seller's permit.

(1) Form A-R-1 (Department of Transportation form). For the occasional sale of aircraft.

(m) Form S-108 (also called "ST-12X"). The amended sales and use tax return for filing refund claims or reporting additional taxes for prior periods.

(2) Returns required to be filed with the department shall be filed by mailing them to P.O. Box 8902, Madison, Wisconsin 53708 or by delivering them to 4638 University Avenue, Madison, Wisconsin.

Note: Forms may be obtained by mail request to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (a), r. (1) (d), cr. (1) (m), Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.03 Elementary and secondary schools and related organizations.** (s. 77.54 (4), (9) and (9a), Stats.) (1) DEFINITIONS. (a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in s. 119.30, Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par. (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.

2. School lunches and library and book fines.

3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.

4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, films or other exhibits, lectures and school

plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as a collection agent for the seller, whether or not the school receives a commission for such collection. The retailer (e.g., a photographer) is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS. Under s. 77.54, Stats., gross receipts from sales to the following organizations are exempt:

(a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status. Such organizations include parent-teacher associations and student organizations.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972 through October 3, 1973.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.04 Constructing buildings for exempt entities.** (ss. 77.51 (4) and (18), 77.54 (9a) and 77.55 (1), Stats.) (1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exemption under ss. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a) provides an exemption for sales to this state or any agency thereof, or any county, municipality as defined in s. 41.02 (4), school district or other political subdivision; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals. Section 77.55 (1) provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated agency of instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

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(2) **TAXABLE GROSS RECEIPTS.** Sales of building materials to contractors or subcontractors used in the construction of buildings or structures, or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) **PURCHASES PRESUMED TAXABLE.** When a contractor and an exempt entity enter into a construction contract to improve real property, which provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(4) **SUPPLIER IS CONTRACTOR.** A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. The sale of building materials to the consumer is subject to the tax.

(5) **EXEMPT GROSS RECEIPTS.** A supplier's sales of building materials made directly to an exempt entity are not taxable, even though such tangible personal property is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received from the exempt entity.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969. This rule supersedes the policies contained in Technical Information Memorandum S-53, entitled "Constructing Buildings for Exempt Entities", dated November 1, 1972. The policies in this rule apply to periods open to adjustment under the statute of limitations (s. 77.59, Stats.).

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 11.05 Governmental units.** (ss. 77.51 (3), 77.52 (2) (a)1., 2., 9. and 20., and 77.54 (9a), (10), (15), (17), (20) and (30), Stats.) (1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following:

(a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).

(b) Food and gift stand sales, including sales of sandwiches, beverages, candy, cigarettes, ice cream, confections, tobacco products, postcards, books, magazines and other periodicals described in s. Tax 11.19, and novelties. Newspaper sales are exempt.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.

(e) Sales of electricity, gas and steam by municipal utilities, except as provided in sub. (3) (b).

- (f) Sales of maps, plat books, photocopies or other printed material.
- (g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employes. Governmental units shall not collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.
- (h) Sales of buildings or timber when the purchaser acquires such property for removal.
- (i) Rental of lodging facilities to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanitoriums nursing homes, colleges or universities operated by governmental units.
- (j) Vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.
- (k) Sales of soda water beverages and beer, including sales of such items by hospitals, sanitoriums and nursing homes to patients, employes or guests.
- (l) Charges for meals to "Huber" law prisoners.
- (m) Sales of books and supplies, including sales by vocational, technical and adult education schools. Sales of tangible personal property by elementary and secondary schools are exempt under s. 77.54 (4), Stats.
- (n) Sales of craft supplies for playground craft programs.
- (o) Auction sales of tangible personal property, but excluding motor vehicles (see par. (g) ).
- (p) Sales and delivery of trees, shrubs or gravel to private purchasers.
- (q) Sales of impounded animals, even though the amount received may be designated as a placement fee.
- (r) The gross receipts from parking and providing parking space for motor vehicles and aircraft, and docking or providing storage space for boats.
- (s) The gross receipts from landscaping and lawn maintenance services, including weed cutting in lawn, garden and other developed areas, but not charges for damages described in sub. (3) (c).

(3) NONTAXABLE RECEIPTS. Gross receipts of governmental units from the following are not taxable:

(a) Fees for licenses and permits, including tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits or I.D. cards issued exclusively for obtaining admission to facilities or events taxed under s. 77.52 (2) (a) 2, Stats.

(b) Water delivered through mains. Coal, fuel oil, propane, steam and wood used for fuel, sold for residential use. Electricity and natural gas sold for residential use and electricity sold for farm use during the months of November through April. "Sold" is defined in s. 77.54 (30) (b),



Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (1) 7.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines, including charges for books that are not returned or charges for a duplicate library card.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.

(k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(l) Meals, food, food products or beverages (except soda water beverages and beer) sold by hospitals, sanitoriums and nursing homes to patients, employes or guests; dormitory meals furnished in accordance with any contract or agreement by a public or private institution of higher education; and meals sold to the elderly or handicapped by "mobile meals on wheels".

(m) Service charges for snow removal, police officers at social gatherings, service of legal papers including summons, complaints and civil process, and ushers and door guards.

(n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.

(o) Fees charged for admission to a university student union building.

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officers and clerk of court under ss. 59.42, 59.57, 69.24, Stats., or by a filing officer under s. 409.407 (2), Stats., and fees charged by a register in probate pursuant to s. 814.66, Stats.

(q) The sale of all admission fees or admission stickers to state parks and recreational areas in state forests imposed under s. 27.01 (2r), Stats.

(4) PURCHASES. Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 144.07 (4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26, Stats., or any other unit of government, or any agency or instru-

mentality of 2 or more units of government within this state. However, the exemption does not apply to governmental units of other states.

(a) A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

(b) A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;
2. The seller bills the governmental unit directly; and
3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

(c) Purchases by state chartered credit unions are subject to the tax. Purchases by federally chartered credit unions and federal reserve banks are not subject to the tax.

(d) Purchases (such as for lodging, meals or uniforms) by employees of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for such purchases by the governmental unit.

(e) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United States government providing for sales and use tax exemptions.

Note: The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except as follows: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972 through October 3, 1973, (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973, (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977, (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979 and the electricity and natural gas six-month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979, (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980 pursuant to Chapter 221, Laws of 1979, (f) Landscaping and lawn maintenance services became taxable on May 1, 1982 pursuant to Chapter 317, Laws of 1981.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (e) and (i), cr. (2) (r), r. and recr. (3) (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (b) and (m), (3) (a), (l), (m) and (p), cr. (2) (s) and (3) (q), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.08 Medical appliances, prosthetic devices and aids.** (s. 77.54 (14s) and (22), Stats.) (1) **DEVICES FOR HANDICAPPED PERSONS.** Section 77.54 (22) (a), Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays. The following items normally are not designed for use by a particular person, and if that is the case, do not qualify for the exemption:

- (a) Kidney dialysis equipment.

- (b) Special communication equipment for the deaf.
- (c) Hydraulic lifts for wheelchairs.
- (d) Special controls installed in motor vehicles to steer and operate the vehicle.
- (e) Humidifiers.
- (f) Stationary walking machines.
- (g) Stairway chair elevators.
- (h) Electric nerve stimulators.
- (i) Insertion or application equipment and supplies used to insert or apply exempt devices.

(2) **PROSTHETIC DEVICES, APPLIANCES AND AIDS.** Section 77.54 (22) (b), Stats., exempts gross receipts from the sale of "Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body." "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to:

- (a) Garments designed to restrict or enhance the body's shape for cosmetic purposes, or to wig or hair pieces.
- (b) Incontinent briefs, pads, shields or adult diapers.
- (c) Bed wetting alarm systems.
- (d) Blood pressure kits.
- (e) Insertion or application equipment and supplies used to insert or apply exempt devices.

(3) **EYE GLASSES.** Section 77.54 (22) (d), Stats., exempts gross receipts from the sale of "Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser." This exemption does not include tools and supplies, eyeglass cases, eye shields, thermal and chemical care units for contact lenses, chains, clips or other accessories associated with eye glasses. Frames for prescription glasses are exempt.

(4) **CRUTCHES AND WHEELCHAIRS.** Section 77.54 (22) (e), Stats., exempts gross receipts from the sale of "Crutches and wheelchairs for persons who are ill or disabled." This exemption includes open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.

(5) **OXYGEN EQUIPMENT.** Section 77.54 (14s), Stats., exempts the gross receipts from the sale of "Equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen." The exemption applies to oxygen carts acquired for use by patients with a prescription for oxygen.

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(6) **REPAIR PARTS AND SERVICE.** Gross receipts from the sale of repair parts and service for exempt property are exempt.

Note: The interpretations of s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for oxygen equipment in sub. (5) was added to the law by 1983 Wisconsin Act 27, effective September 1, 1983.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (1) and (4), Register, July, 1978, No. 271, eff. 8-1-78; am. (1), (2) and (3), Register, January, 1983, No. 325, eff. 2-1-83; r. (2) (c), renum. (5) to be (6), cr. (5), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.09 Medicines.** (ss. 77.51 (21) and 77.54 (14), Stats.) (1) **DEFINITION.** For the exemption in s. 77.54 (14), Stats., "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use.

(2) **EXAMPLES OF MEDICINES.** Medicines include the following items described in sub. (1):

- (a) Bone pins.
- (b) Dyes.
- (c) Insulin (furnished by a registered pharmacist).
- (d) Liquids.
- (e) Oxygen for medicinal purposes.
- (f) Oral contraceptives.
- (g) Pacemakers.
- (h) Pills.
- (i) Powders.
- (j) Salves and ointments.
- (k) Suppositories.
- (l) Sutures.
- (m) Vaccines.
- (n) Vitamins.
- (o) Other medicinal preparations consumed orally, injected or applied.
- (p) Other articles permanently implanted in the human body which remain or dissolve in the body.

(3) **ITEMS WHICH ARE NOT MEDICINES.** Items which are not described in sub. (1) and which are not medicines include:

- (a) Alcoholic beverages, soda water beverages or distilled water.
- (b) Auditory, prosthetic, ophthalmic or ocular devices or appliances.
- (c) Medical supplies (such as bandages, compresses, dressings, pads, splints and supports).

(d) Medical instruments or equipment.

(e) Cast materials.

(f) Intra-uterine devices.

(4) EXEMPT SALES OR USE OF MEDICINES. Medicines shall be exempt if:

(a) Prescribed by a licensed physician, surgeon, podiatrist or dentist for treatment of a human being and dispensed on prescription filled by a registered pharmacist in accordance with law.

(b) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being.

(c) Furnished by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment of the patient.

(d) Furnished by a hospital for treatment of any person by the order of a licensed physician, surgeon, dentist or podiatrist. For this exemption, "hospital" has the meaning described in s. 140.24, Stats., and does not include nursing homes.

(e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(5) TAXABLE SALES OF MEDICINES. Taxable sales of medicines include:

(a) Retail sales for use in laboratories.

(b) Retail sales for use on domestic animals.

(6) TAXABLE USE OF MEDICINES. Persons who sell medicines are subject to the use tax on samples furnished without charge to hospitals, physicians, surgeons, podiatrists or dentists.

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; r. (3) (g), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.10 Occasional sales.** (ss. 77.51 (10), 77.52 (2) (a) 2. and 77.54 (7), Stats.) (1) GENERAL. Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this rule, a taxable sale occurs.

(2) STATUTES. (a) "Occasional sales" is defined in s. 77.51 (10), Stats.

(b) Section 77.54 (7), Stats., exempts most occasional sales from the sales and use taxes.

(3) SALES BY NONPROFIT ORGANIZATIONS. No special statute exempts all sales by nonprofit organizations. However, the following sales by neighborhood, religious, charitable, civic or educational organizations and other nonprofit organizations which conduct one or more fund raising events during the year shall be occasional sales under the conditions shown:

(a) *Admissions or tickets.* Sales of admissions or tickets to an event conducted by a neighborhood association, church, civic group, garden

club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The event does not involve professional entertainment;
2. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
3. The organization did not conduct more than 3 events involving sales of admissions or tickets in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of the events in that year.

(b) *Meals, food and beverages.* Sales of meals, food, food products, and beverages, including beer, for direct consumption at an event including a church supper or refreshment stand at a fair by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
2. The organization conducted no more than 3 events involving sales of meals, food, food products and beverages in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of the events in that year.

(c) *Other sales of tangible personal property and services.* Except for sales under pars. (a) and (b), sales of tangible personal property and taxable services, including light bulbs, Christmas trees, candy or parking, by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
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 \$2,500 within a calendar year.

(d) *Exceeding the \$2,500 standard.* Nonprofit organizations with sales exceeding \$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 deter-

minations should be sent to the Wisconsin Department of Revenue, Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902, Madison, Wisconsin 53708.

(e) *Treatment of categories.* 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 \$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.

Note: Example. If an organization engages in separate activities described in pars. (a), (b) and (c) during a year and has a fourth "admissions" event, but only one "meal" event and \$500 receipts from sales of other tangible personal property at that time, it shall obtain a seller's permit and pay the tax on receipts from the fourth "admissions" event and all subsequent receipts from "meal" events and from subsequent sales of other tangible personal property or services.

[Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(4) SALES WHICH ARE NOT OCCASIONAL SALES. The following transactions shall not be exempt occasional sales:

(a) Sales by a person who holds or is required to hold a seller's permit. For example, sales of used equipment by a retail store or vending machine operator are taxable.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures. Refer to s. Tax 11.13 for additional information concerning this subject.

(c) Sales of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers and semitrailers, except as specifically provided in s. 77.54 (7), Stats. Unless exempt, a use tax shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, snowmobile, trailer or semitrailer is registered or the mobile home not exceeding 45 feet in length is registered or titled for use within this state.

(d) 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.

(e) Sales by persons conducting bingo games.

(f) 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.

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

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

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(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:* 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.

*History:* Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (6) (e), Register, February, 1979, No. 278, eff. 3-1-79; am. (4) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (b) (intro.) and (e), (4) (c), (6) (a), (b) and (d), r. and recr. (3) (c), cr. (6) (f) to (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (a) 3. and (b) 2., Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (c) 2., (d) and (e), (4) (d) and (f), cr. (5), r. (6), Register, April, 1985, No. 352, eff. 5-1-85.

**Tax 11.11 Waste treatment facilities (industrial or governmental).** (s. 77.54 (26), Stats.) (1) **THE STATUTE.** (a) The sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility is contained in s. 77.54 (26), Stats.

(b) The general property tax exemption for a waste treatment facility is contained in s. 70.11 (21) (a), Stats. and the exemption for public utilities and railroads is contained in 76.02 (10), Stats.

(2) **CONTRACTORS AND SUBCONTRACTORS.** (a) The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates such property into an approved industrial waste treatment facility or who incorporates such property into a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sale. Certification of exempt use shall be made on a Certificate of Exemption, Form S-207.



(b) Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the depart-

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ment 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.

(c) A contractor's purchases of items used or consumed in the performance of the construction contract, and which do not become a component part of the waste treatment facility, are subject to the tax. This includes industrial gases, form lumber, tunnel shields and supplies used by a contractor during construction. Payments by a contractor for equipment purchased or leased to perform a construction job are also taxable.

(3) APPROVAL OF FACILITIES. (a) Tangible personal property which becomes a component part of an industrial waste treatment facility 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.

(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 "tentative approvals" based on the information presented to the department by the applicant.

(c) Contractors and others may determine whether a facility has been approved by the department of revenue as follows:

1. Public utility facilities, including railroads, airlines and pipelines: Write or call the Department of Revenue, Bureau of Utility and Special Taxes, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608) 266-3565.

2. Other commercial or industrial facilities: Write or call the Department of Revenue, Bureau of Property Tax, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608) 266-8135.

(d) Property tax exemption approvals by the department of revenue are not required for municipal waste treatment facilities for the sales and use tax exemption under s. 77.54 (26), Stats., to apply. Contractors or others constructing municipal waste treatment facilities may purchase construction materials which become a component part of the exempt facility without tax by issuing a properly completed exemption certificate to their suppliers.

(4) INDUSTRIAL WASTE TREATMENT EXEMPTION. (a) If an industrial or utility waste treatment facility qualifies for the property tax exemption under s. 70.11 (21) (a), or 76.02 (10), Stats., it qualifies for the sales and use tax exemption under s. 77.54 (26). Stats.

(b) When any plant or equipment has been approved as exempt from the property tax on January 1, the repair, service, alteration, cleaning, painting and maintenance of such exempt property and the repair parts and replacements therefor are also exempt through the following December 31. The sales and use tax exemption applies to chemicals and supplies used or consumed in operating a waste treatment facility.

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(5) **MUNICIPAL WASTE TREATMENT EXEMPTION.** (a) Storm sewers, water supply systems and private domestic waste water facilities do not qualify for the sales and use tax exemption.

(b) Only the central waste treatment plant which actually treats the sewage qualifies for the exemption.

(c) The collection system throughout the area served by the treatment facility, the effluent pipeline carrying the treated sewage away from the central treatment plant, earthen dikes and chain link fences on the boundary of a treatment plant, and dredge material disposal sites are not exempt. The collection systems includes the lift stations, force mains and associated pumping equipment used to bring the raw sewage to the central treatment plant.

(d) The repair, service, alteration, cleaning, painting and maintenance of a municipal central waste treatment facility, the repair parts and replacements therefor, and chemicals and supplies used or consumed in operating a waste treatment facility are exempt from the sales and use tax.

**Note:** The interpretations in s. Tax 11.11 are effective July 31, 1975 when ss. 70.11 (21) (a) and 77.54 (26), Stats., were revised, except that the exemption for chemicals and supplies used or consumed in operating a waste treatment facility is effective September 1, 1979, the date s. 77.54 (26), Stats., was amended by Chapter 39, Laws of 1979.

**History:** Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (2), (4) (b) and (5) (d), r. and recr. (3), Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (b), (3) (a) and (b) and (5) (b), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.12 Farming, agriculture, horticulture and floriculture.** (ss. 77.52 (2) (a) 10 and 77.54 (3), (3m), (27) and (30), Stats.) (1) STATUTES. Sec-

tions 77.54 (3) and (3m), Stats., provide exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture and floriculture as a business enterprise. Persons who contract with farmers to do agreed upon jobs are not engaged in farming as a business enterprise.

(2) DEFINITIONS. In this section and s. 77.54 (3), (3m), and (30), Stats.:

(a) 1. "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "Farming" includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses for sale; and raising ginseng, mushrooms and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; raising earthworms; operating sporting or recreational facilities (e.g., riding stables or shooting preserves); operating stockyards, slaughterhouses or feed lots as described in subd. 2; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

2. Effective on December 1, 1981 and thereafter, "feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for such livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

(b) "Horticulture" means the business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial nurseries and orchards. "Nurseries" do not include businesses which hold stock for purposes other than propagation or growth. Horticulture does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(c) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants or shrubs, including such operations as greenhouses.

(d) "Dairy farming" means the business of feeding and raising cattle and other milk producing animals, but does not include operations such as pasteurizing, homogenizing or making butter, cheese or ice cream.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. The standard "Farmer's Exemption Certificate" (Form S-206) provides for continuous use under certain conditions. The certificate shall be used only

for categories of items listed on it. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4) **STATUTORY EXEMPTIONS.** (a) *Section 77.54 (3).* Section 77.54 (3), Stats., exempts: "The gross receipts from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments, fuel and parts therefor, used directly in farming, including dairy farming, agriculture, horticulture or floriculture, but excluding automobiles, trucks, and other motor vehicles for highway use, when engaged in by the purchaser or user as a business enterprise, but the purchaser of property exempt under this subsection shall be liable for use tax under s. 77.57 at the time any more than nominal other use, including job contracting other than the performance of farm services by one farmer for another with machinery customarily used by the performing farmer in his own farming operation, is made of such property." (Emphasis added.)

1. Directly. Items used "directly" in farming include a plow and a combine. Items of "indirect" or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, and lawn and garden tractors.

2. Accessories, attachments and parts. Included within the exemption are accessories, attachments, parts and fuel for tractors and machines used directly in agriculture. "Accessories" and "attachments" include devices designed to be mounted on a machine or to be pushed or pulled by a machine. Examples include farm wagons and portable pipes attached to mobile irrigation pumps. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor cabs, oil filters and slow-moving-vehicle signs. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids (e.g., antifreeze or lubricants) nor milk filters which must be replaced every time a machine is used. These are "supplies" rather than "parts" and are not exempt. The exemption for fuel for farm machines does not apply to purchases of electricity.

3. Machines. "Machines" include all terrain vehicles or trucks not licensed for highway use, auxiliary power generators, bale loaders, balers, barn cleaners, barn elevators, chain saws for orchard use but not for use in lumbering, pulping or cutting firewood, choppers, conveyors, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, and loaders, electric clippers and hoof trimmers, electric dehorners, electric fence charges, not fencing or insulators, electric foggers, feed elevators and augers, fork lifts, grain dryers and grinders, harrows, harvesting combines, hay wagons, manure spreaders, milk coolers, milking machines, including piping, pipeline washer and compressor, mowers, planters, plows, powered feeders, not including platforms or troughs constructed from ordinary building materials, powered posthole diggers, pumps and associated portable piping for irrigation, rock pickers, rotary hoes, silo unloaders, space heaters, not for residential use and not realty improvements, sprayers, stalk shredders and windrowers.

4. Realty improvements. a. Certain machines in addition to those in subd. 3 qualify for the exemption if purchased by farmers directly from retailers, even though they are used to make realty improvements. Machines included are automated livestock feeder bunks (but not ordinary

building materials), automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), automatic water softners (e.g., for milkhouses), barn fans and blowers and other ventilating units, unit heaters and other heating units, water heaters serving production areas, and water pumps serving production areas.

b. However, a person (such as a plumbing contractor) who contracts with a farmer to provide and install such a machine permanently into real estate is a consumer of the machine, not a seller. Such a contractor, not being a farmer, may not furnish a Farmer's Exemption Certificate on the person's purchase of the machine. Being the consumer, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department.

5. Motor vehicles. Specifically excluded from the statutory exemption are "motor vehicles for highway use", including motor trucks, automobiles, station wagons, buses and motor cycles. "For highway use" means licensed for that use. Sales of parts, supplies and repairs for vehicles for highway use, including nurse tanks and trailers, are also taxable.

6. Other non-exempt sales. The exemption does not apply to:

a. Tools used in construction or for making repairs to real estate or farm machinery, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

b. Building materials used to repair or improve real estate such as cement, drain tile/fencing, light fixtures, lumber, nails, stanchions and underground and fixed in place water supply systems.

c. Applicators for insecticides (non-powered), cattle chutes, farrowing crates, feed carts, fire extinguishers, flood gates, gravity flow feeders (non-powered), saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations (oilers), snowmobiles, stationary salt and mineral feeders.

7. Use tax. A person who buys without tax by claiming the farming exemption owes the use tax at the time the person uses the item purchased more than nominally for a nonexempt purpose.

(b) Section 77.54 (3m), Stats., exempts: "The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (3m) and in this section means that the items mentioned in s. 77.54 (3m) are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for such items will not be invalidated by an infrequent and sporadic use other than in farming.

1. Seeds for planting. "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and vegetable seeds; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

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2. Plants. "Plants" include herbs, shrubs or young trees, slips or saplings planted or ready to plant.

3. Feed. a. "Feed" includes processed vegetable and animal products and essential minerals required for the normal nutritional needs of livestock, poultry and domestic fur bearing animals and other materials which are required for the normal nutritional needs of animals in some domestic environments, such as vitamins A, B-complex, D and E. Essential minerals include phosphorous, calcium, sodium, chlorine, iodine, iron, copper, sulfur, potassium, magnesium and zinc. Common feed additives containing these substances include cod liver oil, salt (granular or block), ground limestone, fish oil, fish meal, oyster shells and bone meal.

b. "Feed" includes medicated feed or drug carriers purchased for use as an ingredient of medicated feed, the primary purpose of which is the prevention of diseases in livestock or poultry. "Feed" does not include a mixture labeled and sold for specific treatment or cure of a disease. Medicines (including antibiotics) which are administered to animals or poultry directly or as an additive to drinking water are taxable.

4. Fertilizers and soil conditioners. a. "Fertilizer" means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used primarily for its plant food content to improve the soil's agricultural qualities. "Fertilizer" and "soil conditions" include fertilizer and insecticide combinations, agricultural minerals, carbon dioxide for application to land, urea, sewage sludge, liquid spray mixtures of minerals and plant nutrients, lime, compost, manure, peat moss and soy bean straw.

b. "Fertilizer" and "soil conditioners" do not include fill dirt, top soil, wood chips, wood shavings, litter and hormone growth stimulants. (The difference between fertilizers and hormone growth stimulants is that fertilizers nourish plants whereas hormone growth stimulants act upon the cellular structure.)

5. Sprays, pesticides and fungicides. "Sprays", "pesticides" and "fungicides" include disinfectant sprays, fly sprays and preparations used to destroy insects, mites, nematodes, slugs or other invertebrate animals injurious to plants and animals; chemicals used for crop disease, pest and weed control, including insecticides, rodenticides and pesticides used to sanitize and clean dairy equipment. Products used to sanitize dairy equipment are exempt, if they are registered with the U.S. environmental protection agency as pesticides, advertised and sold as pesticides, and each bottle, can or other container containing the pesticide has an EPA pesticide registration number on it.

6. Containers for fruits, vegetables, grain and animal wastes. a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains or animal wastes. The phrase does not include feed carts designed to hold various green and dry feeds.

b. A complete corn crib or grain bin may be purchased "knocked-down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install such a bin permanently into real estate is a consumer of the bin, not its seller. Such a contractor, dealer or installer, not being a farmer, may not furnish a Farmer's Exemption Certificate on the bin's purchase. Being the con-

sumer, not a seller, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department. A farmer who wishes to utilize the farmer's exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. Farmers may purchase animal waste containers without tax or the component parts thereof, by issuing their supplier a properly completed "single purchase" Farmer's Exemption Certificate.

d. Silos are not included in the exemption. The purchaser of materials used in building a silo must pay the sales tax to the purchaser's supplier. A silo unloader may be purchased by a farmer as an exempt machine.

e. Milk cans are not covered by the farmer's exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

7. Livestock and poultry. "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals (such as those purchased for breeding).

8. Farm work stock. "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase does not include dogs, riding horses, racing horses or laboratory animals. The food for animals which are not farm work stock is taxable (e.g., dog and cat food).

9. Semen. Semen used for artificial insemination of livestock is exempt.

(5) SERVICES FURNISHED TO FARMERS. (a) The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under s. 77.54 (3) and (3m), Stats., are also exempt from the sales and use tax under s. 77.52 (2) (a) 10, Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses shod, but not when having riding horses shod.

(b) Breeding fees, and charges for artificial insemination of animals and veterinarians' services are not taxable.

(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., including telephone, laundry, dry cleaning and photographic services.

(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.

(6) SERVICES PROVIDED BY FARMERS. (a) *Nontaxable services*. The following services performed by farmers are not subject to the sales tax:



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1. Custom work. The performance of custom farm services by one farmer for another farmer, such as harvesting hay or grain.

2. Training animals. The training of horses, dogs or other animals.

(b) *Taxable services.* The following services performed by farmers are taxable:

1. Boarding animals. The boarding of dogs, cats, riding horses, ponies or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed Resale Certificate.

2. Grooming animals. The grooming of recreational animals.

**Note:** The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Chapter 64, Laws of 1971 created s. 77.54 (27), Stats., exempting semen, effective July 22, 1971; (b) Bailing wire and twine became exempt under 77.54 (3m), Stats., on December 24, 1975 under Chapter 146, Laws of 1975; (c) Chapter 1, Laws of 1979 provided a 6 month exemption under 77.54 (30), Stats., each year for electricity for residential use or for use in farming and a 12 month exemption for fuel oil, propane, coal, steam or wood for residential use, and (d) The definition of "feed lot" in sub. (2) (a) 2 and "exclusively" in sub. (4) (b) are effective on December 1, 1981.

**History:** Cr. Register, March, 1978, No. 267, eff. 4-1-78; am. (2) (intro.), (4) (a) 1., (4) (b) (intro.) and (5) (c), renum. (2) (a) to be (2) (a) 1. and am., cr. (2) (a) 2., Register, November, 1981, No. 311, eff. 12-1-81; am. (2) (a) 1., (4) (b) 5., 6. c. and 9., Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (a) 1., 3. and 5., and (5) (c), cr. (5) (d), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.13 Sale of a business or business assets.** (ss. 77.51 (4g) (h) and (10) (a), 77.52 (12) and 77.54 (7), Stats.) (1) **GENERAL.** The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax.

(a) The tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.

2. A single transaction or series of transactions at the time of termination of a business.

3. Piecemeal sales, whether part of a continuing business or upon termination.

(b) The tax does not apply to merchandise inventory purchased for resale in the regular course of the purchaser's business.

(2) **EFFECT OF HOLDING A SELLER'S PERMIT.** (a) Pursuant to s. 77.51 (10) (a), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sale exemption. A person may qualify for the occasional sale exemption if that person delivers the seller's permit to the department for cancellation prior to the disposition. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

(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.

(3) **DELIVERY OF SELLER'S PERMIT.** A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

(a) Retailers may personally deliver their seller's permits to a representative of the department's income, sales, inheritance and excise tax division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(b) The seller's permit may be mailed to the department (P.O. Box 8902, Madison 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the permit, the retailer may use certified mail, return receipt requested.

(c) If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual seller's permit.

(4) **CANCELLATION OF SELLER'S PERMIT.** (a) Although a seller's permit may be deemed to have been delivered and canceled on a postmark date under sub. (3), cancellation shall not be effective prior to the postmark date.

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

(c) The fact that a business ceases operations and no longer conducts its day to day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. Section 77.52 (12), Stats., requires a permittee to ". . . forthwith surrender his permit . . ." when ceasing to operate as a seller. If the permittee does not surrender the permit at that time, the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

**Note:** The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969, except for subs. (2), (3) and (4). The procedure described in subs. (2), (3) and (4) are effective May 4, 1976 and reflect the Wisconsin Supreme Court's decision in *Three Lions Supper Club, Ltd. v. Dept. of Revenue* (May 4, 1976), 72 Wis. 2d. 546.

**History:** Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (2) to be (2) (a), cr. (2) (b), r. (5), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.14 Exemption certificates (including resale certificates).** (ss. 77.52 (13) to (16), and 77.53 (10) and (11), Stats.) (1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52 (13) to (16), Stats., and the use tax status of exemption certificates is contained in s. 77.53 (10) and (11), Stats.

(2) **GENERAL.** (a) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors can exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with 4 types of exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this rule, are the following:

1. Resale Certificate (Form S-205).
2. Certificate of Exemption (Form S-207).
3. Manufacturer's Exemption Certificate (Form S-207m).
4. Farmer's Exemption Certificate (Form S-206).

(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. The law requires that the certificate be signed by and bear the name and address of the purchaser and that it indicate the general character of the property or service being purchased and the basis of the claimed exemption.

(3) **EFFECT OF OBTAINING CERTIFICATE.** (a) A seller is relieved of liability for the tax if the seller takes from the purchaser a valid, written resale or exemption certificate which certifies that the purchaser will use the property or service in a manner or for a purpose entitling the seller to accept the certificate in good faith.

(b) To be valid, a resale or other exemption certificate must upon its face disclose a proper basis for exemption. The use of phrases such as "nontaxable", "exempt" or similar terminology do not provide a proper basis for an exemption. A certificate must be properly executed, dated and contain all the necessary information. Thus, all retailers should be familiar with the instructions contained in the certificate. A certificate claiming an exemption not provided by law is not valid.

(c) If a certificate is valid, a seller or lessor who accepts the certificate in good faith is relieved of any liability for collection or payment of tax upon transactions covered by the certificate. For good faith to be shown, the certificate shall contain no statement or entry which the seller or lessor knows, or has reason to believe, is false or misleading. The question of good faith is one of fact and depends upon a consideration of all the conditions surrounding the transaction. If the seller accepts a certificate with knowledge which gives rise to a reasonable inference that the purchaser does not intend to use the item or service as claimed, the good faith of the seller will be questioned. The seller is presumed to be familiar with the law and rules of the department relating to the business or businesses in which the seller is involved.

(4) **FAILURE TO OBTAIN CERTIFICATE.** If a seller does not obtain a certificate, a seller is not relieved from liability for the tax, nor from the burden of proving the sale was for resale or otherwise exempt. It is not a satisfactory substitute for obtaining an exemption certificate from the purchaser, for the seller to accept payment of the seller's billing with the tax or tax reimbursement deleted, or to accept the purchaser's permit number, or a statement that the transaction is not taxable.

(5) **CONTINUOUS CERTIFICATES.** (a) Continuous exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(b) Continuous exemption certificates (including continuous resale certificates) approved by the department do not allow a purchaser to issue "this time only" purchase orders canceling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for his or her previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6) **RESALE CERTIFICATE (Form S-205).** (a) *Effect of obtaining resale certificate.* 1. The burden of proving that a sale of property or services is not at retail is upon the seller unless the seller accepts a certificate from the purchaser certifying that the property is purchased for resale. If valid and accepted in good faith from a person who is in the business of selling tangible personal property or taxable services and who holds a seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives a resale certificate for property acquired and then makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax shall be reported and paid by the purchaser with the tax return for the period in which the property is first so stored or used.

(b) *Contents of resale certificates.* A resale certificate (Form S-205) shall contain the following information:

1. The name and address and the signature of the purchaser.
2. A description of the general character of the tangible personal property or service sold by the purchaser.
3. A general description of the property or service purchased for resale if a "continuous" resale certificate is used, or an itemization of the property or service purchased if a "single purchase" certificate is used.
4. The seller's permit number of the purchaser, except that: a. A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a seller's permit number; or

b. A person registered as a seller in another state, who makes no retail sales in Wisconsin, may insert the name of the state in which registered and the permit number issued to the person by that state.

5. An indication of the general character of the purchaser's business. This is for the protection of the seller, since it may enable the seller to determine whether a particular type of property or service may be sold without collecting the tax. If the nature of the business described is such that the property or services purchased normally would not be resold, the seller should question the purchaser's reason for issuing the certificate. If a satisfactory answer cannot be provided, the certificate should not be accepted. For example, a "continuous" resale certificate describing a business as a "tavern" normally should not be accepted for the sale of a radio, camera, auto part or other item not regularly sold by taverns. If all of these conditions are met, the seller is relieved from the burden of proving that the sale of property or services was not a taxable sale.

(7) CERTIFICATE OF EXEMPTION (Form S-207). (a) The certificate of exemption (Form S-207) is a multiple purpose form which may be used for purchasing any of the following 6 exempt types of property or services:

1. Containers and other packaging, packing and shipping materials used to transfer merchandise to customers of the purchaser.

2. Tangible personal property becoming an ingredient or component part of an article of tangible personal property in any form destined for sale.

3. Trailers or accessories, attachments, parts, supplies, materials and service on motor trucks, tractors and trailers which are used exclusively in common or contract carriage.

4. Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization holding a Certificate of Exempt Status (C.E.S.). Sales to organizations holding a C.E.S. also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals which is located out-of-state, may use the Certificate of Exemption (Form S-207) to purchase without tax even though it has not been issued a Wisconsin Certificate of Exempt Status.

5. Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts or fuel therefor.

6. Commercial vessels and barges of 50-ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts and fuel therefor.

(b) A certificate of exemption may also be used for any other exemption provided by law, except for resale, or for farmers' or manufacturers' exemption claims. The use of the Form S-207 is explained on the back of the certificate.

(8) MANUFACTURER'S EXEMPTION CERTIFICATE (Form S-207m). (a) A supplier which accepts a properly completed manufacturer's exemption certificate (Form S-207m) in good faith marked for "continuous" use Register, September, 1984, No. 345

may make sales to the manufacturer without collecting the tax if the nature of the property or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If a Form S-207m is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser must designate which items are taxable.

(b) If the manufacturer uses "single purchase" certificates, it may print these as an integral part of its purchase orders, as long as the essential information on the approved form is retained.

(9) **FARMER'S EXEMPTION CERTIFICATE (Form S-206).** A retailer shall have a signed farmer's exemption certificate (Form S-206) for every exempt sale made to a farmer. Rule Tax 11.12 describes the types of property which may be sold to farmers without tax, and the use of the farmer's exemption certificate.

(10) **DIRECT PAY PERMITS.** The law does not provide for use of direct pay permits by manufacturers or other businesses. Such permits are allowed in certain states and authorize a purchaser to report taxes directly to the state, even when making taxable purchases from in-state suppliers. Thus, under Wisconsin law, a purchaser must furnish a supplier with the appropriate exemption certificate when making exempt purchases. Assertions by a purchaser that the purchaser will pay the use tax directly to the state should not be accepted, as they do not relieve the seller of the obligation to report the tax on such sales.

(11) **IMPROPER USE OF CERTIFICATES.** A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor. (s. 77.52 (16), Stats.) Such purchaser may also be liable for other penalties provided by law for filing incorrect returns.

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, 1978, No. 275, eff. 12-1-78; am. (7) (a) 4., Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 11.15 Containers and other packaging and shipping materials.** (ss. 77.54 (3m) and (6) (b), Stats.) (1) **ITEMS EXEMPT UNDER s. 77.54 (6) (b).** (a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be "used by the purchaser to transfer merchandise to customers". Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor.

(b) Containers include barrels, bottles, cartons, chemical carboys and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize or protect the contents (such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice and batting) and rope, twine, gummed tape, wrapping paper, rubber bands, crates and crating materials, pallets, skids and mailing tubes.

(c) Gross receipts from the sale of the following items are within the exemption:

1. Cans in which canned goods, paints and other commodities are contained; medicine bottles; boxes in which jewelry, candy, suits, dresses and hats are delivered to customers; and ice cream cartons.

2. Bottles and cases used by breweries, wineries or soda water beverage producers to transfer the product to customers.

3. Barrels, half-barrels, kegs and the like, used by a brewery to transfer draft beer to wholesalers or retailers.

4. Caps for milk, beer and soda water bottles.

5. "Fragile", "Handle with Care" or other shipping labels.

6. Paper food dividers used to separate food sections in a container for transfer to a customer.

7. Paper bags purchased by grocery stores, bakeries or other retailers and used by their customers in carrying out their purchases.

8. Feed bags purchased by feed dealers who use such bags to transfer merchandise sold to their customers.

9. Bale ties sold to a hay owner and used to deliver hay to the owner's customers.

10. Ice used by a commercial fisherman inside a box of fish to preserve the fish during shipment to market.

11. LPG tanks used to transfer fuel to customers which are replaced each time the fuel is exhausted.

12. 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.

(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 as 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.

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

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.

(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.
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,



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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 s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1960, except that the exemption for meat packaging and shipping materials became effective on May 20, 1978 pursuant to Chapter 368, Laws of 1977.

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; cr. (2) (k), Register, December, 1983, No. 336, eff. 1-1-84; renum. (2) (j) to be (1) (c) 12, and am., Register, September, 1984, No. 345, eff. 10-1-84.

**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, Register, September, 1984, No. 345

“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, parts and supplies for exempt vehicles 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 including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, 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: 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.

(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 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.

(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.

(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

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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.

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

(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.

Note: Refer to s. Tax 11.002 for description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(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, 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.

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 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; am. (1) (b), (d) and (2) (b) 2., r. and recr. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1-1-84.

**Tax 11.17 Hospitals, clinics and medical professions.** (ss. 77.51(21), (22) and (22m), 77.52 (2) (a) 1 and 9, 77.54 (9a), (14), (14s), (20) (c) 4 (22) and (28), Stats.) (1) **GENERAL.** (a) Although professional personnel in hospitals and clinics and other members of medical professions including 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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for medicines furnished by a licensed physician, surgeon or podiatrist to

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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.** 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 the 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	Diaphragms
Beds and linens	*Dietary foods
Compresses and dressings	*Disposable syringes containing insulin
Cosmetics	Dye
Deodorants and disinfectants	*Hearing aids and parts
Distilled water	Medical oxygen and equipment to administer oxygen
Enema kits	Medicines
Instruments	*Needles and syringes used by diabetics
Laboratory equipment and supplies	Oral contraceptives
Medical equipment	Pacemakers
Office equipment and supplies	Prescription drugs
Paper products	Prophylactics
Printed material	Rubbing alcohol
Rib belts and supports	Suppositories
Soda water beverages	Sutures
Soap	Vaccines
Splints and cast materials	Vaginal creams and jellies
Uniforms and gowns	Vitamins
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:

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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 g 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: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Note: The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption in sub. (3) for needles and syringes used by diabetics became effective November 19, 1975 pursuant to Ch. 102, Laws of 1975, and the exemption in sub. (3) for oxygen equipment became effective September 1, 1983 pursuant to 1983 Wisconsin Act 27.

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; am. (3), Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (a), Register, August, 1985, No. 356, eff. 9-1-85.

**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

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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 sub. (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. 77.51 (30), 77.52 (2) (a) 11, 77.54 (2m), (9a), (15), (25) and (30), 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), Stats., provides an exemption for the sale of newspapers, periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months and shoppers guides.

(c) Section 77.54 (25) 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.

(d) Section 77.54 (2m), Stats., provides an exemption for "The gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient." This exemption applies to newspapers, shoppers guides and to periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (30), Stats.

(3) **NEWSPAPERS, SHOPPERS GUIDES AND PERIODICALS DEFINED.** (a) Section 77.51 (30), Stats., defines a "newspaper" under ch. 77 as: ". . . those publications which are commonly understood to be newspapers and which are printed and distributed periodically 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) is a newspaper. 'Newspaper' also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of

that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A 'newspaper' does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection 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

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within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."

(b) Section 77.54 (15), Stats., defines a shoppers guide as: "a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals."

(c) The exemption for periodicals is limited to publications which are sold by subscription and which are regularly issued at average intervals not exceeding 3 months 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, 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.

(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

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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 s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) where other dates are shown; (b) the second class mail standard described in sub. (3) became effective on August 1, 1974; (c) the exemption for sales of shoppers guides became effective July 1, 1978; (d) the exemption for ingredients and components of shoppers guides, newspapers and periodicals described in par. (2) (d) became effective July 2, 1983; (e) the definition of newspaper in par. (3) (a) was added to the law effective July 2, 1983; and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983.

**History:** Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (c) and (4) (b), Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (b) and (3) (c), cr. (2) (d), r. and recr. (3) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84.

**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.

(g) The tobacco products tax imposed under ss. 139.76 and 139.78, Stats.

(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:

(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; cr. (2) (g), Register, December, 1983, No. 336, eff. 1-1-84.

**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 sells a warranty applicable to such property and includes a charge for the warranty in the sales price are taxable.

(2) **REPAIRS BY RETAILERS.** (a) A retailer who performs repair work, including supplying parts and services, without charge under a warranty of a manufacturer or other person is not subject to tax on the amount of the reimbursement received from the warrantor whether the reimbursement is in the form of money or the replacement of parts used to perform the repair work.

(b) Gross receipts from charges by a retailer to a customer for repair parts or service performed under a warranty are taxable, including gross receipts from the sale of service contracts. Charges by a manufacturer or other person for service contracts are taxable.

(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; am. (1), (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84.

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**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:

"(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property of service."

(b) For the privilege of selling, leasing or renting tangible personal property at retail, a sales and use tax is imposed upon all retailers' gross receipts from the sale, lease or rental of tangible personal property. Section 77.51(11)(a)(intro.) provides:

" 'Gross receipts' means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise . . ."

(2) GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS. Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise.

(a) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in such volume. In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person furnishing such property to the retailer is subject to the use tax on its cost of the property donated.

(b) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer's tax liability accrues at that time.

(c) *Gifts shipped out-of-state.* When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) *Sales incentive plans.* Persons transferring taxable personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of such property.

(3) COUPONS AND PREMIUMS. (a) *Coupons for free property issued and redeemable by manufacturer.* When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for personal property without charge, the transfer of property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon.

(b) *"Cents-off" coupons redeemable by manufacturers.* A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. Such coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon.

(c) *Coupons issued and redeemable by retailers.* When a retailer distributes coupons which its customers may use to obtain free premiums in the form of tangible personal property, there is no tax liability for the premiums if exempt property is given. However, if taxable property is given:

1. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows is to be given as a premium to customers without the customers being required to purchase other property to receive the premium. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer shall report the use tax based on the cost of the property.

2. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows will be given as a premium to a customer when that customer purchases other property which is not subject to the sales tax (e.g., gasoline and exempt food). If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer is required to report the use tax based on the cost of the property.

3. A retailer may use a resale certificate when purchasing taxable property which will be given as a premium to the retailer's customer when that customer purchases other property which is also subject to the sales tax. Since this transaction is deemed a sale of both the premium and the other property, the retailer may purchase the premium without payment of the sales tax by claiming an exemption for resale.

4. The taxable gross receipts of retailers, who issue "cents-off" coupons which reduce the price of merchandise they sell and who receive no

reimbursement from a manufacturer, are the reduced amounts charged the customer.

(4) **COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS.** (a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. For example, coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games. The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of such receipts to the participating retailers.

(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon. Any additional receipts received from the person using the coupons also are taxable.

(c) Except for meals, retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

(5) **TRADING STAMPS.** (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of such material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts shall not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of such stamps.

**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 11.29 Leases and rentals of tangible personal property.** (ss. 77.51 (4) (j), (7) (k) and (11) (c) 5, 77.52 (1) and 77.58 (6), Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of tangible personal property shall be subject to the sales and use taxes to the same extent that gross receipts from the sale of the same property would be subject to the tax. Because a lease is a continuing sale for the duration of the lease while the leased property is situated in this state (s. 77.51 (4) (j), Stats.), a lessor shall pay tax on rental receipts for any period of time leased property is in Wisconsin, even though the property may have been acquired and/or used previously by the lessee in another state.

(2) **PURCHASES FOR RENTAL.** (a) A lessor's purchase of tangible personal property to be used solely for lease or rental shall be exempt as a purchase for resale.

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(b) A lessor's purchase of lubricants, repair parts and repair services on personal property used solely for leasing shall also be exempt as a purchase for resale. However, if the same items are purchased by a renter or lessee, the purchases shall be taxable.

(c) Charges by a lessor to a lessee under a maintenance contract on leased personal property shall be taxable.

(3) **PROPERTY BOTH RENTED AND USED PERSONALLY.** If tangible personal property is purchased by a person who uses it part of the time and rents it out part of the time, the sale of the property to such person shall be taxable. The lessor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(4) **SERVICE VS. RENTAL OF EQUIPMENT.** (a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.

(b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out such equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment, the entire charge is subject to the tax. However, the operator's services shall not be taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.

(c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks and the public service commission and the department of transportation's division of motor vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable.

(5) **CREDIT FOR SALES TAX PAID.** If a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or claim a credit against the tax due on rental receipts from the property involved. (s. 77.51(11)(c)5). If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the seller paid sales tax to the state.

(6) **SPECIAL RENTAL SITUATIONS.** (a) *Demurrage.* The charge a gas supplier makes to a customer-consumer, because a gas cylinder is retained beyond a 30 day (or other) period, shall be taxable. Such "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softeners.* The gross receipts from rental of a cylinder type water softener which is periodically removed from a customer's premises for recharging and replaced by another unit shall be taxable.

(c) *Chemical toilets.* A lessor's entire charge for the use of chemical toilets used at fairs and other similar events shall be taxable, including cleaning services provided as part of the total charge.

(d) *Mobile homes.* Rental of a mobile home shall be taxable unless the mobile home is converted to real property by hooking it up to utilities and placing it on a foundation on land owned by the lessor. However, even if it is placed on a foundation and hooked up to utilities, a mobile

home shall remain tangible personal property if the lessor does not own the realty on which it is located.

(e) *Lease cancellation charge.* A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property shall be taxable. The payment shall be deemed consideration arising from the original lease since it effectively decreases the term of the lease and thereby increases the rental payments for the actual period the property was used.

(f) *Delivery and erection.* Lessors of scaffolding or other tangible personal property who set forth separate charges for transportation, assembly and disassembly shall pay tax on their total gross receipts. A lessee rents property when it is assembled and in place and the charges for transportation, assembly and disassembly shall be deemed part of a lessor's rental receipts.

(g) *Funeral coaches.* An owner of a hearse shall receive taxable gross receipts when the owner furnishes it (with or without a driver) to a funeral director who is responsible for conducting the funeral service. If it is customary or mandatory that the lessee (funeral director) take the operator with the leased vehicle, the entire charge shall be taxable.

**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, July, 1977, No. 259, eff. 8-1-77.

**Tax 11.30 Credit sales, bad debts and repossessions.** (ss. 77.51 (4) (c), (4r), (11) (b), (c) 3 and (d), 77.52 (6) and 77.53 (4), Stats.) (1) **CREDIT SALES.** (a) *Sales.* If taxable personal property is sold on credit, the entire amount of the retailer's gross receipts from the sale shall be taxable and shall be reported in the tax return for the period in which the sale is made. A sale involving the transfer of ownership of property is completed at the time and place where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The tax shall be reported on taxable gross receipts on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) *Repossessions.* No deduction from gross receipts shall be made if property sold on credit is repossessed unless the entire consideration paid by the purchaser is refunded or a deduction for worthless accounts is allowable under s. 77.51 (11) (b) 4, Stats.

(2) **BAD DEBTS.** (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 the accounts may claim worthless and 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 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.

(b) *Recovery of bad debts charged off.* If any accounts found worthless and charged off are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

(c) *Amount deductible.* 1. *Nontaxable receipts.* If an account found worthless and charged off is comprised in part of nontaxable receipts (such as interest, financing or insurance) and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied ratably against the various charges comprising the amount the purchaser contracted to pay.

2. *Expenses of collection.* No deduction is allowable for expenses incurred by the retailer in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(d) *Special situations.* 1. A purchaser of receivables is not entitled to a bad debt deduction for such receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

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 the construction contract.

4. A retailer permitted to report gross receipts on the cash receipts basis may not claim a bad debt deduction.

(e) *Repossessions.* When property on which a receivable exists is repossessed, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, attributable to the cash sales price of the property, is less than the cash sales price upon which sales or use tax was paid.

(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

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\$1,000, or \$800, may be taken as a bad debt, resulting in a tax credit of \$40. Four percent divided by 5% equals 80%.

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:

	Cash Sales Price	Sales Tax	Finance Charge	Total
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	\$12,952.38	\$647.62	-	\$13,600.00
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$12,952.38	\$647.62	\$1,360.00	\$14,960.00
6. Payments on contract (2)	<u>5,887.45</u>	<u>294.37</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><u>1,870.12</u></u>			\$ 1,870.12
10. Nondeductible loss		<u><u>\$ 93.51</u></u>	<u><u>\$ 196.37</u></u>	<u><u>289.88</u></u>
11. Total loss				<u><u>\$ 2,160.00</u></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.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (a) and cr. (3), Register, September, 1984, No. 345, eff. 10-1-84.

**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.

(c) A manufacturer's cash rebate to a person who purchases tangible personal property or taxable service 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 state 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 state tax equals 5% of each full dollar plus the tax shown above for the applicable fractional part of a dollar.

(am) In counties having a county tax, the following bracket system is used.

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<u>Amount of Taxable Sale</u>	<u>Combined State and County Tax of 5½%</u>
\$ .01 - \$ .09	0¢
.10 - .27	1¢
.28 - .45	2¢
.46 - .63	3¢
.64 - .81	4¢
.82 - .99	5¢
1.00 - 1.18	6¢
1.19 - 1.36	7¢
1.37 - 1.54	8¢
1.55 - 1.72	9¢
1.73 - 1.90	10¢
1.91 - 2.09	11¢

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2. Example: For a sale of \$11.50, the 5½% tax is 63¢ (55¢ for \$10 sale plus 8¢ for \$1.50 sale).

(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 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; am. (3) (c), Register, December, 1983, No. 336, eff. 1-1-84; emerg. am. (5) (a), eff. 3-24-86; am. (5) (a) (am), Register, October, 1986, No. 370, eff. 11-1-86.

**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:

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- (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.
- (n) Bending glass tubing into neon signs.

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(o) Laminating identification cards.

(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. Sales or use tax applies to the entire amount charged for such services, including the charge for materials on which the service is performed.

**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, October, 1976, No. 250, eff. 11-1-76.

**Tax 11.39 Manufacturing.** (ss. 77.51 (27) and 77.54 (2) and (6) (a), Stats.) (1) **DEFINITION.** Manufacturing means an operation complete in itself, or one of a series of operations, whereby, through the application of machines to tangible personal property by a process popularly regarded as manufacturing, a new article of tangible personal property with a different form, use and name is produced.

(2) **SCOPE OF MANUFACTURING.** (a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

(b) Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities or research and development.

(3) **MANUFACTURERS.** Manufacturers ordinarily include the following:

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- (a) Asphalt plants.
- (b) Bakeries.
- (c) Battery makers.
- (d) Breweries and soda water bottling plants.
- (e) Candy factories.
- (f) Cement and concrete plants, including concrete mixing and processing units mounted on trucks or trailers. The exemption does not apply to the trailer or truck chassis, including its motor, which is used to provide a transportation service since they are not exclusively used in manufacturing.
- (g) Chemical processing plants.
- (h) Concrete block and tile producers.
- (i) Creameries and instant milk producers.
- (j) Dairies and cheeseplants.
- (k) Electric generating companies.
- (l) Flour and feed mills, including mobile units.
- (m) Food processing plants (canning and freezing).
- (n) Foundries.
- (o) Glass making plants.
- (om) Heat treaters and metal platers performing these services on semi-finished products furnished by manufacturers.
- (p) Limestone calcination plants.
- (q) Machine and equipment producers.
- (r) Malting plants.
- (s) Meat packing and processing plants.
- (t) Motor vehicle and aircraft factories.
- (u) Oil refineries.
- (v) Paint factories.
- (w) Paper making plants.
- (x) Printers.
- (y) Sawmills.
- (z) Scrap processors.
- (za) Shoe and clothing factories.
- (zb) Smelting and steel mills.
- (zc) Tanneries.
- (zd) Tool and die making plants.

(ze) Crushing, washing, grading and blending sand, rock, gravel and other minerals.

(zf) Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.

(zg) Tire retreaders.

(4) NONMANUFACTURERS. Examples of nonmanufacturers are:

(a) Automobile and auto parts rebuilders.

(b) Contractors.

(c) Butcher shops.

(d) Dental labs.

(e) Farmers.

(f) Fish hatcheries.

(g) Freezer and locker plants.

(h) Highway truckers.

(i) Hotels.

(j) Junk and scrap dealers.

(k) Key shops.

(l) Laundries and dry cleaners.

(m) Repairmen.

(n) Restaurants.

(o) Television and radio stations.

(r) Persons engaged in:

1. Corn shelling.

2. Performing custom work to the individual order of household consumers.

3. Experimental and development activities.

4. Grain drying.

5. Logging and forestry operations.

6. Mining.

7. Paper recycling.

8. Photography.

9. Popping corn.

11. The business of raising and breeding animals.

12. Real property construction activities.



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## 13. Custom slaughtering of animals.

## 14. Vending machine operations.

Note: The interpretations in s. Tax 11.39 are effective under the general sales and use tax law on and after September 1, 1969, except the exemption for mobile redi-mix concrete units in (3) (f) which became effective September 1, 1983, pursuant to 1983 Wisconsin Act 27.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (3) (j), (4) (c) and (r) 13., cr. (3) (om), Register, June, 1983, No. 330, eff. 7-1-83; am. (1), (3) (f), cr. (3) (ze), (zf) and (zg), r. (4) (p), (q) and (r) 10., Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.40 Exemption of machines and processing equipment.** (ss. 77.51 (27) and 77.54 (6) (a), Stats.) (1) GENERAL. (a) Section 77.54 (6) (a) exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (6) (a) and in this section means that the machines and specific processing equipment and repair parts or replacement thereof are used solely by a manufacturer in manufacturing tangible personal property to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing tangible personal property.

(b) Section 77.51 (27) provides "For purposes of s. 77.54 (6) (a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

(c) In determining whether a particular machine or piece of processing equipment is included in this exemption, these 2 statutes must be considered together.

(2) CONDITIONS FOR EXEMPTION AND EXAMPLES. This exemption shall apply if all the following conditions are met:

(a) Machines and processing equipment shall be used *by a manufacturer* in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities. For example, machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor produces tangible personal property.

(b) Machines and processing equipment shall be used exclusively in manufacturing. For example, a forklift truck used on a production line to move products from machine to machine and used regularly or frequently in a warehouse to move and stack finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used *directly in manufacturing*. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though such machine and equipment are indirectly related to the step-by-step processes. For example, machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications, lighting, safety, fire protection or prevention; research;

storage; delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing. Machine foundations are real property improvements rather than personal property.

(3) **OTHER EXAMPLES OF THE EXEMPTION.** Other examples of application of the exemption are as follows:

(a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment". Small tools include hand tools such as drills, saws, micrometers and hammers. However, if such items are used regularly, frequently or totally for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by such manufacturer to produce tangible personal property. For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed (e.g., machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities, research, or crating or packaging for shipment).

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant. For example, sweeping compounds are factory supplies rather than processing equipment.

Note: For the sales and use tax status of wearing apparel, see Tax 11.41 (3) (a) 15. and (4) (h).

(4) **REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT.** The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.

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, 1977, No. 263, eff. 12-1-77; am. (4) (e), Register, October, 1979, No. 286, eff. 11-1-79; am. (1) (a), (2) (b), (3) (a) to (c), Register, November, 1981, No. 311, eff. 12-1-81.

**Tax 11.41 Exemption of property consumed or destroyed in manufacturing.** (ss. 77.54 (2) and 77.54 (6) (a), Stats.) (1) **GENERAL.** (a) Section 77.54 provides in part: "There are exempted from the taxes imposed by

this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."

(b) As used in s. 77.54 (2), Stats., "manufacture" shall conform to the definition of "manufacturing" in s. 77.51 (27), Stats.

(2) RELATIONSHIP OF SS. 77.54 (2) AND 77.54 (6) (a). In construing the exemption provided in s. 77.54 (2), it is necessary to refer to another exemption provided in s. 77.54 (6) (a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Sections 77.54 (2) and 77.54 (6) (a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by s. 77.54(6)(a) and if they are not, cannot be within the exemption provided by s. 77.54(2).

(3) EXAMPLES OF PERSONAL PROPERTY WITHIN S. 77.54(2) EXEMPTION.  
(a) The following property is within the exemption provided by s. 77.54(2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining manufacturing machinery during the manufacturing process.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.
15. Gloves and other wearing apparel used by employes on the production line to prevent contamination of the manufactured product.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the

manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) **EXAMPLES OF PERSONAL PROPERTY NOT WITHIN S. 77.54(2) EXEMPTION.** The following property is not within the exemption provided by s. 77.54(2), although such property may be exempt under s. 77.54(6)(a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in s. Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel for the comfort or welfare of the employe or for the protection of the employe's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur-lined boots and jackets.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by s. 77.54(2) even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. Since "fuel" is not defined in s. 77.54(2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

- (a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.
- (b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

**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; cr. (3) (a) 15. and am. (4) (h), Register, October, 1979, No. 286, eff. 11-1-79.

**Tax 11.45 Sales by pharmacies and drug stores.** (ss. 77.51 (21) and (22) and 77.54 (14), (14s), (22) and (28), Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in paragraph (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.
3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast materials.

(3) EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES. The exemption for medical appliances and prosthetic devices under s. 77.54 (14s), (22) and (28), Stats., shall apply to sales of the following:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

(b) Trusses, supports, shoes, braces and elastic hose only when specially fitted or altered to fit a particular person. "Altered" includes the bending of metal stays but does not include adjusting straps or seams.

(c) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pacemakers, and other equipment worn as a correction or substitute for any functioning part of the body. This exemption shall not apply to wigs or

hair pieces, to garments designed to restrict or enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not "worn" by a person.

(d) Crutches and wheelchairs for the use of invalids and crippled persons, open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.

(e) Apparatus or equipment for the injection of insulin and equipment used to administer oxygen for medical purposes if the patient has a prescription for oxygen written by a person authorized to prescribe oxygen. The exemption for oxygen equipment applies to oxygen carts acquired for use by patients with a prescription for oxygen.

(f) Parts for and services to the exempt items listed in this subsection.

(4) **MEDICARE CLAIMS.** The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

**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, October, 1976, No. 250, eff. 11-1-76; r. (2) (c) 5., am. (3) (intro.) and (e), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.46 Summer camps.** (s. 77.52 (1) and (2) (a) 1, Stats.) (1) **DEFINITIONS.** In this rule:

(a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual (e.g., the YMCA and Boy Scouts of America).

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) **TAXABLE RECEIPTS.** Receipts from the following are taxable:

(a) Meals or other tangible personal property sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(3) **EXEMPT RECEIPTS.** Receipts from the following are exempt:

(a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Groceries sold to campers, such as for cookouts.

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(4) **COMBINED CHARGE.** An allocation between taxable and exempt receipts must be made when a single (combined) charge is made for all the privileges extended by a camp. Adequate records must be kept and maintained to enable the proper allocation; otherwise, the total charge shall be taxable.

(a) If there is no separate charge for meals; gross receipts from the sale of meals may be determined by adding 10% (to cover overhead costs) to the cost of the food and labor for food preparation.

(b) If there is no separate charge for lodging; gross receipts from lodging furnished by private camps to any person residing for a continuous period of less than one month shall be presumed to be \$3 per person per night.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that the amount shown in sub. (4)(b) became effective September 15, 1970. Prior to that date the tax was based on \$2 per person per night.

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.47 Commercial photographers and photographic services.** (ss. 77.52 (2) (a) 7 and 77.54 (2), Stats.) (1) **TAXABLE GROSS RECEIPTS.** Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services include gross receipts from:

- (a) Taking, reproducing and selling photographs.
- (b) Processing, developing, printing and enlarging film.
- (c) Enlarging, retouching, tinting or coloring photographs.
- (d) Processing exposed film into color transparencies, mounted or unmounted.
- (e) Reproducing copies of documents, drawings, photographs, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.
- (f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) **AMOUNTS INCLUDED IN GROSS RECEIPTS.** (a) Gross receipts subject to the tax include charges for photographic materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from gross receipts subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) **PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES.** (a) Commercial photographers and others providing photographic services may purchase, without paying sales or use tax, any item which becomes a component part of an article destined for sale if a properly completed exemption certificate is given the seller. Such items include:

1. Mounts, frames and sensitized paper used in the finished photograph and transferred to the customer.

2. Film (i.e., colored transparencies and movie film) in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

3. Containers, labels or other packaging and shipping materials used to transfer merchandise to customers.

(b) Photographers and others providing photographic services are required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. Such items include:

1. Chemicals.
2. Trays.
3. Film (other than noted in par. (a) 2).
4. Plates.
5. Proof paper.
6. Cameras.
7. Other photographic equipment.

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.

**Tax 11.48 Landlords, hotels and motels.** (ss. 77.51 (7) (n) and (24) and 77.52 (2) (a) 1 and 9, Stats.) (1) **LANDLORDS.** (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales or use tax applies to a landlord's purchases of all such items. The gross receipts from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for such parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking or storage.

(2) **HOTELS AND MOTELS.** The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business (such as a trucking company, railway or airline) to be used by its employees for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally



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used as sleeping accommodations is taxable, regardless of the use to which the room is put. For example, the rental of a motel sleeping room by a salesman from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all such items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department of revenue for reasonableness.

(b) In computing the ratio in par. (a), tangible personal property includes property subject to the sales tax, such as furniture, furnishings, equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment. For example, if the investment (valued at undepreciated original cost) on the effective date of a lease is \$100,000 for tangible personal property and \$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ( $\$100,000 \div \$500,000$ ) to the gross lease receipts for each sales tax reporting period.

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 11.49 Service stations and fuel oil dealers** (ss. 77.52 (2) (a) 10 and 77.54(3), (5), (9a), (11) and (30), Stats.) (1) **TAXABLE SALES.** Sales by service station operators and fuel oil dealers subject to the sales tax include the following:

(a) The sale of furnace or heating fuel to customers, other than for residential or farm use.

(b) The repair, service, cleaning, painting, towing, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor.

(c) The towing of motor vehicles if the towing is related to the repair, service or maintenance of the vehicle. The following services are not considered taxable towing services:

1. Towing vehicles from "no parking" zones.
2. Towing a demolished vehicle to a junk yard.

### 3. House moving or relocating a mobile home.

(d) Retail sales of tangible personal property (e.g., motor oil, anti-freeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks) by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(2) **EXEMPT SALES.** Sales by service station operators and fuel oil dealers not subject to the sales tax include the following:

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate, Form S-207; to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. On special fuel sold or used for off-highway purposes, the licensee is required to pay the sales or use tax, unless the fuel is used in farm tractors or farm machines used directly in farming.

(b) Sales made directly to governmental units of this state, schools or any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes. Sales to employes of these entities are not exempt, even though the entity may reimburse the employe for the expenditure.

(c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.18 (2) (a), Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of fuel, parts and repairs for tractors or farm machines used directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales of general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54 (5) (a), Stats.

(f) Sales of coal, fuel oil, propane, steam and wood used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) (1) 7 and 8.

(3) **PURCHASES.** (a) Service station operators who repair motor vehicles may purchase without tax ("for resale") repair parts and materials used in such work which are physically transferred to their customers (e.g., auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods).

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies

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such as sandpaper, masking paper, masking tape, buffing pads, paint and 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 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 \$2,500 during the year as provided in s. Tax 11.10 (3).

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.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (e), Register, December, 1983, No. 336, eff. 1-1-84; am. (4) (d) 3, Register, April, 1985, No. 352, eff. 5-1-85.

**Tax 11.51 Grocers' guidelist.** (ss. 77.52 (1), 77.54 (15) and (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),

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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.	Cigarettes	Flash bulbs.
Albums.	Cigarette lighter	Flatware.
Amonia.	fluid, wicks, flints.	Floor care products.
Anti-acid products.	Cigars.	Flowers and seeds.
Anti-freeze.	Cleaning equipment	Food coloring.
Appliances.	and supplies.	Foot care products.
Ash trays.	Cleansers.	Foil (aluminum and
Aspirin.	Clocks.	similar products).
Auto supplies.	Clothes lines.	Frames.
Baby needs (except	Clothespins.	Fuel and lubricants.
food).	Clothing.	Fudgesicles.
Bags (all kinds).	Cocktail mixes.	Furniture polish.
Bakeware.	Cod liver oil.	Games.
Baskets.	Cold remedies.	Garden needs.
Barbeque supplies.	Coloring extracts.	Garbage bags and
Batteries.	Combs and brushes.	cans.
Beauty aids.	Confections.	Gifts (non-food).
Beer.	Cough drops.	Ginseng.
Beer making supplies.	Cracker jacks.	Glassware.
Binders (notebook).	Crayons.	Gloves.
Bird food and sup-	Dental aids.	Glue.
plies.	Deodorants.	Greeting cards.
Bleach.	Detergents.	Grooming aids.
Blueing.	Dinnerware.	Gum.
Bobby pins and roll-	Disinfectants.	Hair care products.
ers.	Distilled spirits.	Hardware.
Books.	Dixie cups.	Heated foods and
Bowl cleaner.	Dog food and sup-	beverages (1).
Breath mints.	plies.	Health and beauty
Brooms.	Dolls.	aids.
Brushes.	Drain cleaners.	Hosiery.
Bubble bath.	Drug sundries.	Household equipment
Cameras and sup-	Dry cleaners.	and supplies.
plies.	Dye.	Ice (cube and
Cake decorations	Electrical supplies.	block).
(non-edible).	Eskimo pies.	Ice cream bars.
Calcium tablets.	Facial tissues.	Ice cream in cones.
Candied fruits.	Farm and garden im-	Internal remedies.
Candy.	plements.	Intoxicating liquor.
Candy apples.	Feminine hygiene	Insect and pest con-
Canning and freezer	needs.	trol products.
supplies.	Fermented malt bev-	Iron tablets.
Can openers.	erages.	Jewelry.
Carbonated	Fertilizers.	Kool aid and similar
beverages.	Fiddle faddle.	items.
Cat food.	Film.	Kotex and similar
Charcoal and starter.	First aid products.	items.
Chewing gum.	Fizzies.	

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

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

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

Cookies and crackers.	Juices, pure fruit (3).	Preserves.
Cooking oils.	Lobster.	Pretzels.
Cream.	Luncheon meats.	Puddings.
Desserts and top- pings.	Macaroni.	Raisins.
Dietary foods (4).	Malted milk powder.	Ravioli.
Dinners, frozen.	Maraschino cherries.	Relishes.
Doughnuts.	Marshmallows.	Rice.
Dressing.	Mayonnaise.	Rolls and biscuits.
Dried fruits.	Meal.	Saccharin.
Dried milk products.	Meat and meat prod- ucts.	Salad dressing.
Eggs.	Meat extracts and tenderizers.	Salt and salt substi- tutes.
Federal food stamp receipts.	Melons.	Salted nuts.
Fish and fish prod- ucts.	Meritene.	Sardines.
Flavoring extracts.	Milk and milk prod- ucts.	Seafoods.
Flour.	Mustard.	Seasonings.
Fritos.	Newspapers.	Sherbet.
Frozen desserts.	Noodles.	Shortening.
Frozen fruit juices (3)	Nuts, except candy coated.	Soup.
Frozen fruits and veg- etables.	Oil, cooking, salad.	Spaghetti products.
Frozen pizza.	Oleomargarine.	Spices.
Frozen TV dinners.	Olives.	Spreads.
Fruit.	Pancake mix.	Sugar.
Garlic.	Peanuts, in shell or canned, salted or not.	Sweeteners.
Gelatin.	Peanut butter.	Syrup.
Gravy extracts and mixes.	Pepper.	Tea and ice tea.
Grits.	Pickles.	Turkey.
Hash.	Pie and pie fillings.	Vanilla and vanilla extract.
Honey.	Pie crust and mixes.	Vegetable juices.
Ice cream, pints or larger.	Potato chips.	Vegetables.
Jams.	Potato salad.	Vinegar.
Jellies.	Poultry and poultry products.	Waffle mix.
Jello.		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 s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of cigarettes became taxable on September 1, 1975 pursuant to Chapter 39, Laws of 1975 when an exemption in s. 77.54 (23), Stats., was eliminated, and magazines and periodicals sold over-the-counter became taxable on September 1, 1983 pursuant to 1983 Wisconsin Act 27, which amended s. 77.54 (15), Stats.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) (b), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84.

**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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(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, peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, tobacco products, 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.

(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.

(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.

(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, 5 and 10 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; am. (3) (a)1. and r. (4) (c), Register, December, 1983, No. 336, eff. 1-1-84.

**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, 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 s. 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.

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## 3. Concessionaire permit.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(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 beginning 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, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of s. 77.51 (7) (c), Stats., if said entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(5) As retailers, such entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52 (7), Stats., and may be required to post security as provided in s. 77.61 (2), Stats. Such retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

**Note:** Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax. Further, it does not apply to churches or other

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nonprofit groups which operate within the occasional sale limitations of s. 77.51 (10) (c), Stats.

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, March, 1976, No. 243, eff. 4-1-76; renum. from Tax 11.02; Register, January, 1978, No. 265, eff. 2-1-78.

**Tax 11.55 Agents, consignees, lienors and brokers.** (s. 77.51 (4g) (f), (7) and (8), Stats.) (1) **UNDISCLOSED PRINCIPAL.** A person who has possession of personal property owned by an unknown or undisclosed principal and has the power to transfer title to that property to a third person, and who exercises that power, is a retailer whose gross receipts are subject to the tax.

(2) **DISCLOSED PRINCIPAL.** (a) Gross receipts from the sale of tangible personal property made by a person with possession of the property, who is acting for a known or disclosed principal, are taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property. If the principal fails to pay the tax, the agent may be liable for it.

(b) A principal shall be deemed disclosed to a purchaser only when the evidence shows that the identity of the principal is made known to the purchaser at the time of the sale, and when the name and address of the principal appear on the books and records of the agent.

(3) **ENFORCEMENT OF LIENS.** Pawnbrokers, storage persons and others selling tangible personal property to enforce a lien are retailers with respect to such sales, and tax applies to the gross receipts from such sales.

(4) **REPOSSESSIONS.** Repossessions of tangible personal property by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

Note: The interpretations in this rule are effective under the general sales and use tax law effective September 1, 1969.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

**Tax 11.56 Printing industry.** (ss. 77.51 (4) (h), (25) and (30); 77.52 (1) and (2) (a) 11 and 77.54 (2), (2m) and (6) (a) and (b), Stats.) (1) **DEFINITIONS.** In this section:

(a) The process of manufacturing printed matter by a manufacturer includes initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate-ready film, and producing an image carrier which is installed on a printing press, or equivalent prepress technology employed to produce an image carrier, and the bindery/finishing stage.

(b) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typeset-Register, August, 1985, No. 356

ting machinery and equipment includes, fonts, video display terminals, tape and disc making equipment, computers and typesetters which are interconnected to operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

(c) "Manufacturer" includes a printer or other person who performs any one or more of the processes in manufacturing printed matter, provided that the printer or other person qualifies as being engaged in manufacturing under s. 77.51 (27) Stats., whether or not the printed matter is sold.

(2) PRINTERS' TAXABLE SALES. Taxable receipts of printers include gross receipts from the following, unless otherwise exempt.

(a) Charges for printing, lithography, photolithography, rotogravure, gravure, letter press, silk screen printing, imprinting, multilithing, mimeographing, photostating, steel die engraving, and similar operations for consumers, whether or not the paper and other materials are furnished by the consumers. A printer's charge for printing on paper furnished by a customer to produce printed matter not to be sold is subject to the tax.

(b) Charges for services in connection with the sale of printed matter, such as overtime and set-up charges, die cutting, embossing, folding, and binding operations, and charges for painting signs, show cards and posters, whether the materials are furnished by the printer or by the customer.

(c) Charges for envelopes, but not for separately stated charges for postage in the sale of prestamped envelopes.

(3) TAXABLE SALES BY OTHERS. (a) Sales of tangible personal property by persons who are not printers, including so-called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binder/finishers are taxable unless the sales qualify for exemption under s. 77.54 (2), (2m) or other statutes.

(b) 1. Section 77.54 (2) exempts the gross receipts from sales of ". . . tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale . . ."

2. Section 77.54 (2m), Stats., exempts the gross receipts from sales of "tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. The exemption . . . does not apply to advertising supplements that are not newspapers."

(c) Tangible personal property includes type-matter, whether or not combined with artwork, such as typeset output, a paste-up, mechanical, assembly, camera-ready copy, flat or a photoreproduction (including film plates).

(4) **NONTAXABLE SALES.** Tax does not apply to charges, if stated separately on invoices and in the accounting records, for mailing services such as:

(a) Addressing printed matter by hand or mechanically for the purpose of mailing.

(b) Enclosing, sealing and preparing for mailing.

(c) Mailing letters or other printed matter.

(5) **EXEMPT PRINTING MACHINERY AND EQUIPMENT.** Section 77.54 (6) (a), Stats., provides that: "Machinery and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property" are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements thereof used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property. Interpretations of this statute are contained in s. Tax 11.40.

(6) **PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER FOR SALE.** (a) Persons engaged in manufacturing printed matter for sale may purchase the following items without tax under the statutes indicated:

1. Section 77.54 (2). Property becoming an ingredient or component part of an item destined for sale (e.g., paper stock or printing ink).

2. Section 77.54 (2). Property such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate-ready film, other positives and negatives, flats and similar items which are consumed, destroyed or lose their identity in the manufacture of tangible personal property to be sold. For example, a printer's purchases of positives and negatives which are used to produce catalogs and shoppers guides it sells to other persons.

3. Section 77.54 (6) (b). Containers and packaging and shipping materials for use in packing, packaging or shipping printed matter to their customers.

(b) The exemptions under s. 77.54 (2), Stats., described in par. (a) 1 and 2, apply to property purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer in manufacturing tangible personal property to be sold. The exemption under s. 77.54 (2) does not apply if the manufactured tangible personal property is not to be sold. Examples of nontaxable purchases include:

1. A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives to produce printing on the manufacturer's products which are to be sold.

2. An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations to produce advertising material the agency sells to a retailer.

3. A publisher's purchases of paper and ink which are furnished to a commercial printer to produce a publication to be sold.

(7) **PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER NOT FOR SALE.** (a) An exemption applies for tangible personal property or services  
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that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not they are transferred without charge to a recipient.

**Note:** Examples of nontaxable purchases: 1. A shoppers guide publisher, who distributes the publication without charge, purchases paper and furnishes it to a printer who charges for the printing of the shoppers guide.

2. A shoppers guide publisher purchases paper it uses to print a shoppers guide which it distributes without charge to recipients.

(b) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items if such purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under (a).

**Note:** Example. A retailer purchases color separations which are used in its own printing plant to produce advertising material it distributes to its customers in Wisconsin.

**Note:** The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983 and the exemption in subd. (3) (b) 2 for ingredients of publications was created by 1983 Wisconsin Act 27, effective July 2, 1983.

**History:** Cr. Register, March, 1983, No. 327, eff. 4-1-83; am. (3) (a), renum. (3) (b) to be (3) (b) 1., cr. (3) (b) 2., r. and recr. (7), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.57 Public utilities.** (ss. 77.54 (3), (6) (a) and (c), (17) and (30), Stats.) (1) **TAXABLE SALES.** The gross receipts from the sale of the following tangible personal property and services provided by utilities are taxable:

(a) Utility services billed to household, industrial or commercial customers, with any adjustments for discounts taken by customers (e.g., early payment discount) in the utility's next reporting period.

(b) Excess use charges and minimum or idle service charges.

(c) The gross amounts received for contacts on poles and excess pole height contributions.

(d) Parking space rentals.

(e) Rentals of transformers located on a customer's property.

(f) Labor and materials to install or repair conversion burners.

(g) The rental of water heaters.

(h) Sales of scrap, gravel or timber sold for removal.

(i) Sales of tools, used equipment and other tangible personal property to employees.

(j) Pilot relights for furnaces ("no heat" calls), or replacing appliance fuses.

(k) Sale of a utility overhead transmission or distribution line in place, if installed under easement or license on land owned by others. (See rule Tax 11.86.)

(l) Charges to builders to put in "temporary services".

(2) **NONTAXABLE SALES.** Gross receipts from the following charges to customers are not subject to the tax:



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

(b) Utility services delivered to Indians living on a Indian reservation, or services delivered on the reservation to an Indian tribal governing board.

(c) Billings for repairs to persons who damaged utility property.

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

(f) Contributions in aid of construction (i.e., payments by a customer to have a line extended to the customer's property).

(g) The installation charge for a pole sold to customer, which is installed on land owned by the customer.

(h) "Wheeling" energy for another utility.

(i) Sales of gas or other fuel (electricity is not a fuel) to farmers if the fuel is used to heat farm buildings, including greenhouses.

(j) Labor charged a customer for the installation of a complete furnace or built-in appliance.

(k) Water delivered to customers through mains.

1. Coal, fuel oil, propane, steam and wood used for fuel, sold for residential use.

2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.

3. Electricity sold during the months of November, December, January, February, March and April for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

4. For purposes of the exemptions in subds. 2 and 3, s. 77.54 (30), Stats., provides that electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed. In any event, each qualifying customer shall receive only 6 months of service exempt from taxation during the November through April period.

5. If fuel or electricity is sold to a person partly for an exempt use and partly for a use which is not exempt, no tax shall be collected by the seller on the portion of the gross receipts which is used for an exempt purpose, as specified on an exemption certificate provided by the purchaser to the seller, as described in subd. 6.

6. Where a building, which contains residential quarters and commercial operations, is heated by one central heating plant, it is necessary to determine the portion of the fuel purchased which qualifies for the "residential use" exemption. The percentage of residential use may be computed by dividing the number of square feet used for residential purposes, excluding common areas, by the total area heated, excluding common areas. If this does not produce a reasonable result, any other reasonable method of estimating may be used. The resulting percentage should be rounded to the nearest 10%.

7. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence. Use in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting and other ordinary uses by the purchaser in a residence. Residential use includes use in single-family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, and farm houses, if the structure is used as a person's permanent residence. Residential use includes use in apartment houses and farm houses even though they are on a commercial or rural meter, respectively.

8. "Non-residential use" is use other than "residential use" and includes any use in the conduct of a trade, business or profession, whether such trade, business or profession is carried on by the owner of the premises or some other person. It includes use in motor homes not used as a permanent residence, travel trailers, other recreational vehicles and transient accommodations. "Transient accommodations" include: hotels, motels, inns, travel homes, tourist houses, summer cottages, apartment hotels or resort lodges or cabins, and any accommodation which is rented for a continuous period of less than one month.

9. A "continuous" certification designation is provided on the exemption certificate, form S-016 or S-017, and, if claimed, the form remains in effect until replaced or revoked. A new certificate shall be filed if there is a change in the percentage of exempt use.

(3) **TAXABLE PURCHASES.** (a) Persons engaged in the business of providing electrical or gas public utility service are consumers of the tangible personal property or taxable services used to provide such services. The tax applies to the sales of such items to them, except where a specific exemption applies, such as the exemptions shown in sub. (4).

(b) Examples of gross receipts from the sale, lease or rental of items to a public utility which are subject to the tax are:

1. Transformers, substation equipment and other tangible personal property purchased by a utility and use to construct, improve or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others. (See Rule Tax 11.86.)

3. Charges for coating pipe or creosoting poles.

4. Charges for X-rays of welding joints.

5. Gas or electricity purchased for resale but used by a utility, but not gas used as a fuel in producing electricity or steam.

6. Charges for aerial photographs and maps.

(4) **NONTAXABLE PURCHASES.** The following sales to public utilities are not subject to the tax:

(a) Fuel converted to electrical energy, gas or steam by utilities (S. 77.54 (6) (c), Stats.).

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufac-

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dentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales, and the tax applies to the total gross receipts therefrom without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax. However, if the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge attributable to the taxable services.

(3) SPECIAL SITUATIONS. (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject to the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) *Artistic expressions.* Sales of works of art, such as paintings and sculptures, are taxable.

(d) *Interior decorator's fee.* 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered (such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply) and there is no sale of tangible personal property involved with the trans-

action.

uct, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(g) *Architects.* Fees paid to architects to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by customers (e.g., architects, engineers or business firms). These charges are taxable because the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing (tangible personal property) for use by the customer.

(i) *Enuresis alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(l) *Taxidermists.* Taxidermists perform service on tangible personal property. Gross receipts from such service are subject to the tax.

(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. Such persons are the consumers of the tangible personal property they purchase,

except for the wax transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to such operators.

(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of such service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin or have shipped into Wisconsin by an out-of-state supplier.

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; am. (3) (n), Register, June, 1983, No. 330, eff. 7-1-83; r. (3) (k) and am. (3) (n), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.68 Construction contractors** (ss. 77.51(4)(intro.), (g), and (i); (11) (intro.) and (c) 4; (12) (intro.) and (c) 2 and (18); 77.52 (2) (a) 10; 77.71 (3) and 77.77 (3), Stats.) (1) GENERAL. (a) Construction contractors may be 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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(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 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:

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- (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 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.
- (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, including 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.

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.

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 above ground on land owned by others as provided in s. Tax 11.86 (1), 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



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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 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, paint-

ing, 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.

(12) COUNTY TAX ON BUILDING MATERIALS. (a) Section 77.71 (3), Stats., imposes an excise tax upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county which has adopted the county tax. The tax is measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county, unless the contractor has paid the county tax of a county in this state on that property.

(b) Building materials which become a component part of real property are used and consumed at the job site.

(c) In providing repair services to real property subject to taxation under s. 77.52 (2) (a) 10, Stats., a contractor may purchase without county tax for resale the building materials used in providing such taxable services, and the county excise tax imposed under s. 77.71 (3) does not apply to such purchases.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the excise tax under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The excise tax under s. 77.71 (3), Stats., on building materials used in real property construction activities is not imposed if the contractor purchased the building materials before the effective date of the county tax of that county or has paid the sales tax of another county in this state in purchasing the building materials.

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. (5) (d), (6) (a)2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337; emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86.

**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 checks,

money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(2) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.
- (h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(3) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote

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business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) **DEFINITION.** In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) **SPECIAL PROVISIONS.** (a) Sales to state chartered credit unions, and to federal and state chartered banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

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

**Tax 11.70 Advertising agencies.** (s. 77.51 (4) (intro.) and (h), 77.52 (1) and (2), Stats.) (1) **NONTAXABLE SERVICES.** Charges by advertising agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

- (a) Writing original manuscripts or news releases.
- (b) Writing copy to be used in media advertising.
- (c) Consultation, market research and compiling statistical or other information.
- (d) Recommendations for advertising themes or merchandising plans.
- (e) Obtaining media space and time.
- (f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.

(2) **TAXABLE SALES.** (a) Tax applies to an agency's gross receipts from the sale of tangible personal property located or used in Wisconsin whether the transfer is to the advertiser or to a third party at the direction of or on behalf of the advertiser. This applies to advertiser clients located both inside and outside Wisconsin. The sale of tangible personal property normally occurs when the advertising agency bills the client for the property and the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to

the client. For example, an agency's billing to a client for finished art transferred to another Wisconsin business is taxable.

(b) Tax applies to an advertising agency's total retail sales price of tangible personal property, without any deduction for any cost element which becomes a part of the sales price. Such elements include preliminary art work, consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though such costs may be separately itemized in a billing to a client.

(c) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(d) The total sales price of the following items or services are subject to the tax:

1. Retail sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

2. Charges for photographic services or photostats.

3. Charges for producing, fabricating, processing, printing or imprinting tangible personal property for consumers for a consideration, even though the consumers may furnish the materials used in the producing, fabricating, processing, printing or imprinting of the tangible personal property.

4. Charges for "finished art". "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes and includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced. The tax applies to sales of finished art whether it is used to produce a taxable item or an exempt item (e.g., periodical), or is used to provide an advertising service by placing advertising in an advertising media (such as newspapers, magazines, other publications and radio or television stations).

(3) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee", "retainer", "service charge", or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable items is taxable in accordance with the ratio between the charges.

(4) PURCHASES BY AGENCIES. (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that it resells before use, or that becomes physically an ingredient or component part of tangible personal property which it produces and sells.

(b) An advertising agency is the consumer of all tangible personal property not purchased for resale or not becoming physically an ingredient or component part of tangible personal property sold by such agency.

**Tax 11.71 Computer industry.** (ss. 77.51 (4) (h) and (j), and 77.52 (1) and (2) (a) 10, Stats.) (1) **DEFINITION OF TERMS.** In this section:

(a) "Application" means the specific job performance by an automatic data processing installation.

(b) "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment as well as punched card tabulating machines. It does not include tape-controlled automatic drilling, milling or other manufacturing machinery or equipment.

(c) "Basic operational programs", commonly referred to as "systems software", means the programs that perform overall control and direction of the computer system and permit it to do the functions basic to the operation of a computer, and permit it to execute the instructions contained in utility software and applications software programs. Basic operational programs are considered an integral part of the computer hardware when these internal codes are not accessible to or modifiable by the user.

(d) "Coding" means the list, in computer code, of the successive computer instructions for successive computer operations for solving a specific problem.

(e) "Custom programs" mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon all the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system.

2. Whether the program is loaded into the customer's computer by the vendor and the extent to which the installed program must be tested against the program's specifications.

3. The extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation.

4. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.

5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.

6. Custom programs do not include basic operational programs.

7. If an existing program is selected for modification, there must be a significant modification of that program by the vendor so that it may be used in the customer's specific hardware and software environment.

(f) "Data processing" means the recording and handling of information by means of mechanical or electronic equipment, commonly referred to as automatic data processing.

(g) "Enhancement" means modifications, upgrades, improvements or changes to existing programs by persons other than the purchaser of the program.

(h) "Input" means the information or data transferred, or to be transferred, from external storage media including punched cards, punched paper tape and magnetic media into the internal storage of the computer.

(i) "Keypunching" means recording information in cards, paper tapes, or magnetic tapes, disc or drum by punching holes or otherwise entering information in the cards, tapes, discs or drums, or recording data on any media to represent letters, digits and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

(j) "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information has been punched in a card or transcribed on a tape during the keypunching operation has been punched properly.

(k) "Prewritten programs", often referred to as "canned programs", means programs prepared, held or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease.

(1) "Processing a client's data" means the developing of original information from raw data furnished by a client. Automatic data processing operations which develop original information include summarizing, computing, extracting, sorting, sequencing, or the updating of a continuous file of information maintained for a client by a service bureau.

(m) "Program" means the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a specific problem. It includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs. For purposes of this section a program is either a prewritten or custom program.

(n) "Program maintenance", in addition to other maintenance services, includes telephone support services to discuss and solve problems.

(o) "Reformatting of data" means the rearranging of data by mechanical or electronic equipment.

(p) "Service bureau" means a business rendering automatic data processing services.

(q) "Source document" means a document from which basic data are extracted, such as sales invoice.

(2) **TAXABLE RECEIPTS.** The following transactions involving automatic data processing equipment, programs, output and services are taxable:

(a) The retail sale, lease or rental of new or used automatic data processing equipment and charges for the installation, service and maintenance of this equipment.

1. In this subsection, lease includes a contract by which a lessee, for a consideration, obtains the full or partial use of equipment if the lessee's employees are located on the premises where the equipment is located or operate the equipment. A lease does not include obtaining remote access to equipment by telephone or other means when that person's employees



are not located on the premises where the equipment is located and they do not operate the equipment or control its operations.

2. Subleasing receipts are taxable without any deduction or credit for sales or use tax paid by the original lessee to the lessor if the original lessee uses the equipment in addition to subleasing it. If the original lessee uses the equipment solely for lease or rental to others, the lessor's charge to the original lessee is exempt as a purchase for resale.

(b) The retail sale, lease, rental or license to use prewritten programs and basic operational programs, including the maintenance and enhancement of those programs, whether transferred in a machine readable form such as cards, tapes or discs, or transferred in any other manner to the lessee or purchaser such as by telecommunications, or written instructions on coding sheets. The tax applies to the total charge for these programs, including:

1. The consideration received for the temporary transfer of possession of a prewritten or basic operational program for the purpose of direct use or to be recorded by the customer.

2. The consideration received for a program in the form of license fees or royalty payments, present or future, whether for a minimum use or for extended periods.

3. The consideration received for designing, producing, implementing, testing or installing the program.

(c) The sale of training materials, such as books and manuals furnished to trainees for a specific charge. However, training services are not taxable.

(d) The charge for additional copies of records, reports or tabulations, including copies produced by means of photocopying, multi-lithing or by other means. "Additional copies" means all the copies in excess of copies produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program so that a program is run continuously, by using different programs to produce the same output product, or by other means.

(e) The sale of mailing lists as set forth in s. Tax 11.82, including listings in the form of mailing labels produced as result of a computer run. However, the tax does not apply to the charge for addressing material to be mailed with names and addresses furnished by a customer, or maintained by a service bureau for the customer, by the use of automatic data processing equipment.

(3) **NONTAXABLE COMPUTER AND DATA PROCESSING SERVICES.** The gross receipts from the following computer or data processing services are not taxable:

(a) Processing a client's data.

Note: 1) A contract to process a client's data by the use of a computer program or through an electrical accounting machine programmed by a wired plugboard will usually include receiving the client's source documents, recording data in machine readable form such as in punch cards or on magnetic media, making corrections, rearranging or creating new information as the result of the processing and then providing tabulated listings or recording output

on other media. This service is not taxable, even though the total charge is broken down into specific charges for each step.

2) If a client furnishes data and computer programs for processing the data and the processing is under the direction and control of the person providing the service, the processing service is not taxable, even though charges for the service may be based on computer time. The true object of this arrangement is considered to be a service, even though some tangible personal property may be incidentally transferred to the client.

(b) Providing custom programs.

(c) Providing program technical support, error correction services and maintenance and enhancement to custom programs.

(d) Providing time-sharing services which permit persons at different locations to access the same computer through remote access by telephone lines, microwave or other means. Nontaxable time-sharing exists when a person or that person's employes, who have access to the equipment, are not located on the premises where the equipment is located and do not operate the equipment or control its operation.

(e) Miscellaneous services which are not part of the sale of a taxable program including:

1. Designing and implementing computer systems including determining equipment and personnel required and how they will be utilized.

2. Designing storage and data retrieval systems including determining what data communications and high-speed input-output terminals are required.

3. Consulting services including study of all or part of a data processing system.

4. Feasibility studies including studies to determine what benefits would be derived if procedures were automated.

5. Evaluation of bids including studies to determine which proposal for computer equipment would be most beneficial.

(f) Key punching and keystroke verifying services, including:

1. Key punching only, key punching and keystroke verification, or key punching and providing a proof list or verification data or both. Charges for these services are not taxable, whether the cards or tapes are furnished by the customer or by a service bureau.

2. Recording data from source documents directly on magnetic tape, off-line. This operation may include keystroke verifying or proof listing of data or both and is comparable to the punch card operation.

3. Imprinting characters on a document to be used as the input medium in an optical character recognition system, whether paper tape or other media are used in the operation.

4. Reformatting of data.

Note: The interpretations in s. Tax 11.71 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule. However, computer and data processing services were taxable under s. 77.52 (2) (a) 13, Stats., Laws of 1977, from August 1, 1977 through June 30, 1978.

In *Janesville Data Center, Inc. v. Department of Revenue* (1978), 84 Wis. 2d 341, the Wisconsin Supreme Court held that the transfer of customer data onto tangible personal property Register, February, 1986, No. 362

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and the verification of customer data is not subject to the sales and use tax as a transfer of tangible personal property or a taxable service.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

**Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers.** (ss. 77.51 (4) (1), (7) (e) and (f) and (24) (a) and 77.52 (2) (a) 6, Stats.) (1) **LAUNDRIES AND DRY CLEANERS.** The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are taxable, except when the services are performed on raw materials or goods in process destined for sale, or when the services are performed by the customer through the use of coin-operated, self-service machines.

(2) **LINEN AND CLOTHING SUPPLIERS.** The gross receipts of lessors from leasing or renting clothing (e.g., uniforms) towels, linens, diapers or similar items to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled are subject to the tax. However, the items furnished to customers under such agreements may be purchased by the lessor without paying sales or use tax.

(3) **PURCHASES.** (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 they use for identification purposes. The 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.

(b) The tax applies to gross receipts from sales, leases or rentals of machinery and equipment to persons engaged in performing or furnishing laundry, dry cleaning, pressing and dyeing services, and to persons leasing or renting linens, towels and clothing to industrial, commercial or household users.

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.

History: Cr. Register, December, 1979, No. 288, eff. 1-1-80; am. (3) (a) and r. (3) (c), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.78 Stamps, coins and bullion.** (s. 77.51 (5), Stats.) (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

- (a) Cancelled United States and foreign postage stamps.
- (b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.
- (c) Uncancelled foreign postage stamps.
- (d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.

(e) Foreign coins and paper currency when sold or traded as collectors' items.

(f) United States coins and paper currency when sold or traded as collectors' items above their face value.

(g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

(h) Commemorative medals.

(2) **NONTAXABLE SALES.** Retail sales of the following tangible personal property are not subject to the sales and use tax:

(a) United States postage stamps, coins and paper currency sold at face value.

(b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.

(c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.

(d) Foreign coins and paper currency in current circulation, when sold at face value and when acquired as a medium of exchange.

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, January, 1977, No. 253, eff. 2-1-77.

**Tax 11.79 Leases of highway vehicles and equipment.** (ss. 77.51 (4) (intro.) and (j), (7) (k) and 77.58 (6), Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under sub. (1), the cost of the following items may be deducted if they meet the conditions in sub. (3):

(a) Motor fuel.

(b) Vehicle license fees.

(c) Federal highway use taxes.

(d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in sub. (2) may be deducted if:

(a) The charge is reasonable.

(b) The charge is separately stated in the lease agreement, billing or invoice.

(c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in sub. (2).

(d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under sub. (1), the cost of the following may not be deducted:

(a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.

(b) Maintenance or repair charges incurred by the lessor.

(c) Interest and other financing costs incurred by the lessor.

(d) Dispatch service.

(5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

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, January, 1977, No. 253, eff. 2-1-77; cr. (4) (d), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.80 Sales of ice.** (s. 77.52 (1) and 77.53 (1), Stats.) (1) Ice is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale. For example, ice used for refrigeration purposes is consumed in the process of refrigeration; whereas, ice used in drinks is purchased for resale by the seller of the drink.

(2) Examples of taxable sales of ice (including dry ice) are:

(a) Sales through vending machines.

(b) Sales to restaurants, taverns, grocery stores and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(c) Sales to railroads or commercial fishermen for use in refrigerating railway cars or vessels.

(3) Examples of nontaxable sales of ice are:

(a) Sales to restaurants, taverns and soda fountains to be used exclusively in drinks (exempt as sales for resale).

(b) Sales to manufacturers, producers or food processors for use inside the shipping cases of merchandise being transferred to a customer (exempt as "shipping material" under s. 77.54 (6)(b), Stats.).

(c) Ice sold to manufacturers which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

(4)(a) If ice is sold to a person who will use it both for a taxable purpose (ex., refrigeration) and nontaxable purpose (ex., for resale), the total charge shall be divided between taxable and nontaxable use. The tax is then payable on the ice to be used in a taxable manner. If no division is made, the tax applies to the total sale.

(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax under s. 77.53 (1), Stats.

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.

**Tax 11.81 Industrial gases, welding rods and fluxing materials.** (s. 77.54 (2), Stats.) (1) **GENERAL STATEMENT.** The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54 (2), Stats., exempts from the sales tax "The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity." Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

(a) Exempt if they become ingredients or components of tangible personal property destined for sale; or

(b) Exempt if they are consumed, destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or

(c) Taxable if they are sold to a person who consumes them in a non-manufacturing activity.

(2) **INDUSTRIAL GASES.** Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen.

(a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

1. Carbon dioxide used to produce dry ice or carbonated soft drinks.
2. Gases such as neon, helium or argon used as a filler in the production of light bulbs and tubes.
3. Hydrogen used in hydrogenating vegetable oils.
4. Acetylene used as a base in the manufacture of synthetic materials.

5. Oxygen used in the chemical industry for oxidation processes, when not used as a fuel to produce heat.

(b) Taxable sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces.
2. Acetylene or other gases used in torches in the manufacture of tangible personal property.

(c) Taxable sales of gases to nonmanufacturers, whether or not used by the purchaser as fuel, include:

1. Acetylene or other gases used by automobile body shops or by other repair establishments.
2. Gases used in mining or quarrying.
3. Nitrogen used by telephone companies in underground cables.

(3) **WELDING RODS** (stick electrode or filler rods). Since welding rods (stick electrode or filler rods) are physically transferred and become a part of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property destined for sale or in repairing tangible personal property for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of such rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) **FLUXING MATERIALS**. Fluxing materials sold to a manufacturer for use in manufacturing tangible personal property destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own production machinery or equipment (a nonmanufacturing activity) they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

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.

**Tax 11.82 Mailing lists and mailing services.** (ss. 77.51 (5), 77.52 (1), 77.53 (1) and 77.54 (2), Stats.) (1) **MAILING LISTS.** (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property, except for written or typed lists of names and addresses, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use such lists. Examples of taxable mailing lists include, but are not limited to magnetic tapes and mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels and heat transfers.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing such lists. However, any tangible personal property becoming a component part of mailing lists when such mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) **MAILING SERVICES.** (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to such property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for such property. However, addressing does not include such tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax shall not apply to charges for services rendered in preparing material for mailing (including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations) if such charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing such services. Consequently, they must pay the tax when purchasing such property.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

Note: The amendment to sub. (1) (b) effective January 1, 1979, codifies the department of revenue's policy and conforms the rule to the Minnesota Supreme Court's decision in *Fingerhut Products Company et al. vs. Commissioner of Revenue*, Docket No. 96-906, September 27, 1977, that typed lists of names and addresses are not tangible personal property subject to the sales and use tax, but are rather nontaxable transfers of information.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (b), Register, December, 1978, No. 276, eff. 1-1-79.

**Tax 11.83 Motor vehicles.** (ss. 77.51 (4) (j) and (7) (am), 77.52 (1) and (15), 77.53 (1), (16) and (18), 77.54 (7), 77.56 (2) and 77.61 (1), Stats.) (1) **DEFINITION.** In this rule, "motor vehicle" means a self-propelled vehicle (e.g., automobile, truck, truck-tractor and motorcycle) designed for and capable of transporting persons or property on a highway. In this rule, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck, and road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled such as a trailer or semitrailer.

(2) **RETAILERS' TAXABLE GROSS RECEIPTS.** A retailer's taxable gross receipts include: (a) Gross receipts from the sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from Register, February, 1986, No. 362



the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value (a "trade-down").

(b) Gross receipts from charges for delivery, handling, preparation and any warranty.

(c) Gross receipts from equipment and accessories sold with a motor vehicle.

(d) Gross receipts from charges for all parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments (e.g., a radio or air conditioner).

(3) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS. (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent or child of the transferor; and the motor vehicle has been previously registered in this state in the name of the transferor; and the transferor is not a motor vehicle dealer. A son-in-law or daughter-in-law is not allowed this exemption.

(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of such interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

(4) PURCHASES BY NONRESIDENTS. (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of this state (including members of the armed forces) who will not use such vehicles or trucks (for which the truck bodies were made) in this state other than in their removal from this state are exempt. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle is subject to the tax.

(c) A motor vehicle, trailer, semitrailer or mobile home purchased by a nonresident of Wisconsin 90 days or more before bringing the unit into this state, in connection with a change of residence to this state by the individual, is not subject to the Wisconsin use tax.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (5).

(5) **TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN.** A motor vehicle purchased outside this state and registered in this state generally is subject to the Wisconsin use tax, except as noted in sub. (4)(c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made, sales tax paid the other state or the District of Columbia shall be applied as a credit against and deducted from the Wisconsin use tax. This credit shall not apply to taxes paid to another country, to municipalities in other states or to motor vehicle registration fees.

(6) **TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir(s) of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser is required to pay the tax to the department of transportation at time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable.

(7) **VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS.** (a) If salespersons use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson a reasonable amount for such use, and such charge is subject to the tax. In lieu of making such charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis:

1. In the case of motor vehicles licensed in the name of the retail dealer, the measure of the tax reported on the dealer's monthly sales and use tax return shall be \$45.00 until December 31, 1985, \$57.00 from January 1, 1986 through December 31, 1986, \$69.00 per month from January 1, 1987 through December 31, 1987 and \$83.00 per month January 1, 1988 and thereafter.

2. In the case of motor vehicles being operated with retail dealer plates, the measure of the tax reported on the dealer's monthly sales and use tax return shall be \$12.00 per month until December 31, 1985, \$15.00 per month from January 1, 1986 through December 31, 1986, \$18.00 per month from January 1, 1987 through December 31, 1987 and \$22.00 per month January 1, 1988 and thereafter.

(b) Retail dealers shall not report on the basis prescribed in par. (a) for service vehicles such as wreckers or pick-up trucks, or autos used by customers when their car is being repaired. Wholesalers, distributors, brokers or manufacturers may not report on this basis.

(8) **SALES BY DEALERS TO THEIR SALESPERSONS.** When a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons, the transaction is subject to the sales tax.

(9) **HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration shall not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered

with the state. Such heavy equipment dealers may purchase motor vehicles for resale without tax.

(10) **MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. Such property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle are subject to tax. Such property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Examples of taxable supplies include: sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle.

(c) A supplier cannot accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, *except* when the purchaser:

1. Inventories such property;
2. Certifies that the purchaser sells significant amounts of the property over-the-counter to walk-in trade; and
3. The purchaser specifies on the resale certificate each type of item the purchaser sells over-the-counter.

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the use tax payable by motor vehicle dealers using regular license plates in sub. (7) (a) 1 was \$1.00 per month through December 31, 1972, \$1.35 per month until June 30, 1981, \$2.25 per month until December 31, 1985, and thereafter as shown in the rule; (b) the use tax payable in sub. (7) (a) 2 by motor vehicle dealers using dealer plates was 25¢ per month through December 31, 1972, 35¢ per month until June 30, 1981, \$.60 per month until December 31, 1985 and thereafter as shown in the rule.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7) (a) and (8), Register, May, 1981, No. 307, eff. 6-1-81; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (7) (a) 1. and 2., Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (7) (a) 1. and 2., eff. 3-24-86; am. (7) (a) 1. and 2., Register, October, 1986, No. 370, eff. 11-1-86.

**Tax 11.84 Aircraft.** (ss. 77.52 (2) (a) 9, 77.54 (5) (a) and (7) and 77.61 (1), Stats.) (1) **GENERAL.** (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent or child of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor does not hold and is not required to hold a Wisconsin seller's permit.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of aeronautics. The tax applies to aircraft registered or customarily hangared or both in this state, even though such aircraft also may be used out-of-state.

(2) **TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.
2. The sale and delivery in Wisconsin of oil, equipment, parts and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52 (2) (a) 9, Stats., imposes the tax on "Parking or providing parking space for motor vehicles and aircraft for a consideration . . . ." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational. For example, an aircraft kept in a hangar and available for normal use is parked, but an aircraft kept in a hangar with its wings off is stored rather than parked.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor (tie down) parking are taxable.

(c) *Other taxable receipts.* The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

(3) **EXEMPT SALES OF AIRCRAFT.** Section 77.54 (5) (a), Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use the aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(4) **NONTAXABLE SERVICES.** Gross receipts from the following services or fees shall not be taxable:

(a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for such instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in this business may purchase weed killers, fertilizer and seed without tax for resale, if these items are separately itemized on the invoice to the farmer.

(f) Landing fees.

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

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (b) 1. and 2., Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) 2. and (3), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 11.85 Boats, vessels and barges.** (ss. 77.51 (7) (am), 77.52 (2) (a) 9 and 10, 77.53 (17) and (18), 77.54 (7) and (13) and 77.61 (1), Stats.) (1) **TAXABLE SALES.** Taxable gross receipts involving boats include the following:

(a) Gross receipts from the sale, lease or rental of boats and boat accessories, and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would

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be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats. The tax applies to boat storage in public storage warehouses.

(e) The use tax does not apply to household goods for personal use purchased outside Wisconsin 90 days or more before being brought into this state by a person becoming domiciled in this state. A boat is not household goods for this exemption.

(2) EXEMPT SALES. (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 is not engaged in the business of selling tangible personal property or taxable services.

(b) Sales of boats to the spouse, parent or child of the transferor shall be exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor does not hold and is not required to hold a seller's permit.

(c) Commercial vessels and barges of 50-ton burden and over primarily engaged in interstate or foreign commerce or commercial fishing shall be exempt from the tax. Accessories, attachments, parts and fuel for such vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(e) A boat purchased by a governmental unit and by certain nonprofit organizations shall be exempt from the tax, regardless of the boat's size or kind (see s. 77.54 (9) (a) and s. 77.55 (1)).

(3) PAYMENT OF TAX. (a) No boat shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax at the time the boat is registered with the Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, Wisconsin 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin.

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that effective February 28, 1979 boats documented with the Coast Guard did not qualify for the occasional sale exemption pursuant to Chap. 1, Laws

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of 1979, and effective June 1, 1980 charges for docking and storing boats by governmental units became taxable pursuant to Chap. 221, Laws of 1979.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (d), (2) (a) and (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.86 Utility transmission and distribution lines.** ss. 77.51 (5), 77.52 (2) (a) 10, 11 and 20, 86.16 and 182.017, Stats.) (1) **PERSONAL PROPERTY.** "Tangible personal property", as defined in s. 77.51 (5), Stats., includes overhead telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the poles, transformers, towers (but not foundations), pipes, conduits, sleeves or other overhead property by which such lines are supported or in which they are contained or connected, if erected or installed under easement or license (including authorizations under ss. 86.16 and 182.017, Stats.) on land owned by a person other than the utility (such lines and facilities located above ground level being herein collectively referred to as "overhead utility facilities"). The term "tangible personal property", as defined in s. 77.51(5), Stats., does not include underground telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the foundations, pipes, conduits, sleeves or other underground property by which such lines are supported or in which they are contained or connected (such lines and facilities being herein sometimes collectively referred to as "underground utility facilities").

(2) **REAL PROPERTY.** (a) The lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land are part of the realty. However, transformers, circuit breakers and other equipment installed to control the flow of electricity remain personal property after installation.

(b) Concrete foundations (including anchors), crushed rock and backfill whether or not on land owned by the utility, are deemed part of the realty, and materials used in construction or forming the same are taxable when purchased by the contractor.

(3) **TAXABLE AND NONTAXABLE TRANSACTIONS.** (a) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance of overhead utility facilities which are personal property as described in subs. (1) and (2) are subject to the sales and use tax. For example, the gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion thereof, and from a sale "in place" of such a facility, if installed under easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of such property may be purchased without tax for resale. Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to the sales and use tax; however, the materials used in the construction or installation of such underground facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(b) A contractor performing a "lump sum contract" for the construction of an overhead utility facility, which is personal property as described in subs. (1) and (2), may not reduce gross receipts by the amount of related expenses, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and

unloading and hauling materials. These payments are costs of performing the contract and do not affect the amount of taxable gross receipts.

(c) When a contractor enters into an agreement to construct or repair an overhead utility facility, which is personal property as described in subs. (1) and (2), the total charge for such construction or repair is taxable even though a portion of the total charge consists of hourly charges for the use of equipment.

(d) When equipment for the construction or repair of a utility line is rented to a utility, the rental charge is taxable. If an operator is included with such equipment and it is customary or mandatory that the utility accept the operator with the equipment, the entire charge for the equipment and operator is taxable. A rental agreement exists only if the utility employs the crew other than the equipment operator and provides on-the-job supervision; otherwise, the entire charge for the repair, service, maintenance or installation of the utility line is subject to the tax if so indicated in par. (c).

(4) **NONTAXABLE SERVICES.** (a) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line is not considered a cost of constructing the line for sales tax purposes. Charges for tree trimming and line clearing in the construction or maintenance of a line in a rural undeveloped area are not taxable. However, charges for right-of-way tree trimming, line clearing or restoration work may be taxable landscaping services as described in sub. (5).

(b) A separate charge for removing an existing utility line is not taxable.

(5) **LANDSCAPING SERVICES.** Gross receipts from landscaping services are taxable when performed in lawn and garden areas. This includes lawn, shrub and tree services performed in developed areas found in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other developed areas.

**Note:** Examples: 1. Trimming trees on a utility's right-of-way.

2. Restoration work performed when a utility extends its service or repairs or replaces existing lines.

**Note:** The interpretations in s. Tax 11.86 are effective on and after September 1, 1970, except that landscaping services describe in sub. (5) became taxable pursuant to Chapter 317, Laws of 1981, effective May 1, 1982.

**History:** Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (4) (a) and cr. (5), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.87 Meals, food, food products and beverages.** (ss. 77.51 (4) (b) and (f), (11) (c) 2, (12) (c) 1 and 77.54 (20), Stats.) (1) **DEFINITIONS.** In this rule:

(a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

(b) "Hospital" has the meaning in s. 50.33 (1), Stats. (2)

(c) "Nursing home" has the meaning in s. 50.01 (3), Stats.

(d) "Retirement home" means a nonprofit residential facility, which as its primary function provides personal care above the level of room and board to retired persons, where 3 or more unrelated adults or their



spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(e) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing and ambulation.

(f) "Sanitorium" means an institution for the recuperation and treatment of the victims of physical or mental disorders.

(g) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) **TAXABLE SALES.** (a) *General.* Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. For example, when a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food (or heated beverages) are taxable. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

(c) *Food components of meals.* Food items which comprise or are components of a meal (for example, a basket of chicken with cole slaw and french fries) shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

(d) *Caterers.* Meals, food, food products and beverages sold by caterers shall be taxable.

1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute the sale of taxable food. Any rental charges made by a caterer for items such as tableware, tablecloths or other tangible personal property, whether or not separately stated on the bill, shall be includable in the consideration paid and shall be taxable.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers, including dishes, silverware, linen napkins, tablecloths, punch fountains, coffee silver service and glassware, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering service. However, the following items may be purchased without tax for

resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for such use: tents, public address systems, portable dance floors, portable bars, chairs and tables. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placemats and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator has a "premise" as defined in s. 77.54 (20) (c) 6, Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for such service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe, shall be exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of such meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Meals to employes.* Sales of meals to employes by an employer for a specific charge shall be taxable.

1. A specific charge shall be deemed made for meals if any one of the following conditions is met:

- a. The employe pays cash for meals consumed.
- b. An actual, specific charge for meals is deducted from an employe's wages.
- c. An employe receives meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.
- d. An employe has the option to receive cash for meals not consumed.

2. In the absence of any of the conditions in subd. 1 a specific charge shall not be deemed made when:

a. A value is assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA, social security, or union contract purposes.

b. An employe who does not consume available meals has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies (e.g., airlines or railways) to a customer while operating in or over Wisconsin for a specific charge shall be taxable. Such meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage shall not be separately stated to the customer, the tax shall apply to purchases of such meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for such items, the place of business shall be considered selling directly to the members and not to the organization. The sales shall, therefore, be subject to the tax, even if the organization shall collect from the members and pay the seller, and retain a portion of the collections for its own purposes. In such situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. However, when an exempt religious, charitable or educational organization shall pay for food and beverages out of its own funds, and shall provide such items to members or others without charge, the sale of such items by a retailer to the organization shall not be subject to the tax. If such exempt organizations hold a Certificate of Exempt Status issued by the department, they shall give the retailer their certificate number to claim the exemption.

(3) EXEMPT SALES. The following meals shall be exempt:

(a) *Health care facilities.* Meals, food, food products, or beverages sold by hospitals, sanitoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells such items, the exemption shall not apply. For example, if the ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at such coffee shop are taxable.

(b) *"Meals on wheels"*. Meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of prepackaged ice cream, ice milk or sherbet in pint, quart, gallon or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

(4) **SPECIAL SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food. For example, a restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chap. 250, Laws of 1977.

**History:** Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (d), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.88 Mobile homes.** (ss. 77.51 (7) (am), 77.53 (17), 77.54 (7) and 77.61 (1) (a) and (c), Stats.) (1) **MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT.** A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) **SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS.** (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to such a contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) **SALES OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY.** (a) *By dealers.* A Wisconsin mobile home dealer's gross receipts from the sales of mobile homes which are personal property are subject to the tax.

(b) *By retailers who are not dealers.* Retailers who are not mobile home dealers shall not charge the sales tax on sales of mobile homes which are personal property. Instead, the purchaser shall pay the tax as described in sub. (4) (a), unless the transaction is exempt from the tax.

(c) *By others.* 1. The sales tax status of mobile homes that are personal property and that are purchased from persons who are not mobile home dealers or retailers is as follows, and any sales tax due shall be paid as described in sub. (4) (a):

a. Exempt from the tax prior to August 1, 1977, regardless of length.

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b. Taxable beginning August 1, 1977, though June 30, 1978, regardless of length.

c. Exempt beginning July 1, 1978, and thereafter if the mobile home exceeds 45 feet in length excluding the towing hitch.

2. Mobile homes transferred to the spouse, parent or child of the transferor are exempt if the mobile home has been previously registered or titled in this state in the name of the transferor and the person transferring is not engaged in the business of selling mobile homes.

(4) PAYMENT OF TAX. (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) A mobile home purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax. However, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) CONSIGNMENT SALES. When a mobile home dealer has possession of a mobile home owned by another person (the principal), the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser (see s. Tax 11.55). If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

(6) DEFINITION. In this section "mobile home dealer" has the same meaning as "mobile home dealer" as defined in s. 218.10 (3), Stats., and a retailer is a person who has a seller's permit issued pursuant to s. 77.52 (9), Stats. A mobile home dealer is one type of retailer.

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, 1980, No. 300, eff. 1-1-81.

**Tax 11.91 Successor's liability.** (s. 77.52 (18), Stats.) (1) DESCRIPTION OF SUCCESSOR. (a) A purchaser or assignee of the business or stock of goods of any retailer liable for sales or use tax shall be personally liable for the payment of such sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation shall be created and shall acquire the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for the sales tax of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a financial institution or other creditor actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered if it never operates the business and if its sole purpose is to sell the business in its entirety at whatever price it can obtain to recover its investment.

(2) EXTENT OF LIABILITY. (a) If there shall be no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) PROCEDURES FOR PURCHASER. (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. The letter requesting the certificate shall include the real name, business name and seller's permit number (if known) of the prior operator. The department shall have sales tax returns for all periods during which the predecessor operated before it can issue the certificate.

(c) By statute, the department has 60 days from the date it receives the request or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the

request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on or after September 1, 1969.

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79.

**Tax 11.92 Records and record keeping.** (ss. 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9), 77.75, Stats.) (1) GENERAL. All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in this state tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices (which shall contain a posting reference), cash register tapes, credit memoranda (which shall carry a reference to the document evidencing the original transaction) or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. Such records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property (including any services that are a part of the sale or lease) made within Wisconsin irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order. Sales to organizations holding a certificate of exempt status (e.g., religious or charitable organizations) can be shown to be exempt by recording the exemption certificate number on the seller's copy of the bill of sale. All other exempt sales must be supported by an exemption certificate signed by the purchaser and retained by the seller, unless

the merchandise sold is specifically exempted by statute regardless of use (such as groceries). Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in a manner in which they readily can be related to the transactions for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in this state.

(d) Every person subject to the county sales and use tax shall keep a record of sales the person completes in each county enacting an ordinance under s. 77.70, Stats., imposing a county tax, separately from sales made elsewhere in the state. Every person shall also keep a record of the sales price of items on which the person is subject to county use or excise tax in each enacting county.

(2) **MICROFILM RECORDS.** Microfilm (including microfiche) reproductions of general books of account (such as cash books, journals, voucher registers and ledgers) and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing (ADP) tax accounting system shall have the capability of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents (such as sales invoices, purchase invoices, exemption certificates, credit memoranda) shall be readily available.



(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.
2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until such tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

Note: The interpretations in this rule are effective under the general and use tax law on or after September 1, 1969.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; emerg. cr. (1) (d), eff. 3-24-86; cr. (1) (d), Register, October, 1986, No. 370, eff. 11-1-86.

**Tax 11.925 Sales and use tax security deposits.** (s. 77.61 (2), Stats.) (1) **GENERAL.** Under s. 77.61 (2), the department may require any person liable to it for sales and use taxes to place with it, before or after a permit is issued, such security as the department determines. The amount of security shall not exceed \$5,000. If any person fails or refuses to place such security, the department may refuse to issue a permit or revoke the permit.

(2) **FACTORS FOR DEPARTMENT'S CONSIDERATION.** (a) In determining whether or not security will be required and the amount of security to be required, the department may consider all relevant factors including the person's:

1 Evidence of adequate financial responsibility. Such evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.

2 Prior record of filing tax returns and paying taxes of any kind with the department.

3 Type of business (e.g., a temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location).

4 Type of entity (e.g., a sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets).

(b) Although the individual factors listed in sub. (2) (a) may be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department of revenue. Protection of the sales and use tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines that a security deposit in excess of \$50.00 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) TYPES OF SECURITY. Acceptable types of security include, but are not limited to:

(a) *Non interest-bearing.* 1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

3. Personal guarantee of a third party, if approved by the department.

(b) *Interest-bearing.* 1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on such certificates shall be paid to the depositor.

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A Security Assignment, Form S-127, shall be completed if this type of security is selected. (Note: Form S-127 may be obtained at any Department of Revenue office or by writing to: Wisconsin Department of Revenue, P.O. Box 8902, Madison, Wisconsin 53708).

3. Bearer bonds issued by the U.S. government, any unit of Wisconsin municipal government or by Wisconsin schools. The depositor should clip 2 full years' coupons before depositing this type of security.

(4) DETERMINATION OF AMOUNT. (a) If a security deposit is required, the amount generally shall be equal to the depositor's average quarterly Wisconsin sales and use tax liability increased to the next highest even \$100 amount. The average quarterly sales and use tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous sales and use tax liability at the location specified on the permit.

2. The predecessor's sales and use tax liability at the location specified on the permit,

3. The estimated tax liability shown on the application for permit.

4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.

(b) If at the time of the security review the retailer has an outstanding sales and use tax delinquency, the delinquent amount shall be added to the average quarterly sales and use tax liability.

(5) RETURN OF DEPOSIT. (a) Section 77.61 (2), Stats., provides: “. . . Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter.”

(b) The 24 month compliance requirement described in par. (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24 month period described in par. (a) the department shall review the taxpayer's compliance record. If the taxpayer has complied with ch. 77, subch. III the department shall within 60 days after the expiration of the 24 month period certify the deposit for refund.

(d) Compliance with subch. III means that:

1. Sales and use tax returns were timely filed.
2. All payments were made when due.
3. No delinquencies of sales or use tax, interest or other charges existed.
4. No penalties due to negligence or fraud were assessed for filing periods within the 24 month compliance period.
5. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.

e. If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

Note: Except as noted below, the interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

Subsection (5) relating to return of deposit is effective on March 13, 1980, the effective date of chapter 125, Laws of 1979.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

**Tax 11.93 Annual filing of sales tax returns.** (s. 77.58 (5), Stats.) (1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

(2) Returns and payments of retailers reporting on an annual basis shall be due and payable on the last day of the month following the close of their calendar or fiscal year.

(3) A retailer who files on an annual basis shall not be required to file a sales and use tax “annual information return” if:

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- (a) Deductions and exemptions are itemized on the sales tax return filed for the year, and
- (b) Gross receipts reported for income tax and sales tax purposes are the same amount.
- (4) The annual information return filing requirements do not apply to the 1981 tax year and thereafter.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that the \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to the date a \$100 standard applied. The "annual information return" was eliminated for 1981 and subsequent years pursuant to Chapter 221, Laws of 1979.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; cr. (4), Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.94 Wisconsin sales and taxable transportation charges.** (ss. 77.51 (4) (intro.) and (d) and (4r), and 77.52 (1), Stats.) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (4r), Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is *not* a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employees or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (4) (d), Stats., applies to a situation where tangible personal property is delivered to a purchaser in this state by an owner or former owner of the property holding or required to hold a Wisconsin sales or use tax permit or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a manufacturer ships or turns over such property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller, who had received the original order from the Wisconsin purchaser, the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to

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purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) **TAXABLE TRANSPORTATION CHARGES.** (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

**Note:** Example. When the seller charges the purchaser for delivery of the taxable tangible personal property the correct computation of tax is as follows:

Selling price of merchandise	\$100.00
Delivery charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 5% ( $\$110 \times 5\%$ )	<u>5.50</u>
Total	\$115.50

(b) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no such allocation is made, the total delivery charge shall be taxable.

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(d) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller. For example, if the "delivered price" of a carload of lumber is \$6,000 (including transportation) and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

**Note:** The interpretations in the rule are effective under the general sales and use tax law effective September 1, 1969.

**History:** Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (e), r. (2) (b), renum. (2) (c), (d) and (e) to be (2) (b), (c) and (d), Register, September, 1984, No. 345, eff. 10-1-84.

**Tax 11.95 Retailer's discount.** (s. 77.61 (4) (b), 77.76 (3) and 77.785 (2), Stats.) (1) For timely reporting state and county sales or use tax collected on their retail sales, retailers may deduct 2% of the first \$10,000 sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of tax payable and .5% of the sales and use tax payable in excess of \$20,000 each year. Section 77.785 (2), Stats., requires dealers to collect and remit the county tax to the state agency which registers or titles a boat, all-terrain vehicle, trailer, semi-trailer, aircraft, motor vehicle, mobile home not exceeding 45 feet in length or snowmobile, and the dealer is entitled to the retailer's discount on these county taxes paid timely.

(2) The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted. The discount is not allowed if the payment is delinquent. It is also not allowed on deficiency determinations, amended returns filed after the due date or consumer's use tax imposed pursuant to s. 77.53 (2), Stats.

Note: The interpretations of s. 77.61 (4) (b) and (c), Stats., in s. Tax 11.95 are effective for a retailer's taxable year beginning on or after January 1, 1983 pursuant to Chapter 20, Laws of 1981. Effective January 1, 1972 until the effective date of Chapter 20, Laws of 1981 retailers could deduct 1% of the tax payable for each reporting period if the payment was not delinquent. Prior to January 1, 1972 the discount was 2%. Prior to April 1, 1976 persons with a Wisconsin seller's permit were allowed the discount on consumer's use tax paid timely; after that date the discount does not apply.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr., Register, September, 1984, No. 345, eff. 10-1-84; emerg. am. (1), eff. 3-24-86; am. (1) Register, October, 1986, No. 370, eff. 11-1-86.

**Tax 11.96 Interest rates.** (ss. 77.58 (7) and 77.60 (1) and (2), Stats.) (1) **INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT.** Unpaid sales or use taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(a) For taxes due on or after November 1, 1975, interest shall be computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

(b) For taxes due prior to November 1, 1975, interest shall be computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

(2) **INTEREST ON REFUNDS.** Any refund of sales or use taxes shall include interest as follows:

(a) If the tax being refunded is from a return which has a filing due date on or after November 1, 1975, interest shall be computed at the rate of 9% per year from the due date of the return to the first day of the month following the month in which the taxes are refunded by the department.

(b) If the tax being refunded is from a return which has a filing due date prior to November 1, 1975, interest shall be computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the first day of the month following the month in which the taxes are refunded by the department.

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

(4) **EXTENSION PERIODS.** If an extension of time is granted for filing a sales or use tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 12% per year. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent

and shall be subject to delinquent interest under sub. (3) from the end of the extension period until paid.

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1) and (3), am. (4), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 11.97 "Engaged in business" in Wisconsin** (ss. 77.51 (4) (j), (7) (c) and (k) and (7g); 77.53 (3), (5), (7), (9) and (9m); 77.31 (1) and (2), Stats.) (1) GENERAL. (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the Fourteenth Amendment to the U.S. Constitution. Over the last 30 years the court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established; the out-of-state seller is required to register and collect the state's use tax.

(b) Some United State supreme court decisions concerning nexus include:

Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)

Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)

General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)

Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)

Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)

National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967)

National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977)

(2) STATUTES. (a) Section 77.51 (7) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and s. 77.51 (4) (j), Stats., defines a lease as a continuing sale.

(b) Section 77.51 (7g), Stats., provides as follows:

"Retailer engaged in business in this state", unless otherwise limited by federal statute, for purposes of the use tax, means any of the following:

(a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(b) Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or the taking of orders for any tangible personal property or taxable services."

(c) Under s. 77.53 (5), Stats., the tax required to be collected by a use tax registrant is a debt owed by the registrant to this state, and s. 77.53 (7), Stats., provides the tax is to be stated separately from the list price of the goods sold.

(3) **ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS"**. Unless otherwise limited by federal statute, a retailer engaged in business in this state who must register includes the following:

(a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property located in this state.

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(d) Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property.

(e) Any person servicing, repairing or installing its products in this state.

(f) Any person delivering goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

(4) **ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS"**. Activities which, in themselves, do not create nexus in this state, include:

(a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or common carrier by the retailer into this state, or when possession of the goods is taken at the out-of-state location by the consumer.

(5) **REGISTRATION**. (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state shall apply for a use tax registration certificate. The registration form, entitled "Application for Permit" (Form A-101), may be obtained from any department office. There is no fee for registration. Retailers engaged in business in Wisconsin for use tax purposes are not necessarily engaged in business in Wisconsin for franchise/income tax purposes.



## Tax 11

(b) Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may register and pay taxes directly to this department. Holders of such permits shall collect the use tax from Wisconsin customers, give receipts therefor and pay the use tax in the same manner as retailers engaged in business in this state.

(c) Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(6) **ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES.** The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a county which has adopted the tax. The activities in sub. (4) which do not create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

Note: The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; cr. (5) (c), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (6), eff. 3-24-86; cr. (6), Register, October, 1986, No. 370, eff. 11-1-86.

**Tax 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats. (ss. 71.13 (1) (b), 77.60 (2) and 77.62 (1), Stats.) (1) PROCEDURES.** The secretary may reduce the delinquent interest rate from 18% to 12% per year effective for all determinations, assessments or other actions for additional tax made by the department on or after August 1, 1981 when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the sales and use taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) **FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) **DETERMINATION NOT APPEALABLE.** The secretary's determination under this rule is not appealable.

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

**History:** Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, June, 1983, No. 330, eff. 7-1-83.

## Chapter Tax 12

## PROPERTY TAX

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**Tax 12.05 Temporary assessor certification.** (ss. 73.09 (1) and (6), Stats.)

(1) **APPROVAL.** Temporary assessor certification shall be approved under the following conditions:

(a) The applicant shall not have been temporarily certified previously.

(b) The applicant shall have a job commitment from an elected or appointed assessor, from a firm contracting to make the assessment under ss. 70.05 (2), 70.055, or 70.75, Stats., or a job commitment from the bureau of property tax.

(c) The certified individual signing the assessment roll for a local tax unit of government or county assessor system under s. 70.99, Stats., or the applicant's immediate supervisor if in the bureau of property tax, shall be responsible to see that the following conditions are met:

1. The effective start and end dates of temporary assessor certification are adhered to.

2. No more than 2 persons employed by private firms may function as temporary assessors in the same municipality.

(2) **APPLICATION.** Application for temporary assessor certification shall be in writing and notarized on the form prescribed by the department of revenue.

(3) **WHEN VALID.** Temporary assessor certification shall become effective upon the mailing of a letter of approval by the department of revenue. The letter of approval shall be mailed within 5 business days of receipt by the department of an application as described in sub. (2). Temporary certification shall expire after whichever of the following first occurs:

(a) One hundred days have expired since the certification became effective; or

(b) The results of the first assessor certification examination conducted after the temporary assessor certification became effective are issued.

(4) **AUTHORIZED DUTIES.** A temporary certified individual shall be authorized to perform in accordance with the Wisconsin property assessment manual, and under the direct supervision of the certified individual in sub. (1) (c), the duties defined for the lowest assessment technician level of local assessor certification under sub. (1) (c).

History: Emerg. cr. eff. 12-31-80; cr. Register, May, 1981, No. 305, eff. 6-1-81; am. (3) (intro.), Register, January, 1985, No. 349, eff. 2-1-85.

**Tax 12.055 Assessor certification examinations.** (s. 73.09 (5) Stats.) (1) **EXAMINATIONS.** Assessor certification examinations shall be held at the discretion of the department of revenue.

(2) **RESULTS.** Individuals who have taken an assessor certification examination shall be notified as to whether the individual has passed or failed that examination within 25 business days after the exam.

History: Cr. Register, January, 1985, No. 349, eff. 2-1-85.

**Tax 12.06 Duties of assessors.** The following levels of certification for assessors and assessment personnel are established:

(1) **ASSESSMENT PERSONNEL.** (a) *Assessment technician.* 1. Assessment technician shall be authorized to perform, in accordance with the Wisconsin Property Assessment Manual, and under the direct supervision of a property appraiser or an assessor, the following duties:

- a. Measuring and listing of land and improvements;
- b. Calculating building cost data from information contained on property record cards;
- c. Posting maps, plats and charts for a property appraiser or assessor;
- d. Collecting data pertaining to construction costs, municipal boundaries and other information for an appraiser or assessor;
- e. Accompanying and assisting an appraiser or assessor in making physical inventories of all types of real and personal property;
- f. Verifying property descriptions on real estate transfer returns by checking records of the county register of deeds;
- g. Classifying of real property according to use.

2. Assessment technician shall not be authorized to serve as a property appraiser, or an assessor 1, assessor 2 or assessor 3.

(b) *Property appraiser.* 1. Property appraiser shall be authorized to perform, in accordance with the Wisconsin Property Assessment Manual, and under the direct supervision of an assessor, the duties of an assessment technician and the following duties:

- a. Inspecting residential, mercantile, agricultural and residual classes of real property for assessment purposes;
- b. Assembling pertinent information relative to tangible personal property subject to taxation;
- c. Appraising real and personal property for assessment purposes;

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d. Supervising subordinate assessment staff;

e. Appearing before municipal board of review as representative of the assessor to give testimony relative to real and personal property assessments.

2. Property appraiser shall not be authorized to serve as assessor 1, assessor 2 or assessor 3.

(2) ASSESSORS. (a) *Assessor 1*. 1. Assessor 1 shall be authorized to perform, in accordance with the Wisconsin Property Assessment Manual, any of the duties of a property appraiser, an assessment technician and the following duties:

a. Serving as statutory assessor in an assessment district with a degree of complexity requiring the level of assessor 1 as determined by the department of revenue which shall include responsibility for all assessed values of real and personal property in the assessment district for which the individual is statutory assessor;

b. Contacting taxpayers of the assessment district to explain the property assessment laws and procedures under which the property assessments are determined;

c. Supervising subordinate assessment staff.

2. Assessor 1 shall not be authorized to sign the assessment roll as statutory assessor in an assessment district with a degree of complexity requiring the level of assessor 2 or assessor 3 as determined by the department of revenue.

(b) *Assessor 2*. 1. Assessor 2 shall be authorized to perform, in accordance with the Wisconsin Property Assessment Manual, any of the duties of a property appraiser, an assessment technician, an assessor 1 and the following duties:

a. Serving as statutory assessor in an assessment district with a degree of complexity requiring the level of assessor 2 as determined by the department of revenue which shall include responsibility for all assessed values of real and personal property in the assessment district for which the individual is statutory assessor;

b. Supervising subordinate assessment staff.

2. Assessor 2 shall not be authorized to sign the assessment roll as statutory assessor in an assessment district with a degree of complexity requiring the level of assessor 3 as determined by the department of revenue.

(c) *Assessor 3*. 1. Assessor 3 shall be authorized, in accordance with the Wisconsin Property Assessment Manual, to perform the following duties:

a. Serving as statutory assessor in an assessment district with a degree of complexity as determined by the department of revenue at the level of assessor 3 which shall include responsibility for all assessed values of real and personal property in the assessment district for which the individual is statutory assessor;

- b. Policy determination, budgetary formulation and responding to appropriate levels of government involved in the property assessment process;
- c. Supervising subordinate assessment staff.

2. Assessor 3 shall not be authorized to sign the assessment roll as statutory assessor in any assessment district with a degree of complexity requiring the level of assessor 1 or assessor 2 as determined by the department of revenue, nor serve on the staff of any assessment district as assessment technician, property appraiser, assessor 1 or assessor 2.

**History:** Cr. Register, February, 1976, No. 242, eff. 3-1-76; emerg. cr. (1) (am), eff. 1-31-80; am. (2) (a) 1. a., (2) (b) 1. a. and (2) (c) 1. a., Register, January, 1985, No. 349, eff. 2-1-85.

**Tax 12.065 Continuing education requirements for recertification of assessors and assessment personnel.** (ss. 73.09 (1) and (4), Stats.) (1) DEFINITIONS. (a) "Accredited institution of higher education" means schools accredited by one of the regional institutional accrediting commissions or associations which have been recognized by the U.S. department of education or a law school accredited by the American bar association.

(b) "Appraisal instruction" means programs which consist of appraisal knowledge which is broad based and essential to assessors and assessment personnel in performing the appraisal function.

(c) "Committee" means the advisory committee appointed by the department from, but not limited to, the following groups: the department; league of Wisconsin municipalities, the assessor's section; the Wisconsin association of assessing officers; county assessor systems; the vocational technical school program; the alliance of cities; private appraisal firms or individuals.

(d) "Continuing education" means those hours and subject areas of classroom instruction established for each level of assessor certification and approved by the department to meet minimum requirements for recertification.

(e) "Credit program" means a course which can be applied toward an associate degree or higher degree at an accredited institution of higher education.

(f) "Evidence of attendance" means an official transcript, student grade report, or department approved certificate showing satisfactory completion of educational programs.

(g) "Hour" means a period of 50 minutes of actual classroom instruction and shall not include time spent in writing tests and examinations.

(h) "Noncredit program" means an educational program or training session which does not satisfy requirements for an associate degree or higher degree at an accredited institution of higher education.

(i) "Property tax law" or "management instruction" means programs which consist of assessment administration knowledge which is broad based and essential to assessors in performing the assessment function. This does not include offerings in mechanical office equipment and business skills such as typing, speedreading, memory development or personal motivation.

(j) "Recertification" means the reissuance of a certificate by the department to previously certified assessment personnel.

(k) "Recertification period" means the 5 years preceding the expiration of the applicant's current certification.

(l) "Satisfactory completion" means receiving a passing grade for a credit program or physical attendance at a noncredit program. Attendance at a credit program on an audit basis does not satisfy the requirement of satisfactory completion.

(2) REQUIREMENTS. Continuing education requirements shall include:

(a) The program shall be approved by the department prior to attendance.

(b) The program shall be attended and completed not earlier than 5 years preceding the expiration of the applicant's current certification period. For certifications issued after January 1, 1981, the earliest program attended may not begin prior to the date of issuance of the applicant's current certification.

(c) The program shall be attended and completed not later than 2 months prior to the expiration of the applicant's current certification period.

(d) The program shall be at least 2.5 hours in length.

(e) An applicant or instructor may apply continuing education hours only once for the same program during any given recertification period.

(f) The minimum hours and subject areas of classroom instruction required by certification level are as follows:

1. Continuing education is not required to be recertified at the assessment technician level.

2. Twenty hours of continuing education programs in appraisal instruction shall be required for recertification at the property appraiser level.

3. Thirty hours of continuing education programs shall be required for recertification at the assessor 1 and 2 levels. A minimum of 15 hours shall be in appraisal instruction and a minimum of 15 hours shall be in property tax law or management instruction.

4. Thirty hours of continuing education programs shall be required for recertification at the assessor 3 level. A minimum of 3 hours shall be in appraisal instruction and a minimum of 27 hours shall be in property tax law or management instruction.

5. Programs may jointly meet requirements for applicants holding multiple certifications.

(3) DUTIES. The department and the committee shall be authorized to perform the following duties in administering the continuing education program:

(a) The department shall:

1. Appoint the committee to staggered 2-year terms. The maximum committee membership shall be 15, containing a minimum of 3 department members.
2. Assign the duties of committee chairperson and committee secretary to department members.
3. Call committee meetings as needed and maintain all committee records.
4. Review recommendations by the committee and notify interested parties of the decisions.
5. Reimburse the ordinary and necessary expenses of the committee members or duly authorized representatives in the performance of committee business.
6. Investigate any sponsor or instructor upon receipt of a complaint from an interested person.
7. Give written notification with the reason for such action if, after investigation and review, the department denies or deems it proper to withdraw its approval of any educational program or instructor. The sponsor or instructor may request a hearing before the department.

(b) The committee shall:

1. Meet as needed at the request of the committee chairperson. A minimum of 7 members shall be required to conduct business and decisions shall be made on the basis of a majority vote of the members in attendance.

2. Review materials submitted to the department and recommend approval or disapproval based on the subject area of the program, the qualification of the instructor and the number of hours in each program.

(4) INVESTIGATION AND REVIEW. The department with the assistance of the committee may review approved educational programs and instructors. The method of review shall be determined by the department in each case and may consist of one or more of the following:

- (a) Consideration of information available from federal, state or local agencies, private organizations or agencies, or interested persons.

- (b) Conferences with officials or representatives of the sponsor involved or with former students.

- (c) Public hearing regarding the educational program or instructor involved, with adequate written notice to the sponsor or instructor or both.

- (d) Investigation by visitation to the school program or session.

(5) APPROVAL. Requirements for approval of hours, subject areas, instructors and certification of attendance at programs are as follows:

- (a) Credit program approval may be requested by the school or an individual.

1. An application for approval shall be submitted at least 60 days prior to commencement of the program on a form provided by the department.

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ment. The department may require the following information and materials:

- a. The department in the school which is offering the course.
- b. The method of instruction for each course.
- c. The course number and titles.
- d. Detailed outlines of each course with specific allocations of classroom hours to each topic.
- e. A current school bulletin.

2. Program approvals shall be for a maximum of 15 months and shall expire on the first September 30 occurring 3 or more months from the date of initial approval. A school shall submit an application for reapproval to the department prior to July 30 each year. Approval for a credit course to an individual shall be valid for the specific session requested and only for the individual making the request.

3. Individuals attending the course shall provide evidence of satisfactory completion to the department within 30 days of the conclusion of the course.

4. The school or individual submitting a completed application as described in sub. (1) shall be notified of the department's approval or rejection regarding the application within 45 days of the receipt of the application.

(b) Noncredit program approval may be requested by a school or a program sponsor.

1. An application for approval shall be submitted at least 60 days prior to the commencement of the program on a form provided by the department. The department may require the following information and materials:

- a. All applicable information listed in par. (a) 1.
  - b. The name of the sponsoring organization.
  - c. Copies of program announcements and promotional material.
  - d. Names and qualifications of instructors of noncredit program.
2. Instructors shall be experienced in the subject which they are teaching; the department may limit its approval to specific content areas set forth in sub. (1) (b) and (i). As a minimum the instructor shall be a person, who, in the judgment of the department is qualified by experience, or education, or both to supervise a course of study within the legislative intent of this section.
3. Where the department deems it appropriate, initial approval of noncredit programs may be given without specific information concerning dates, times, locations and instructors, but this information shall be provided no later than 30 days prior to the beginning of the approved program. These approvals shall expire on the first September 30 occurring 3 or more months from the date of initial approval. Applications for reapproval shall be submitted to the department prior to July 30 each year.

4. Additional criteria for approval and reapproval of noncredit programs are as follows:

a. Applicants for approval shall not discriminate against anyone on the basis of sex, race, religion, age, physical disability or national origin in their educational programs.

b. The department shall approve only those programs whose primary emphasis is in the area of appraisal, property tax law, or management instruction. The number of hours of continuing education approved for a course will be only the actual number of hours of instruction which deal directly with appraisal, property tax law, or management areas.

c. The department may refuse approval if in its judgment the attendance at the program cannot be adequately monitored.

5. The sponsor or school shall provide evidence of attendance as follows:

a. Certificates of attendance on forms prescribed by the department, signed by authorized persons whose signatures are on file with the department and dated on the last class attended by the student, shall be given to all currently certified personnel who meet attendance requirements. This shall be completed within 10 days after the last class.

b. The approved instructor or the sponsor shall submit to the department a notarized list of those persons satisfactorily completing noncredit education programs which also certify that the named students personally attended the minimum required classroom instruction. The notarized list shall be furnished within 10 days following completion of the program. A school or sponsor shall maintain records to establish the attendance record submitted for continuing education programs for 5 years.

6. Students shall register for the complete educational program, attend the whole program, and receive a certificate for the hours for which the program was approved, except that a student who is forced by an emergency to leave a program may be given a certificate for the hours actually attended but not for less than 2.5 hours. Sponsors may make arrangements for make-up classes to enable students to meet attendance requirements.

7. It shall be misconduct under s. 73.09 (7), Stats., for certified assessors or assessment personnel who are involved as instructors or sponsors of noncredit courses to advertise or represent to the public that programs and instructors have been approved by the department when such approval has not been granted in writing by the department.

8. The school or program sponsor submitting a completed application as described in sub. (1) shall be notified of the department's approval or rejection regarding the application within 45 days of the receipt of the application.

(6) All correspondence to the department shall be sent to:

Wisconsin Department of Revenue  
Committee on Continuing Assessor Education  
c/o Assessor Certification and Training Unit  
Box 8933 125 S. Webster  
Madison, WI 53708

History: Emerg. cr. eff. 7-31-81; cr. Register, February, 1982, No. 314, eff. 3-1-82; cr. (5) (a) 4. and (b) 8., Register, January, 1985, No. 349, eff. 2-1-85.

**Tax 12.07 Assessment districts.** Based on the complexity of assessment functions, the department of revenue has established, by assessment district, the levels of certification required for statutory assessors as follows:

(1) **COUNTIES.** (a) Counties requiring an assessor 3 level of certification:

- |             |              |                |
|-------------|--------------|----------------|
| 1. Brown    | 6. Outagamie | 10. Walworth   |
| 2. Dane     | 7. Racine    | 11. Washington |
| 3. Kenosha  | 8. Rock      | 12. Waukesha   |
| 4. Marathon | 9. Sheboygan | 13. Winnebago  |

(b) Counties requiring an assessor 2 level of certification:

- |                 |                |                 |
|-----------------|----------------|-----------------|
| 1. Adams        | 19. Green Lake | 37. Polk        |
| 2. Barron       | 20. Iowa       | 38. Portage     |
| 3. Bayfield     | 21. Jackson    | 39. Price       |
| 4. Buffalo      | 22. Jefferson  | 40. Richland    |
| 5. Burnett      | 23. Juneau     | 41. Rusk        |
| 6. Calumet      | 24. Kewaunee   | 42. St. Croix   |
| 7. Chippewa     | 25. LaCrosse   | 43. Sauk        |
| 8. Clark        | 26. Lafayette  | 44. Sawyer      |
| 9. Columbia     | 27. Langlade   | 45. Shawano     |
| 10. Crawford    | 28. Lincoln    | 46. Taylor      |
| 11. Dodge       | 29. Manitowoc  | 47. Trempealeau |
| 12. Door        | 30. Marinette  | 48. Vernon      |
| 13. Douglas     | 31. Marquette  | 49. Vilas       |
| 14. Dunn        | 32. Monroe     | 50. Washburn    |
| 15. Eau Claire  | 33. Oconto     | 51. Waupaca     |
| 16. Fond du Lac | 34. Oneida     | 52. Waushara    |
| 17. Grant       | 35. Ozaukee    | 53. Wood        |
| 18. Green       | 36. Pierce     |                 |

(c) Counties requiring an assessor 1 level of certification:

- |             |           |              |
|-------------|-----------|--------------|
| 1. Ashland  | 3. Forest | 5. Menominee |
| 2. Florence | 4. Iron   | 6. Pepin     |

(2) **MUNICIPALITIES.** (a) Municipalities requiring an assessor 3 level of certification:

1. City of Madison—Dane county
2. City of Milwaukee—Milwaukee and Washington counties.

(b) Municipalities requiring an assessor 2 level of certification:

1. Town of Allouez—Brown county
2. Town of Caledonia - Racine county
3. Town of Grand Chute - Outagamie county

4. Town of Menasha - Winnebago county
5. Town of Mt. Pleasant - Racine county
6. Village of Ashwaubenon - Brown county
7. Village of Brown Deer—Milwaukee county
8. Village of Elm Grove—Waukesha county
9. Village of Fox Point—Milwaukee county
10. Village of Greendale—Milwaukee county
11. Village of Hales Corners—Milwaukee county
12. Village of Menomonee Falls—Waukesha county
13. Village of Shorewood—Milwaukee county
14. Village of Whitefish Bay—Milwaukee county
15. City of Appleton—Calumet, Outagamie and Winnebago counties
16. City of Beaver Dam—Dodge county
17. City of Beloit—Rock county
18. City of Brookfield—Waukesha county
19. City of Cudahy—Milwaukee county
20. City of DePere—Brown county
21. City of Eau Claire—Chippewa and Eau Claire counties
22. City of Fitchburg - Dane county
23. City of Fond du Lac—Fond du Lac county
24. City of Franklin—Milwaukee county
25. City of Glendale—Milwaukee county
26. City of Green Bay—Brown county
27. City of Greenfield—Milwaukee county
28. City of Janesville—Rock county
29. City of LaCrosse—LaCrosse county
30. City of Manitowoc—Manitowoc county
31. City of Marshfield—Marathon and Wood counties
32. City of Mequon—Ozaukee county
33. City of Middleton—Dane county
34. City of Monona—Dane county
35. City of Muskego—Waukesha county
36. City of Neenah—Winnebago county
37. City of New Berlin—Waukesha county
38. City of Oak Creek—Milwaukee county
39. City of Oconomowoc—Waukesha county
40. City of Oshkosh—Winnebago county
41. City of Racine—Racine county
42. City of Sheboygan—Sheboygan county
43. City of South Milwaukee—Milwaukee county
44. City of Stevens Point—Portage county
45. City of Sun Prairie—Dane county
46. City of Superior—Douglas county
47. City of Waukesha—Waukesha county
48. City of Wausau—Marathon county
49. City of Wauwatosa—Milwaukee county
50. City of West Allis—Milwaukee county
51. City of West Bend—Washington county
52. City of Wisconsin Rapids—Wood county

(c) Municipalities requiring an assessor 1 level of certification:

All towns, villages and cities not specifically mentioned as requiring an assessor 3 or assessor 2 level of certification shall require an assessor 1 level of certification.

History: Cr. Register, February, 1976, No. 242, eff. 3-1-76; am. (2) (b), Register, January, 1985, No. 349, eff. 2-1-85.

**Tax 12.073 Estimated fair market value on real and personal property tax bills.** (s. 70.665, Stats.) (1) **DEFINITIONS.** For purposes of administering s. 70.665, Stats., the following terms are defined:

(a) "Assessment ratio" means the decimal fraction rounded to the nearest ten thousandth obtained when the assessed value of all taxable nonmanufacturing property as taken from the clerk's statement of assessment filed with the department is divided by the value of all taxable nonmanufacturing property in the taxation district as determined by the department of revenue prior to adjustments under s. 70.57, Stats.

(b) "Estimated fair market value of real property" means the result rounded to the nearest \$100 obtained when the total assessed value of a parcel of real property, including forest croplands assessed per s. 77.04, Stats., and public lands assessed under ss. 70.114, 70.116, 70.117 and 70.175, Stats., as shown on the tax bill is divided by the assessment ratio furnished to the clerk by the department of revenue.

(c) "Estimated fair market value of personal property" means the result rounded to the nearest \$10 obtained when the total assessed value of the personal property as shown on the tax bill is divided by the assessment ratio furnished to the clerk by the department of revenue.

(d) "Taxation district" means any whole or portion of a municipality lying within a county.

(2) **REQUIREMENTS.** (a) The department of revenue shall furnish the assessment ratio to every taxation district clerk on the department's final statement of assessment for the taxation district.

(b) The clerk of the taxation district shall use the assessment ratio furnished by the department to calculate the estimated fair market value shown on the tax bills.

**Note: Option A**

In addition to the assessed value shown, Wisconsin law requires that your taxation district show the estimated fair market value of taxable property on property tax bills.

This estimated fair market value has been calculated by dividing the assessed value shown on this tax bill by the average assessment ratio of \_\_\_\_\_ furnished by the department of revenue. This ratio was calculated by dividing the local assessed value by the equalized value of your taxation district.

**Option B**

In addition to the assessed value shown, Wisconsin Law requires that your taxation district show the estimated fair market value of taxable property on property tax bills.

This estimated fair market value has been calculated by dividing the assessed value shown on this tax bill by the average assessment ratio furnished by the department of revenue. This ratio was calculated by dividing the local assessed value by the equalized value of your taxation district.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**Tax 12.075 Notice of increased assessment on taxable real property.** (s. 70.365, Stats.) (1) **GENERAL.** This notice shall be in writing and shall contain the following:

- (a) The authority of the notice of assessment.
  - (b) The amount of the increased assessment or the amount of the previous year's assessment and the amount of the current year's assessment.
  - (c) Date of the meeting of the local board of review.
  - (d) Reason for the change in the assessment.
  - (e) Information notifying the taxpayer of the procedures to be used to object to the assessment.
  - (f) Name and address of the taxpayer.
  - (g) Name of the municipality.
  - (h) A local telephone number the taxpayer may call to obtain information regarding the increased assessment, and appeal procedures before the local board of review.
  - (i) Parcel number and legal description or property address.
- (2) **PRESCRIBED FORM.** The form of this notice shall be prescribed by the department as follows:
- (a) Standard form
  - (b) Manual postcard form
  - (c) Computer postcard form
- (3) **OTHER FORMS.** Any form containing the same information as any of the prescribed forms is acceptable.
- (4) **APPLICABILITY.** Subsections (1), (2) and (3) shall apply to all notices of increased assessment mailed after December 31, 1979.

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

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**Tax 12.08 Review of equalized value of taxable general property by counties.** (s. 70.57 (2), Stats.) (1) **DEFINITIONS.** (a) "Equalized value" means the value of taxable general property of any county, city, village, or town, so determined by the department according to s. 70.57, Stats.

(b) "Secretary" means the secretary of the department of revenue or designee.

(c) "Department" means the department of revenue.

(d) "Appeal" means the complaint to the department of revenue by a county to the equalized value established by the department.

(2) **INTRODUCTION.** (a) The equalized value of taxable general property in the several counties of the state, made by the department under s. 70.57, Stats. may be reviewed, and a redetermination of the value of such property may be made by the department upon appeal. The filing of such appeal in the manner hereinafter provided shall impose upon the secretary the duty under powers conferred by s. 70.57 (2), Stats. to review the county equalized value complained of and if, in the secretary's judgment, based upon the sworn testimony, evidence and record made upon the hearing of such appeal, the secretary finds such equalized value of the county to be unequal and discriminatory, the secretary shall determine the correct such valuation to bring it into substantial compliance with the law.

(b) Section Tax 12.08 governs the making and filing of complaints by counties, the attendance of witnesses, the production of books, records and papers, and the mode of procedure used.

(3) **AUTHORIZATION OF APPEALS.** To authorize the appeal an order or resolution directing the same to be taken shall be adopted by the county board of the county taking such appeal at a lawful meeting of such body. When an appeal shall have been authorized the prosecution thereof shall be in charge of the chairman of the county board, or county administrator if so provided, unless otherwise directed by the governing body.

(4) **FORM OF APPEAL.** To accomplish such appeal there shall be filed in the office of the secretary within 90 days after the date of determining the equalized value by the department, an appeal in writing which shall set forth:

(a) That the county, naming the same, appeals to the secretary from the equalized value established by the department, specifying the date of such assessment.

(b) Whether such appeal is for the purpose of obtaining a review and redetermination of the equalized value of all the taxation districts of the county or of particular districts only, therein specified.

(c) Whether review and redetermination is desired as to real estate, or as to personal property, or both.

(d) That such appeal has been authorized by a resolution of the county board of the county in whose behalf such appeal is taken, and a copy of said resolution is included.

(e) A plain and concise statement, without unnecessary repetition, of the facts constituting the grievance sought to be remedied upon such

appeal, and shall contain allegations alleging specifically in what respects the equalized value assessment is in error.

(f) The appeal shall be verified by the chairman of the county board, or county administrator if so provided in the manner that pleadings in courts of record may be verified.

(5) HEARING. (a) As soon as practicable, the secretary shall set a time and place for hearings of such appeal. At least 10 days before the time set for such hearings, the secretary shall cause notice thereof to be mailed by certified mail to the county clerk of the county that has appealed.

(b) All proceedings shall be taken in full by a stenographer or by a recording device, a list shall be kept of the persons speaking and the order in which they speak. The secretary may order that a transcription be made, and in case of further appeal to Dane county circuit court it shall be made. Copies of the transcript shall be supplied to anyone requesting the same at the requestor's expense.

(c) The secretary shall hear upon oath all persons who appear in relation to the appeal, and on such hearing shall proceed as follows:

1. The secretary shall swear all persons testifying at the appeal hearing and may consider evidence and oral testimony submitted under oath.

2. The secretary may examine any person representing the county or the department and the county may examine any person representing the department.

3. The county representative and witnesses shall be the first to be heard.

4. The secretary shall, upon request of the county, furnish an abstract or copy of the information used by the department in arriving at the county equalized value. This includes statistics compiled by the department regarding sales and appraisal analysis, new construction, annexation, and other factors bearing on the county equalized value.

5. The department shall be prepared to present to the secretary the equalized values of all general property subject to taxation in the tax districts and shall provide evidence and oral testimony as is necessary regarding the department's valuation procedures and methodology used to arrive at the county equalized value.

6. The hearing may be adjourned, at the discretion of the secretary, as often and to such times and places as may be necessary in order to determine the facts.

7. The county's equalized values determined by the department under s. 70.57, Stats. are prima facie correct.

8. If satisfied that no substantial injustice has been done in the county equalized value assessment appealed from, the secretary may dismiss such appeal. If satisfied that substantial injustice has been done in the equalized value assessment, the secretary shall determine to revalue the tax district or districts which the secretary deems necessary, in a manner which in the secretary's judgment is best calculated to secure substantial justice.



(6) **REDETERMINATION OF COUNTY EQUALIZED VALUE.** The secretary shall make careful investigation of the value of taxable general property in the several tax districts to which such review and redetermination shall extend, in any manner which in good judgment is best calculated to determine the fair, equalized value of such property.

(7) **DECISION OF THE SECRETARY.** (a) The secretary shall make the final determination upon such appeal without unreasonable delay and shall file a copy thereof in the office of the county clerk and mail by certified mail a like copy to the attorney of the county appealing.

(b) In such determination the secretary shall set forth the relative value of the taxable general property in each such tax district as found, and what sum, if any, shall be added to or deducted from the aggregate value of taxable property in each such county and tax district as fixed in the determination of the department under s. 70.57, Stats., from which such appeal was taken in order to produce a relatively just and equitable county equalized value. The determination of the secretary shall be final and correction, if any, shall be made in the following year as specified in s. 70.57 (1), Stats.

Note: Further appeal from the determination made by the department is specified in s. 70.57 (2), Stats. as follows: "Appeal from the determination of the department shall be by writ of certiorari to the circuit court of Dane county within 90 days after the determination and shall be placed at the head of the circuit court calendar for an early hearing."

History: Cr. Register, June, 1979, No. 282, eff. 7-1-79.

**Tax 12.10 Examination of manufacturing property report forms, confidentiality.** (ss. 70.35 (3) and 70.995 (12), Stats.) (1) Manufacturing property report forms that must be completed by all manufacturers and returned to the department according to s. 70.995 (12), Stats., are confidential records. Self reporting forms for personal property required by s. 70.35 (3), Stats., are confidential records of the assessor's office.

(2) Manufacturing property report forms shall be deemed privileged information, for use by the department and for use in any public hearing regarding the property assessment. Local assessors and their agents view the report forms submitted regarding property in the jurisdiction the assessor represents. Government agencies may view the report forms for use in acquiring real property for public purposes.

(3) Upon presentation of appropriate identification by the person allowed to make the examination, the report forms may be examined only at the district property assessment office.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79.

**Tax 12.20 Net proceeds occupational tax on metal mining, taxable year.** The taxable year adopted by the person engaged in mining metalliferous minerals in this state for purposes of the "net proceeds occupational tax report" shall correspond to the year adopted by that person for Wisconsin franchise and income tax purposes.

History: Cr. Register, June, 1979, No. 282, eff. 7-1-79.

**Tax 12.21 Indexed mining net proceeds tax rate schedule.** (s. 70.375 (5) and (6), Stats.) (1) Reference to statutory provisions. Section 70.375 (5), Stats., prescribes the tax rates to be applied to the net proceeds of the mine of persons engaged in mining metalliferous minerals for taxable years 1981 and 1982.

## Tax 12

(2) Section 70.375 (6), Stats., provides that "For calendar year 1983 and corresponding fiscal years and thereafter, the dollar amounts in sub. (5) and s. 70.395 (1) to (2) (i) shall be changed to reflect the percentage change between the gross national product deflator for June of the current year and the gross national product deflator for June of the previous year, as determined by the U.S. department of commerce as of December 30 of the year for which the taxes are due, except that no annual increase may be more than 10%. The revised amounts shall be rounded to the nearest whole number divisible by 100 and shall not be reduced below the amounts under sub. (5) on November 28, 1981. Annually, the department shall adopt any changes in dollar amounts required under this subsection and incorporate them into the appropriate tax forms."

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 12.22 Confidentiality of information.** (s. 70.375 (2) (b), Stats.) Any information received for the taxable year 1981 and thereafter shall not be divulged except as provided in s. 71.11 (44), Stats., and Ch. Tax 1.11.

History: Cr. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 12.23 Basis and amount of deduction for depreciation and amortization.** (s. 70.375 (4) (k), Stats., 1979, s. 70.375 (4) (k) )

(1) The basis for depreciation and amortization of the property eligible for such write-offs prior to January 1, 1981 under s. 70.375 (4) (k), Stats., 1979, for mines operated during the taxable year 1977 shall be their net book value as of the beginning of that year provided that the straight line method for computing the expense was used for book purposes. If the straight line method was not used the basis shall be recomputed as if it was used.

(2) The amount of the deduction for depreciation on property first eligible for depreciation on or after January 1, 1981 is limited to amounts allowable under s. 71.04 (15), Stats.

History: Cr. Register, June, 1979, No. 282, eff. 7-1-79; am. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 12.25 Deductions for expenses incurred by other than person taxed.** History: Cr. Register, June, 1979, No. 282, eff. 7-1-79; r. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 12.27 Three year averaging rule.** History: Cr. Register, June, 1979, No. 282, eff. 7-1-79; r. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 12.25 Review of assessments, claims for refunds.** Additional assessments and claims for refunds for excess net proceed tax payments are subject to the same procedure for review and final determination as additional income tax assessments and claims for refunds under provisions of ch. 71, Stats., as far as the same may be applicable.

History: Cr. Register, June, 1979, No. 282, eff. 7-1-79; renum. from Tax 12.28, Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 12.29 Interest.** History: Cr. Register, June, 1979, No. 282, eff. 7-1-79; r. Register, June, 1983, 330, eff. 7-1-83.

**Tax 12.40 Waste treatment facilities (industrial).** (s. 70.11 (21), Stats.) (1) STATUTE. (a) The general property tax exemption for a waste treatment facility is contained in s. 70.11 (21), Stats.

(b) Property purchased or upon which construction began prior to July 31, 1975 shall be subject to s. 70.11 (21), 1973 Stats. Property Register, June, 1983, No. 330

purchased or upon which construction began on July 31, 1975 or thereafter shall be subject to s. 70.11 (21), 1975 Stats. and must be approved by the department.

(2) APPROVAL. (a) Requests for approval by industrial or commercial concerns for each waste treatment facility shall be made by completing the form entitled "Application for Exemption of Waste Treatment Facility". The completed form is due February 1 of each year and is to be filed annually even though in years subsequent to purchase or construction no capital changes have occurred to the waste treatment facility. All actual costs of purchase or construction of the facility must be reflected on this form.

(b) The completed form "Application for Exemption of Waste Treatment Facility" should be sent to the Bureau of Property Taxes, Division of State/Local Finance, Wisconsin Department of Revenue, 201 East Washington Avenue, Madison, WI 53702.

(3) INDUSTRIAL WASTE TREATMENT FACILITY EXEMPTION. (a) The words "waste", "treatment" and "facility" are deemed to have the following meanings:

1. *Waste*; means that which is left over as superfluous, discarded or fugitive material. In addition, "*industrial waste*" is defined by reference to s. 144.01 (9), Stats., as liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "*Air contaminant*" is defined by reference to s. 144.30 (1), Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas odorous substances or any combination thereof but shall not include uncombined water vapor.

2. *Treatment*; means removing, altering or storing waste.

3. *Facility*; means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

4. *Waste treatment facility* means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material. Monitoring equipment which is not a component or integral part of a waste treatment facility is not exempt.

(b) The exemption for industrial waste treatment facilities does not extend to "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" (s. 144.01 (10), Stats.).

(c) The exemption also does not apply to conversion of an industrial furnace from one type of fuel to another type of fuel. The exemption does not apply to the increased height of a smoke stack to diffuse emissions over a wide area or increments to property held for the production of income but which may be indirectly related to pollution abatement. However, the installation of a scrubber or electrostatic precipitator in a smoke stack could qualify for exemption.

**Tax 12.50 Exempt solar and wind energy systems.** (s. 70.111 (18), Stats.)

(1) **APPLICABILITY.** The general property tax exemption applies whether the solar and wind energy systems certified by the department of industry, labor and human relations under s. 101.57 (4), Stats., are deemed personal property or are so affixed to the realty as to be classified as real estate.

(2) **CLAIMS FOR EXEMPTION, PROCEDURE.** Upon certification by the department of industry, labor and human relations the owner of the solar and wind energy system shall submit a claim for exemption on forms prescribed by the department of revenue to the assessor for the taxation district in which the system is located.

(3) **WHEN VALID.** An exemption shall become effective when both of the following conditions are met:

(a) The certification under s. 101.57 (4), Stats., shall be effective prior to the January 1 assessment date for which the exemption is claimed.

(b) The claim for exemption shall be submitted to the assessor no later than the April 1 immediately following the assessment date for which the exemption is claimed.

(4) **TERMINATION.** This rule shall terminate December 31, 1995.

History: Emerg. cr. eff. 12-31-80; cr. Register, May, 1981, No. 305, eff. 6-1-81.

## Chapter Tax 13

## INVESTMENT AND LOCAL IMPACT FUND

Tax 13.01	Purpose	Tax 13.08	Expenditures
Tax 13.02	Scope	Tax 13.09	Audits
Tax 13.03	Definitions	Tax 13.10	Fiscal guidelines
Tax 13.05	Transfer of taxes, funds, and fees	Tax 13.11	Accounting procedures
Tax 13.06	Direct payments	Tax 13.12	Recoupment and withholding of payments
Tax 13.07	Discretionary payments		
Tax 13.075	Local and joint impact committees		

Note: Chapter Tax 13 as it existed on November 30, 1982, was repealed and a new chapter Tax 13 was created effective December 1, 1982.

**Tax 13.01 Purpose.** The purpose of this chapter is to establish standards and procedures for the issuance of funds generated by a net proceeds occupation tax to municipalities for costs associated with social, educational, environmental, and economic impacts of metalliferous mineral mining incurred prior to, during, and after extraction of metalliferous minerals.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

**Tax 13.02 Scope.** Pursuant to s. 70.395 (2) (c), Stats., the provisions of this chapter shall govern the distribution and use of net proceeds occupation tax monies.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

**Tax 13.03 Definitions.** (1) "Board" means investment and local impact fund board.

(2) "Certify" or "Certification" means filing with the department of administration a written confirmation of specific transfers, payments, or investments to be made by the department of administration.

(3) "Construction" means the activities described in the approved mining plan which can only occur at the mining site with the issuance of a mine permit and written authorization to commence mining under ss. 144.85 and 144.86 (3), Stats.

(4) "Construction period payment" means:

(a) An amount equal to \$100,000 for each city, village, town, or Native American community eligible to receive a payment under s. 70.395 (2) (d) (5)a, Stats., during the construction period.

(b) An amount equal to \$300,000 for each county eligible to receive a payment under s. 70.395 (2) (d) 5b., Stats., during the construction period, less the amount of property taxes paid to the county during the current project year on improvements made by the person engaged in metalliferous mining and any payments received by the county under s. 70.395 (2) (d)1 and 1m, Stats.

(5) "First dollar payment" means an amount equal to \$100,000 for each county, city, village, town, or Native American community eligible

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to receive a payment under s. 70.395 (2) (d) 1, 2 or 2m, Stats. If the tax collected under ss. 70.38 to 70.39, Stats., in any year is less than the first dollar payment as defined in this subsection, the first dollar payment for that year means the total amount of taxes collected under ss. 70.38 to 79.39, Stats.

(6) "Impact fund" means investment and local impact fund.

(7) "Indexed" means an adjustment made to payments under s. Tax 13.06 (1), (2), and (3), to reflect the percentage change between the gross national product deflator for June of the current year and the gross national product deflator for June of the previous year, as determined by the U.S. department of commerce as of December 30 of the year for which the taxes under ss. 70.38 to 70.39, Stats., are due, except that no annual increase may be more than 10%. The revised amounts shall be rounded to the nearest whole number divisible by 100.

(8) "Mine" means an excavation in or at the earth's surface made to extract metalliferous minerals for which a permit has been issued under s. 144.85, Stats.

(9) "Mining" or "mined" has the meaning under s. 70.375 (1) (b), Stats.

(10) "Mining permit application" means the mine permit application form filed with the department of natural resources pursuant to s. NR 132.06 Wis. Adm. Code.

Note: The mine permit application is Form 2700-4, Rev. 4-82.

(10m) "Mining related purposes" has the meaning designated in s. 70.375 (1) (bm), Stats.

(11) "Mining site" means the location:

(a) Of a metalliferous ore deposit for which a mine permit application has been filed pursuant to s. 144.85, Stats.

(b) Designated by s. 70.375 (1) (av), Stats., limited to the proposed location of the defined areas, structures, and equipment as shown in a mining plan:

1. Filed as part of a mine permit application under s. 144.85, Stats., or

2. Filed with the board as part of the written notice by a person intending to begin construction under s. 13.05.

(12) "Municipality" means any county, city, village, town, or school district. Pursuant to s. 20.002 (13), Stats., this definition also includes any federally recognized tribal governing body.

(13) "Native American community" means a federally recognized tribal governing body.

(14) "Nonshared costs" means the amount of the school district's principal and interest payments on the long-term indebtedness and annual capital outlay for the current school year which is not shared under s. 121.07 (6) (a), Stats., or other nonshared costs, and which is attributable to enrollment increases resulting from the development of metalliferous mineral mining operations.

(15) "Permit period payment" means an amount equal to \$100,000 for each city, village, town, or Native American community eligible to receive a payment under s. 70.395 (2) (d) 5., Stats., during the mine permit period.

(16) "Person" means a sole proprietorship, partnership, association, or corporation and includes a lessee engaged in mining metalliferous minerals.

(17) "Project fiscal year" means a 12-month time period which begins on the date a city, village, town, or Native American community first receives a payment under s. Tax 13.06 (2) or (3).

(18) "Project reserve fund" means an amount equal to 10% of the net proceeds tax paid by each mine plus all accrued interest.

(19) "Tax" means the net proceeds occupation tax imposed on persons engaged in mining metalliferous minerals in this state.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; emerg. cr. (10m), eff. 1-1-86. am. (4), cr. (10m), r. and recr. (11), Register, September, 1986, No. 369, eff. 10-1-86.

Tax 13.04 Severability. History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. under s. 13.93 (2m) (b) 16, Stats., Register, September, 1986.

**Tax 13.05 Transfer of taxes, funds, and fees. (1) NET PROCEEDS TAX.** Fifteen days after collection of the tax, the department of administration, upon certification of the department of revenue, shall transfer the amount collected as follows:

(a) From mines in operation on or before November 27, 1981:

1. Forty percent to the general fund.
2. Sixty percent to the impact fund.

(b) From mines which first begin operations after November 27, 1981:

1. The first dollar payment or 60% of the taxes collected, whichever is greater, to the impact fund.

2. After the distribution in subd. 1, the remainder of the taxes collected to the badger fund under s. 25.28, Stats.

3. If the balance in the impact fund is more than \$20 million on January 1 of any year, the board shall transfer the excess over \$20 million to a segregated account to be administered under s. 25.28, Stats. The interest which accrues on the amount transferred to the segregated account shall be used pursuant to s. 25.28, Stats. For the purpose of determining the amount to be transferred, any monies deposited in the project reserve fund under s. Tax 13.06 (4) shall not be included in the impact fund balance.

4. The board may transfer funds from the segregated account established under subd. 3, up to the amount previously transferred in all prior years, under 2 conditions:

a. When the impact fund does not have sufficient funds to make any of the payments authorized under s. 70.395, Stats., for any year, or

b. When the balance in the impact fund is below \$20 million on any January 1.

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(2) **WASTE MANAGEMENT FUND.** Prior to the beginning of a fiscal year, the board shall certify to the department of administration for payment from the impact fund any sum necessary for the department of natural resources to make payments under s. 144.441 (3) (g) 4 and 5, Stats., for the long term care of mining waste sites, if monies in the waste management fund are insufficient to make complete payments during that fiscal year. This sum may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50% of the balance in the impact fund at the beginning of that fiscal year, whichever amount is greater.

(3) **CONSTRUCTION FEE.** Each year a person who engages in construction shall pay a construction fee to the department of revenue equal to an amount sufficient to make all the construction period payments that year under s. Tax 13.06 (2). The person shall pay the construction fee on a project fiscal year basis for each year construction continues at that site up to 3 years after the production of concentrates begins. This fee shall be used exclusively by the board to make construction period payments.

(a) Any person intending to begin construction shall notify the board by registered mail 90 days prior to the time construction begins. This written notice of intent shall include:

1. The name and address of the person intending to begin construction.
2. A mining plan showing the location of the mining site.

(b) Within 45 days after the receipt of the written notice of intent to begin construction, the board shall notify the department of revenue and give written public notice listing the counties, cities, villages, towns, and Native American communities to receive construction period payments.

(c) In determining the construction fee, construction is considered to begin in all cities, villages, and towns that are part of the mining site when it begins in any part of the mining site. The construction period payments for cities, villages, towns, and Native American communities shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amounts shall be rounded to the nearest whole number divisible by 100 and shall not be reduced below \$100,000.

(d) Within 7 days after the beginning of construction, a person shall pay the construction fee to the department of revenue for deposit in the impact fund.

(e) For each year construction continues up to 3 years after the production of concentrates begins, the construction fee shall be paid to the department of revenue within 30 days after notification of the assessment.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (3) (a), (b) and (c), Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.06 Direct payments.** (1) **FIRST DOLLAR PAYMENTS.** Certain counties, cities, villages, towns, and Native American communities shall receive a first dollar payment under s. 70.395 (2) (d), Stats. The board shall give written public notice in July listing the municipalities to receive a first dollar payment or a percentage of the tax collected, or both, and the amount of each payment. Each December, the board shall certify to the



department of administration the specific payments to be made on the first Monday in January of the next year, as follows:

(a) *Counties*. 1. Each county in which the metalliferous minerals are extracted shall receive a first dollar payment.

2. Each county in which the metalliferous minerals are extracted shall also receive 20% of the tax collected from persons in that county or \$250,000, whichever is less.

(b) *Cities, villages, and towns*. Each city, village, and town in which metalliferous minerals are extracted, or which contain at least 15% of that ore body, shall receive a first dollar payment.

(c) *Native American communities*. Each Native American community located within one or more cities, villages, or towns which receive a first dollar payment shall also receive a first dollar payment.

(d) *Exceptions*. 1. Where the tax collected is in respect to a mine located in more than one county each county's first dollar payment shall be equal to the ratio of the amount of crude ore extracted from the mine in that county to the total amount of crude ore extracted from the mines that year multiplied by the amount of the payment under par. (a) 1.

2. If a first dollar payment is made within a project fiscal year in which a city, village, town, or Native American community receives a construction period payment, the first dollar payment shall be reduced proportionately to correspond to the time remaining in the project fiscal year.

3. The dollar amounts in this subsection shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amounts shall be rounded to the nearest whole number divisible by 100. First dollar payments shall not be reduced below \$100,000. When the \$250,000 figure under par. (a) 2 is indexed, the amount shall not be reduced below \$250,000.

(2) **CONSTRUCTION PERIOD PAYMENTS**. Certain counties, cities, villages, towns, and Native American communities that contain a mining site for which a mine permit has been granted under s. 144.85, Stats., at which construction begins prior to January 1, 1989, and for which a construction fee has been paid, shall receive annual payments during the time periods are engaged in construction at that site. The Board shall certify to the department of administration the specific construction period payments to be made under s. 70.395 (2) (d) 5.a. and b., Stats. The funds paid under this subsection shall be used only for mining-related purposes. The following municipalities shall receive construction period payments:

(a) *Cities, villages, towns, and Native American communities*. Each city, village, and town that contains a mining site and each Native American community located within one or more cities, villages, or towns that contains a mining site.

1. The first payment shall be made within 30 days after construction begins. Subsequent annual payments shall be made on the anniversary date of the first payment.

2. The payment amounts in this paragraph shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amount

shall be rounded to the nearest whole number divisible by \$100 and shall not be reduced below \$100,000.

3. Payments will be made for each year that construction continues at that site for up to three years after the production of concentrates begins.

(b) *Counties.* Each county that contains a mining site. The first payment shall be made within 30 days after the date which is one year after the commencement of construction.

1. Counties may receive payments under s. 70.395 (2) (d) 5b only for mining-related purposes. The county shall submit to the board at least 60 days before the anniversary of the commencement of construction a request for payment, with an explanation of the mining-related purpose of each element of the county's request. The county may seek board approval for mining-related expenditures at any time during the year. The board may hold a hearing on the county's request. The board shall certify to the department of administration for payment to the county either the maximum payment allowable under s. 70.395 (2) (d) 5b, or the amount of the county's request which the board determines is for mining-related purposes, whichever is less. The county shall be eligible for a payment for each year that construction continues at that site until the production of concentrates begins.

2.a. It is a mining-related purpose for the county to use a portion of the construction period payment to fund projects or activities of a city, village, town, or Native American community located within the county, if such a project or activity is for a mining-related purpose.

b. A city, village, town, or Native American community may submit a request to the county to receive a portion of the county's construction period payment. The request shall include an explanation of the mining-related purpose of each element of the request. One or more cities, villages, towns, or Native American communities may submit a joint request. The county shall evaluate its own request together with the requests of any city, village, town, or Native American community and may include such a request as part of the county's request to the board.

(3) PERMIT PERIOD PAYMENTS. Certain cities, villages, towns, and Native American communities that contain a mining site for which a mine permit application is submitted under s. 144.85, Stats., shall receive annual payments from the impact fund during the time persons are engaged in the mine permitting process in relation to that site. The board shall determine the cities, villages, towns, and Native American communities to receive permit period payments based on the location of the metallic mineral deposit, the concentrator, and the tailings disposal pond as proposed in the mine permit application.

(a) These payments shall be made within 30 days after the mine permit application is filed. The payment shall be paid annually on the anniversary date of the first permit period payment for each year the permitting process continues until a final administrative or judicial decision is made on the mine permit application, the person formally withdraws the mine permit application, or for 4 years, whichever is the shorter period. No more than 4 annual permit period payments shall be made to cities, villages, towns, and Native American communities in relation to any one metallic mineral deposit.

(b) The permit period payments shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amount shall be rounded to the nearest whole number divisible by 100 and shall not be reduced below \$100,000.

(c) Any person filing a mine permit application to the department of natural resources under s. 144.85, Stats., shall notify the board by registered mail within 7 days after the mine permit application has been filed. The notification shall include a map showing the location of the metallic mineral deposit, and the proposed location of the concentrator and tailings disposal pond.

(d) The board shall certify to the department of administration the specific payments to be made under s. 70.395 (2) (d) 5., Stats. The following municipalities shall receive permit period payments:

1. *Cities, villages, and towns.* Each city, village, and town that contains a mining site for which a mine permit application is submitted prior to January 1, 1986.

2. *Native American communities.* Each Native American community located within one or more cities, villages, or towns which receive a permit period payment.

(4) **PROJECT RESERVE FUND.** The board shall establish and maintain a project reserve fund within the impact fund in relation to each mine which first begins operation after November 27, 1981. Each project reserve fund shall consist of 10% of the net proceeds tax paid by each mine plus all accrued interest on that amount. For municipalities that contain a mining site and for which a project reserve fund has been established, the board shall withdraw monies from that specific fund to be used for the following purposes:

(a) To ensure an annual payment to each city, village, and town in an amount equal to the average first dollar payment to that municipality for the 3 previous years.

(b) To reimburse municipalities for costs associated with the cessation of mining operations.

(c) To indemnify municipalities for reclamation expenses not covered under s. 144.91 (2), Stats.

(5) **PAYMENT PRIORITIES.** If the appropriations under s. 20.566 (7) (e) and (v), Stats., in any one year are not sufficient to pay the full amount under subs. (1) through (4), full payments shall be made in the order listed in this subsection. If funds are not sufficient to pay the full amounts payable at a particular priority level, payments shall be prorated among the entities entitled to payments at that level. Payments shall be made in the following order pursuant to s. 70.395 (2) (e), Stats.:

(a) Construction period payments to counties, cities, villages, towns, and Native American communities which contain a mining site and for which a mining company has paid a construction fee for that site.

(b) First dollar payments for counties, cities, villages, towns, and Native American communities.

(c) Payments to counties for an amount equal to 20% of the tax collected or \$250,000, whichever is less.

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(d) Payments to the project reserve fund.

(e) Permit period payments to cities, villages, towns, and Native American communities.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; emerg. cr. (2) (c), eff. 1-1-86; r. and rec. (2) (intro.), (a) and (b), am. (5) (a), Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.07 Discretionary payments.** In accordance with s. 70.395 (2) (g), Stats., any municipality may apply to the board for a discretionary payment from the impact fund.

(1) **SCHOOL DISTRICT PAYMENTS.** A school district may apply to the board for payments from the fund in an amount equal to the school district's nonshared costs. If the board finds that the school district has incurred costs attributable to enrollment resulting from the development and operation of metalliferous mineral mining and if the board and the school board of the school district reach an agreement on a payment schedule, the board shall certify to the department of administration for payment to the school district an amount equal to all or part of the nonshared costs of the school district in the year in which the initial agreement was reached. The board and the school district may, by mutual consent, modify the provisions of the agreement at any time. The payment shall be considered a nondeductible receipt for the purposes of s. 121.07 (6), Stats.

(2) **DISCRETIONARY PAYMENT PROGRAM.** The annual discretionary payment program includes the following procedures:

(a) *Application process.* The application process shall include the following steps:

1. Before June 1, the board may adopt an overall funding ceiling for the discretionary payment program outlined in this subsection. The level of the ceiling shall be based on the financial status of the impact fund, the board's expectation of what municipalities will need from the impact fund in the next year, and a review of the status of mineral development projects in the state. The overall funding ceiling shall be viewed throughout the application review process as a fiscal control upon the board. The board may modify the ceiling, as it deems necessary, once it has fully determined the merits of each application.

2. Before June 1, the board shall give written public notice announcing its intent to distribute discretionary grants and the total funds available for distribution. The board shall give written notice of the grant program and grant guidelines to local governments reasonably expected to be affected by metallic mineral development.

3. All discretionary grant applications submitted to the board shall be postmarked on or before July 31 in order to receive funding consideration.

4. Each application shall include a supporting resolution from the appropriate local governing body or bodies. The supporting resolutions submitted to the Board shall be postmarked on or before August 31.

a. Each local or joint impact committee application shall be accompanied by a supporting resolution from the committee.

b. Each joint impact committee application shall be accompanied by a supporting resolution from each local committee within the area served by the joint committee and from each municipality which appoints the joint committee.

c. Each local impact committee application shall be accompanied by a supporting resolution from its appointing authority.

5. A municipality may submit more than one application. Two or more municipalities may submit a joint application.

6. The board may provide partial funding to a municipality for a mining-related project. The board may also require municipalities to provide matching funds toward project costs as a condition for receiving a discretionary grant.

(b) *Application contents.* An application may take one of 2 forms:

1. Project proposal. Municipalities seeking funds for a particular public service or facility, including the design, construction, or maintenance of a public facility, the hiring of consultants to provide specific legal, planning, local development, or technical assistance shall develop a project proposal for consideration by the board. The appropriate form shall be furnished by the board upon request. Information on the following shall be provided for a project proposal:

a. A detailed description of the project and its components parts.

b. The facts which verify the mining impact the proposal will address.

c. A detailed budget for the proposal including the local funding contribution the municipality plans to make or any outside funding that would be used for the project.

d. The project timetable, including the date of commencement and the date the project is expected to be completed.

e. A description of any alternatives to the proposed project which were considered and an explanation of why the proposed project was rated more highly than the alternatives.

f. A description of how the project will alleviate a mining impact.

2. Mining impact brief. Municipalities seeking funding for the operations of a local impact committee or a joint impact committee shall submit a mining impact brief. The appropriate form shall be furnished by the board upon request. Mining impact briefs shall include:

a. A description of the proposed committee activities to be performed.

b. A detailed budget including a description of the amount and sources of other funds and resources that will be applied toward committee activities during the proposed project.

c. An explanation of how the proposed committee activities will alleviate a mining related impact or impacts.

d. A description of how the project will be coordinated with other related activities undertaken by other local units of government and other local and joint impact committees.

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e. A comprehensive description of the committee's long-term plans and goals, including a description of the committee activities for which it anticipates that funding will be sought from the board and from other sources in the year subsequent to the proposed project and during the long-term planning period.

f. A description of how the proposed activities to be funded relate to the long-term plans of the committee.

(c) *Application review process.* All applications shall be reviewed by the board. The following criteria shall be used to evaluate each application:

1. The extent to which the impact is caused by metallic mining and the severity of the actual or potential impact.

2. The extent to which the applicant is prepared to deal with the mining impact and is using all possible resources to address the situation. Consideration shall be given to the following factors:

a. Whether the applicant will complement the project with other community assistance programs, resources, funds, or expertise.

b. Whether the applicant has demonstrated an ability and willingness to plan for its future.

c. Whether the applicant had demonstrated a willingness to cooperate with neighboring jurisdictions.

3. The extent to which the applicant will make effective use of a mining impact grant. Consideration shall be given to the following factors:

a. Whether the proposal is likely to accomplish its purpose and addresses the impact.

b. Whether the request is well-reasoned and cost-effective.

c. Whether the project duplicates other planned activities.

4. The extent to which funding for the impact is necessary.

5. The extent to which the applicant has received any payments under s. Tax 13.06.

6. The board shall consider the following additional criteria in evaluating a funding application submitted by a local impact committee:

a. The extent to which the funding proposal conforms with the statutory purposes of a local impact committee in s. 144.838 (1), Stats., and meets the requirements of s. 144.838 (4), Stats.

b. The adequacy of the local impact committee's long-term plan and the appropriateness of the funding proposal in relation to the long-term plan.

c. The degree of support provided to the local impact committee by its appointing authority, including staff support, direct financial support, and approval by the appointing authority of the local impact committee's activities, as evidenced by supporting resolution.

d. The efforts of the local impact committee to obtain additional funding from other sources.

e. The past success of the local impact committee in accomplishing its statutory purposes.

f. The performance of the local impact committee in financial audits and the steps taken by the local impact committee to correct inadequacies noted in audits.

7. The board shall consider the following additional criteria in evaluating a funding application submitted by a joint impact committee:

a. The extent to which the funding proposal conforms with the purposes of the joint committee specified in this chapter.

b. The adequacy of the joint impact committee's long-term plan and the appropriateness of the funding proposal in relation to the long-term plan.

c. The degree of local support for activities of the joint committee, including staff services donated by municipalities within the area served by the joint committee, direct financial support received or anticipated to be received from local impact committees and municipalities within the area served by the joint committee and approval of the activities of the joint committee as evidenced by supporting resolutions from local committees, municipalities, and tribal governing bodies within the area served by the joint committee.

d. The efforts of the joint impact committee to obtain additional funding from other sources.

e. Past successes of the joint committee in implementing the purposes specified for the joint committee in this chapter.

f. Performance of the joint committee on financial audits and steps taken by the joint committee to correct inadequacies noted in any financial audit.

g. The adequacy of communications between the joint impact committee and the local impact committees, municipalities, and tribal governing bodies within the area served by the joint impact committee.

8. When providing partial funding or requiring local matching funds for a grant project, the board shall consider:

a. The extent to which the project is mining related.

b. The extent to which the project is necessary for alleviating a mining-related impact.

c. The extent to which outside funding is necessary.

d. The extent to which a municipality receives other revenues associated with a proposed or operating mine.

e. The amount of funds available in the investment and local impact fund and the short term and long term needs of mining communities throughout the state.

9. The extent to which the location of each applicant, with respect to mineral development, meets 3 distribution priorities:

a. Distribution shall first be made to those municipalities with active metalliferous mining sites or with metalliferous mining sites that were

active within 3 years previous to December 31 of the year in which the grant application is made, or to those municipalities in which a permit has been issued under s. 144.86, Stats., to commence mining.

b. Distribution shall next be made to those municipalities adjacent to municipalities in which metalliferous minerals are extracted or were extracted more than 3 years, but less than 7 years previous to December 31 of the year in which the grant application is made.

c. Distribution shall next be made to those municipalities in which metalliferous minerals are not currently being extracted and to those municipalities which are not adjacent to municipalities in which metalliferous minerals are extracted. Within this category, a higher priority shall be given to municipalities where a metalliferous mine is proposed and the mining company has filed a notice of intent under s. 144.831, Stats., a prospecting permit application under s. 144.84, Stats., or a mining permit application under s. 144.85, Stats., municipalities where metalliferous mining occurred more than 3 years ago, and municipalities where metallic mineral exploration is occurring.

10. During the board review of the grant proposals, applicants may appear before the board on behalf of their applications.

(d) *Decision and notification process.* The board shall make its funding decisions on or before October 15. The board shall notify all applicants in writing of the action taken on their respective applications.

(e) *Grant agreements.* Grant decisions made by the board shall be formalized in a grant agreement between the board and the local government grant recipient. The terms of the grant agreement shall include:

1. The grant project period.
2. The purposes for which the grant shall be used.
3. The grant sum awarded.
4. Provisions for the maintenance of grant funds in a segregated account.
5. Provisions for the maintenance of records of grant expenditures and supporting documentation to substantiate the costs claimed.
6. Provisions for the return of unexpended funds to the board at the end of the project period or grant year.
7. Provisions for the submittal of an expenditure report to the board at the end of the project period or grant year to document the use of the grant award.
8. Other reasonable terms the board believes necessary to ensure the prudent use of the grant funds.

(f) *Grant disbursements.* The board shall disburse grant awards as follows:

1. Discretionary grant awards of \$2,000 or less shall be disbursed to the grant recipient at the beginning of the grant project, after the grant agreement has been signed by both parties.



2. Grant awards for more than \$2,000 shall be distributed on an as-needed basis. A grant recipient shall certify to the board project costs that have been incurred. A grant check shall be sent to the grant recipient within 3 weeks for the amount of the expenditure. To certify the expense, the grant recipient shall file a certification form with the board or submit a copy of the bill to document the expenditure.

(g) *Appeals process.* The grant appeal process shall include the following steps:

1. Any municipality which wants to appeal a funding decision by the board shall submit a written appeal to the board within 20 days after notification. The 20-day period begins on the day after the mailing of the board's decision. The written appeal shall specify in detail:

- a. How the board has made a material error of law,
- b. How the board has made a material error of fact, or
- c. New, pertinent information which was not available to the board at the time of its decision.

2. A representative of an appealing municipality may appear before the board prior to board action on the appeal. The board shall decide whether to reconsider action on an appeal within 30 days after receipt of the written appeal. Any municipality aggrieved by a funding decision of the board may petition the circuit court for a review of the board's decision within 30 days of its original decision, or if an appeal has been sought as provided in this subdivision, within 30 days of the board's decision on that appeal. The 30-day period begins on the day after the mailing of the board's decision. The petition for review shall be served on the board and filed in the office of the clerk of circuit court as specified in s. 227.16, Stats.

(3) **EMERGENCY PAYMENTS.** (a) Any discretionary funds available to the board, may be withdrawn and distributed by the board, at any time, to any municipality which demonstrates its need for financial assistance in alleviating a mining-related impact which is deemed by the board to be sudden and unforeseeable. The policies and procedures presented in sub. (2) (c), shall apply to the distribution and use of emergency reserve monies, except for the specified deadline dates.

(b) The board shall not consider requests for emergency payments from local or joint impact committees for administrative or operational expenses.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; am. (2) (a) 4., (2) (b), 2. intro. and a. to d. and (3), renum. (2) (c) 6. and 7. to be (2) (c) 9. and 10., cr. (2) (a) 4.a. to c., (2) (a) 6., (2) (b) 2.f. and (2) (c) 6. to 8., r. and recr. (2) (b) 2.c., Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.075 Local and joint impact committees.** (1) **STATUTORY AUTHORITY.** Under s. 144.838, Stats., a local impact committee or a joint impact committee may apply to the board for a discretionary payment from the impact fund.

(2) **PURPOSES OF LOCAL AND JOINT IMPACT COMMITTEES.** (a) *Local impact committees.* Local impact committees may be established for the purposes specified in s. 144.838 (1), Stats.

**Note:** 144.838 Local impact committee. (1) A county, town, village, city or tribal government likely to be substantially affected by potential or proposed mining may designate an existing committee, or establish a committee, for purposes of:

(a) *Facilitating communications between operators and itself.*

(b) *Analyzing implications of mining.*

(c) *Reviewing and commenting on reclamation plans.*

(d) *Developing solutions to mining-induced growth problems.*

(e) *Recommending priorities for local action.*

(f) *Formulating recommendations to the investment and local impact fund board regarding distribution of funds under s. 70.385 (2) (g), Stats.*

(b) *Joint impact committees.* A joint impact committee may be established for the purposes of:

1. Providing communications and coordination between local committees.

2. Providing services to local committees.

3. Eliminating duplication of effort by local committees.

4. Providing the services listed in s. 144.838 (1), Stats., in any municipality which appoints a member to the joint impact committee but does not have a local impact committee.

5. Providing any of the services listed in s. 144.838 (1), Stats., upon request of a local impact committee.

(3) **MEMBERSHIP OF LOCAL AND JOINT COMMITTEES.** (a) *Committee membership.* Under s. 144.838 (2), Stats., a local or joint impact committee may include as members representatives of affected units of government, business and industry, manpower, health, protective or service agencies, school districts or environmental and other groups or other interested parties.

(b) *Joint impact committees.* Each local committee in the area served by the joint impact committee shall appoint one local committee member to serve as a member of the joint impact committee. Each municipality or Native American community which appoints the joint impact committee, but not a local impact committee, shall appoint one person to serve as a member of the joint impact committee.

**History:** Cr. Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.08 Expenditures.** (1) **PURPOSES.** Except for any first dollar payments to a city, village, town, or Native American community, all funds distributed to a municipality by the board shall be used for mining-related purposes. Discretionary grants to alleviate metalliferous mining impacts may be applied towards the following purposes:

(a) Protective services, such as police and fire services associated with the construction and operation of the mining facility.

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(b) Highways, as defined in s. 990.01 (12), Stats., repaired or constructed as a consequence of the construction and operation of the mining facility.

(c) Studies and projects for local development.

(d) Monitoring the effects of the mining operations on the environment.

(e) Extraordinary community facilities and services provided as a result of mining activity.

(f) Legal counsel and technical consultants to represent and assist municipalities appearing before state agencies on matters relating to metaliferous mineral mining and for processing mining-related permits or other approvals required by the municipality.

(g) The preparation of area-wide community service plans which identify social, economic, educational, and environmental impacts associated with mining and which set forth a plan for minimizing the impacts.

(h) Local impact committee operations, under s. 144.838, Stats.

(i) Other expenses associated with the construction and operation of the mining facility.

(j) Expenses attributable to a permanent or temporary closing of a mine including the cost of providing retraining and other educational programs designed to assist displaced workers in finding new employment opportunities and the cost of operating any job placement referral programs connected with the curtailment of mining operations in any area of this state.

11. Provision of educational services in a school district.

(2) SPECIAL COUNTY EXPENDITURES. Payments received by counties under s. Tax 13.06 (1), may also be applied as follows:

(2) PERMIT PERIOD PAYMENTS. Once a mining permit application is filed pursuant to s. 144.85, Stats., and prior to mine construction, funds disbursed in accordance with s. 70.395 (2) (d) 5a, Stats., may be spent for purposes directly in response to the filing of the mining permit application, limited to:

(a) Facilitating communications with the mining company and state agencies.

(b) Analyzing the implications of the proposed mine.

(c) Reviewing and commenting on the mining reclamation plans, permit applications or the environmental impact statement.

(d) Developing written solutions to potential mining-induced growth problems.

(e) Developing and recommending priorities for local action.

(f) Legal counsel and technical consultants in accordance with ss. 70.395 (2) (g)6 and 70.395 (2) (hw), Stats.

(g) Public participation activities directly related to the review of the proposed mining project by state agencies.

(h) Planning consultants.

(i) Preparation of areawide community service plans which identify social, economic, educational, and environmental impacts associated with mining and set forth a plan for minimizing the impacts.

(k) Necessary supplies and materials pertaining to the activities listed in this subsection.

(3) CONSTRUCTION PERIOD PAYMENTS. Once mine construction begins, funds disbursed in accordance with s. 70.395 (2) (d)5, Stats., may be spent for purposes directly in response to mine construction, limited to:

(a) Activities listed in sub. (2).

(b) Protective services, such as police and fire services.

(c) Repair and construction of highways, as defined in s. 990.01 (12), Stats.

(d) Studies for local development.

(e) Monitoring the effects of the mine.

(f) Extraordinary services and facilities needed.

(g) Provision of educational services in a school district.

(h) Public service expansion and maintenance.

(i) Capital equipment and improvements.

(j) Other expenses incurred as a direct result of mine construction.

(4) OPERATION PERIOD PAYMENTS. Once mining begins, discretionary payments made in accordance with s. 70.395 (2) (g), Stats., and payments paid to counties in accordance with s. 70.395 (2) (d)1 and 1m, Stats., may be spent for mining related purposes, limited to:

(a) Activities listed in subs. (1), (2) and (3).

(b) Other expenses resulting directly from the mine.

(5) CURTAILMENT AND CESSATION PERIOD PAYMENTS. In preparation for either the permanent or temporary cessation of mining, discretionary payments made in accordance with s. 70.395 (2) (g), Stats., and first dollar payments paid to counties in accordance with s. 70.395 (2) (d)1 and 1m, Stats., may be spent for mining related purposes limited to:

(a) Economic development activities.

(b) Planning consultants and projects.

(c) Monitoring the effects of the mine.

(d) Legal counsel and technical consultants pursuant to ss. 70.395 (2) (g)6 and 70.395 (2) (hw), Stats.

(e) Analysis and implementation of plans to address economical, social, educational, and environmental impacts of the mine closing.

(f) Services needed in direct response to mine closing.

(g) Expenses attributable directly to the temporary or permanent closing of a mine.

(6) OTHER MINING-RELATED COSTS. Municipalities may seek approval from the board for other mining-related projects not outlined in this section. Applications seeking expenditure approval shall contain:

(a) Documentation of a metallic mining impact.

(b) Documentation of need.

(c) Documentation that the proposal is well reasoned, cost effective, and will accomplish its purpose.

(7) SPECIAL COUNTY EXPENDITURES. First dollar payments received by counties under s. Tax 13.06 (1), may also be applied as follows:

(a) A maximum of 10% of a county's first dollar payment may be placed in a county mining investment fund for investment by the state investment board or placed in a financial institution located in the state. Funds may be withdrawn to alleviate impacts associated with the closing of the mine in the county or the curtailment of mining activity in the county. If a county deposits funds in the county mining investment fund, withdrawals are subject to the restrictions contained in s. 25.65, Stats. If a county deposits mining impact funds with a financial institution, withdrawals made within 10 years of deposit shall be subject to review and approval of the board. The county shall notify the board of withdrawals made 10 years after deposit. The county shall report annually to the board any deposits, withdrawal, and use of funds in that year.

(b) A maximum of \$25,000 of a county's first dollar payment may be distributed to any town, city, or village in the county where the extraction of metalliferous minerals is occurring.

(c) For metalliferous mining related purposes as defined by the board, in addition to those listed in s. Tax 13.08.

(8) OTHER ALLOWABLE EXPENDITURES. Discretionary grants and other funds disbursed by the board may be applied toward a variety of uses as they relate directly to a mining impact project. In general, costs for the compensation of personal services, costs of materials and supplies, travel, and other administrative costs are allowable. All expenditures shall comply with state and local laws, rules, and policies. Costs which shall not be allowed include:

(a) Costs incurred prior to, and after, the effective date of a discretionary grant period.

(b) Costs of social activities, ceremonies, amusements, and other entertainment.

(c) Costs incurred for lobbying members of the legislature or other legislative activities.

(d) Costs incurred which are not directly related to the eligible funding activities listed in this chapter.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (intro.), renum. (2) and (3) to be (7) and (8) and am., r. (4) and (5), cr. (2) to (6), Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.09 Audits.** (1) All funds received from the board shall be placed in a segregated account. The board may require financial audits of the recipients of payments under s. 70.395 (2) (d) through (g), Stats. The financial audit may be conducted as part of a municipality's annual audit, if one is conducted. The costs of the audits shall be paid by the board from the appropriation under s. 20.566 (7) (a), Stats. The audits shall consist of 3 parts:

(a) An examination of the municipality's financial statements to assess the fairness with which they were reported;

(b) An evaluation of the expenditures to ensure that the grant funds were used for mining impact activities and complied with the grant contract and state laws and rules; and

(c) A review of the municipality's internal accounting system to determine whether the grant was carefully managed, and where needed, provide suggestions to improve in-house procedures.

(2) The board shall attempt to insure that all grant recipients are audited periodically. In determining whether a grant recipient is to be audited in a particular year, the board shall give priority to:

(a) Grant recipients whose expenditure reports indicate that a financial accounting, compliance, or management problem exists.

(b) Grant recipients who have received grants of \$25,000 or more for a given project or for a given year.

(c) Any other circumstances which might indicate that an audit would be in the public interest.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; r. (3), Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.10 Fiscal guidelines.** All funds disbursed under this chapter shall be governed by the following provisions:

(1) **SEGREGATED ACCOUNTS.** All funds disbursed by the board shall be placed by the recipient government in a separate account and the use of funds clearly and directly identified by the accounting procedures listed in s. Tax 13.11

(2) **INVESTMENTS.** Funds may be invested by recipient governments where the investment of revenue is permitted under state and local law. Interest earned on investments shall be credited to the recipient's segregated mining impact account and is subject to the same limitations which govern the accounting and expenditure of funds in this chapter. Funds may be invested separately or, for investment purposes, pooled with other cash of the jurisdiction. Where a governmental unit operates a pooled-cash investment program, it shall have an equitable procedure for allocating the interest earned on the total portfolio among all funds from which the cash was pooled.

(3) **LOANS.** The recipient municipality may not loan funds to other activities, programs, or projects.

(4) **INDIRECT OR ADMINISTRATIVE COSTS.** All administrative costs shall be accounted for in sufficient detail to document the expenditures. No flat percentage rates or indirect cost rates shall be used.

(5) **TRAVEL EXPENSES.** Funds may be used to cover reasonable and necessary travel expenses pertaining to mining-related activities. Fund recipients may not claim or authorize rates which exceed the rates allowed by the State of Wisconsin, department of administration. All travel expense rates used by a fund recipient shall be consistent with travel expense rates paid for other activities of the recipient government. If the recipient chooses to pay travel expenses which are higher than state rates, that municipality shall pay the additional cost. Only reasonable and necessary travel expenses shall be claimed.

Note: Travel rates allowed by the State of Wisconsin, department of administration under s. 203.12 (1), Stats., are available upon request from the board.

(6) **MEETING RATES.** Fund recipients may claim or authorize costs up to \$20 per person for attending mining-related meetings. All meeting rates claimed by the fund recipient shall be consistent with the meeting rate paid for other activities of that municipality. If the recipient chooses to pay a meeting rate higher than \$20 per person, that municipality shall pay the additional cost.

(7) **LEGAL FEES.** Fund recipients may claim up to \$60 per hour for legal counsel for mining-related purposes, pursuant to s. 70.395 (2) (hw), Stats. Recipients which use funds to pay their own attorney shall use the hourly rate which is consistent with other work the attorney does for that municipality. Recipients which choose to pay an attorney a rate above \$60 per hour shall pay the additional cost.

(8) **SUPPLIES AND MATERIALS.** Supplies and materials purchased with mining impact funds shall be purchased at costs which are consistent with costs paid by that municipality for its own supplies and services.

(9) **PROCUREMENT OF SERVICES.** Fund recipients shall solicit a minimum of three proposals when purchasing services for \$2,000 or more. This subsection shall apply to technical, planning, engineering, and other consulting and professional services. Public works projects paid with mining impact funds are subject to provisions outlined in s. 59.08, 60.47, 61.55, 62.15, and 120.55, Stats. Procurement procedures shall:

- (a) Ensure equal treatment to all prospective bidders.
- (b) Maximize open and free competition for services needed.
- (c) Ensure the buyer-seller relationship is free from conflicts of interest or the appearance of conflicts of interest.
- (d) Ensure the reasons a particular consultant or contractor was chosen are clearly documented.
- (e) Ensure sufficient records are available to document the significant history of the procurement.
- (f) Ensure services are obtained efficiently and economically.

(10) **CONTRACTS.** All services for \$2,000 or more, procured with mining impact funds, shall be clearly described in a written contract. The contract shall delineate the terms, conditions, and specification of the services.

(11) **HIRING.** Hiring of personnel for mining-related purposes shall be done in an open and fair manner.

(12) **OTHER EXPENDITURES.** Fund recipients shall also ensure all expenditures are:

- (a) Necessary and reasonable.
- (b) Solely related to the mining impact activity or project.
- (c) Consistent with local policies and practices.

(13) **EXPENDITURES NOT ALLOWED.** Fund recipients may not claim expenditures for:

- (a) Retainer fees for attorneys and other consultants.
- (b) Overdrawn account charges of a financial institution.
- (c) Loan interest.
- (d) Independent financial or compliance audits.
- (e) Social activities, ceremonies, amusements, and entertainments.
- (f) Lobbying members of the legislature or other legislative activity.
- (g) Building space, lights, heat and janitorial services, except when these costs are incurred and needed as a result of meetings held exclusively for mining related purposes.
- (h) Salaries for elected governing body officials for legislative, administrative, and executive purposes.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.11 Accounting procedures.** All recipients of funds under this chapter shall maintain accounting procedures which adequately provide for the following:

- (1) Accurate, current, and complete financial statements on the use of funds disbursed to them by the board.
- (2) Accurate, current, and complete financial statements on funds contributed from other sources toward mining impact projects or activities.
- (3) Records which identify adequately the source and application of all funds disbursed to them by the board, including:
  - (a) Records of transactions pertaining to the grant funds which are inclusive, timely, verifiable, and supported by source documentation.
  - (b) Records on in-kind services and cost-sharing when required by the board for certain discretionary payments under s. Tax 13.07.
  - (c) Records which adequately establish the compliance of funds for mining-related purposes.
  - (d) Records which are sufficiently detailed.
- (4) Effective internal control over all funds, ensuring that:
  - (a) The use of funds is for purposes authorized by the board and consistent with applicable laws, regulations and policies.
  - (b) The use of funds is safeguarded against waste, loss and misuse.



(c) The use of funds is supported with reliable data.

(5)(a) All municipalities which receive a payment or grant under this chapter shall file an expenditure report by March 1 of the year following the year the funds are received. The expenditure report shall be on forms prepared and furnished by the board. A county's expenditure report shall include information regarding the use of any funds distributed by the county under s. Tax 13.08 (7) (a).

(b) Any city, village, town, or Native American community which receives a first dollar payment is not required to file an expenditure report for that payment.

(c) The board's staff may make on-site visits over the course of any year and otherwise monitor the use of permit period payments, construction period payments, and discretionary payment by municipalities. Staff shall keep the board informed of its activities and findings in this regard. From the monitoring activities, the completed expenditure reports, and the auditing procedure outlined in s. Tax 13.09, the board shall determine whether municipalities have applied their funds to the purposes authorized.

**History:** Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and rec. Register, September, 1986, No. 369, eff. 10-1-86.

**Tax 13.12 Recoupment and withholding of payments.** (1) The board may, at any time, recoup direct, discretionary and emergency payments to be made, for noncompliance with ss. 70.395 and 70.396, Stats., or any rule pursuant thereto.

(2) Whenever the board has reason to believe that noncompliance has occurred, it shall hold a hearing on the matter upon written notice to the municipality. If after the hearing the board determines that noncompliance has occurred, it shall recoup such payments to be made and withhold such payments to be made to the municipality as may be appropriate.

**History:** Cr. Register, September, 1986, No. 369, eff. 10-1-86.

## Chapter Tax 14

## HOMESTEAD CREDIT

Tax 14.01	Administrative provisions	Tax 14.04	Property taxes accrued
Tax 14.02	Qualification for credit	Tax 14.05	Rent constituting property taxes accrued
Tax 14.03	Household income		

**Tax 14.01 Administrative provisions.** (s. 71.09 (7), Stats.) (1) **PURPOSE.** This rule describes the Wisconsin homestead credit and administrative provisions related thereto.

(2) **THE WISCONSIN HOMESTEAD CREDIT.** (a) 1. Section 71.09 (7), Stats., provides relief to persons who own or rent their Wisconsin homestead, through a system of income tax credits, refunds, and appropriations from the general fund. A qualifying person may claim Wisconsin property tax accrued or rent constituting property tax accrued or both on the person's homestead as a credit against Wisconsin income tax otherwise due. If the credit exceeds the claimant's Wisconsin income tax otherwise due or if no income tax is due, the amount not offset against Wisconsin income tax is paid to the claimant.

2. The relief shall be referred to as a "credit" whether actually provided in the form of a credit, refund or appropriation.

(b) The amount of the homestead credit is described in s. 71.09 (7) (g), (gn), (go), (gp) and (gz), Stats., and may be determined from tables prepared by the department of revenue. The credit cannot be larger than:

1. \$800 for the calendar year 1979 and thereafter.
2. \$640 for the calendar years 1977 and 1978.
3. \$428 for the calendar years 1975 and 1976.

(c) If an approved homestead credit claim by a qualified person is more than zero but less than \$10, the amount of credit paid or credited shall be \$10.

(d) Wisconsin homestead credit claims shall be on a calendar year basis.

(3) **TIME WITHIN WHICH ORIGINAL AND AMENDED CLAIMS SHALL BE FILED.**

(a) An original homestead credit claim shall be filed with the department of revenue on or before December 31 of the year following the year for which the claim is filed, or the claim shall be disallowed.

(b) A person who has filed a timely original claim may file an amended claim with the department of revenue within 4 years of December 31 of the year following the year for which the claim was filed.

(4) **HOW TO FILE.** (a) A homestead credit claim shall be filed on Schedule H, titled "Wisconsin Homestead Credit Claim", and filed with the Wisconsin department of revenue at the location described in the instructions to Schedule H.

(b) If a person or the person's spouse files a Wisconsin income tax return and claims a homestead credit thereon, Schedule H shall be attached to the income tax return. If such income tax return has been previously filed, a duplicate copy of the income tax return shall be filed with Schedule H and the words "duplicate" written on the top of the first page of the return and "income tax return previously filed" written on the top of Schedule H.

(c) If neither the person claiming the credit nor such person's spouse is required to file a Wisconsin income tax return for the year to which the claim relates, Schedule H may be filed without attaching it to a return.

(5) **PROOF OF CLAIM.** (a) Section 71.09 (7) (j), Stats., provides that "Every claimant under this subsection shall supply to the department, in support of his claim, reasonable proof of age, rent paid, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead and the statement that the property taxes accrued used for purposes of this section have been or will be paid by him and that there are not delinquent property taxes on the homestead."

(b) Reasonable proof for purposes of a claim for homestead credit submitted on Schedule H shall include:

1. Completion of all information requested on the form;

2. A copy of the real estate tax bill, or if not available, a substitute for the bill containing equivalent information to that appearing on the original tax bill, if property taxes accrued are claimed. If the claimant presents the claim in person and wishes to retain the original tax bill but is unable to provide a copy, inspection of the original tax bill by any authorized representative of the department of revenue shall satisfy this requirement. In this event, information shall be entered on the face of Schedule H by the department's representative indicating that the tax bill has been examined and the tax verified, followed by the representative's signature;

3. A properly completed Certification of Rent Paid, if rent constituting property taxes accrued is claimed;

4. The signature of the claimant and, if married, the claimant's spouse. If a claimant or the claimant's spouse is unable to sign a claim, an "X" or other mark made by the claimant with the assistance of another person who signs the claim as a witness to the validity of the signature shall be acceptable. A legally authorized representative such as a guardian or attorney-in-fact may sign a homestead credit claim in lieu of the claimant. Although a personal representative, executor or administrator of an estate is authorized to sign on behalf of a deceased person, homestead credit claims submitted on behalf of a claimant who is deceased at the time of filing will be denied pursuant to s. 71.09 (7) (b), Stats.

(6) **INCORRECT CLAIMS.** The department of revenue has 4 years from December 31 of the year following the year to which a homestead credit claim relates to give notice of an incorrect claim. Incorrect claims may be corrected by adjusting the credit allowed, by assessment as income taxes are assessed or by refund, as appropriate.

(7) **INTEREST AND PENALTIES ON INCORRECT CLAIMS.** (a) *Excessive claims.* Excessive homestead credit claims, not the result of neglect or fraudulent intent, that have been paid or credited shall be subject to interest at the same 9% per annum rate as is assessed on additional assessments of income tax under s. 71.09 (5) (a), Stats. Such interest shall be imposed from the date on which the excessive amount was paid or credited, but not earlier than from April 15 of the year following the year to which the claim relates, to the date on which such amount when subsequently assessed will become delinquent if unpaid. If unpaid by the due date shown on the notice of adjustment to the homestead credit claim, the amount due shall be subject to delinquent interest at the rate provided by s. 71.13 (1) (a), Stats. For example, in the case of a 1977 homestead credit claim filed in 1978, if a claimant received a refund of homestead credit on March 1, 1978, the refund is subsequently determined to be excessive by \$100 and the claimant is assessed for such amount on March 12, 1979 and the due date for payment of the assessment is April 13, 1979, interest at 9% per annum will be imposed from April 15, 1978 to April 13, 1979. If the refund had been made on October 13, 1978, interest at the rate of 9% per annum would be imposed from that date to April 13, 1979. In the event the assessment is not paid by April 13, 1979, delinquent interest at the rate of 1.5% per month applies from that date to the date of payment.

(b) *Understated claims.* Under s. 71.09 (7) (c), Stats., no interest shall be paid by the department on any homestead credit, including any additional credit, refund or payment allowed as the result of the review of a homestead credit claim or an amended claim.

(c) *Excessive claims due to negligence.* Section 71.09 (7) (1), Stats., provides in part "In any case in which it is determined that a claim is or was excessive and was negligently prepared 10 per cent of the corrected claim shall be disallowed and if the claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at 1.5% per month from the date of payment until refunded or paid."

(d) *Excessive claims due to fraudulent intent.* Section 71.09 (7) (1), Stats., provides "In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the date of payment or credit of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor . . ."

(e) The interest rates referred to in pars. (a), (c) and (d) became effective on November 1, 1975. Assessments for periods beginning prior to that date shall bear normal and delinquent interest at 6% and 12% per annum, respectively, until November 1, 1975 and at the newer rates thereafter.

(8) **DISAGREEMENT WITH DEPARTMENT DETERMINATIONS.** (a) Under s. 71.09 (7) (k), Stats., a person aggrieved by a notice of determination by the department of revenue resulting from an audit of a claim may "within 30 days after receipt thereof, petition the department for redetermination thereof. The department shall make a redetermination of such petition within 6 months after it is filed and notify the claimant thereof. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive."

(b) Under s. 71.09 (7) (n), Stats., a person aggrieved by the redetermination referred to in par. (a) may appeal such redetermination to the tax appeals commission within 30 days, as provided under s. 73.01 (5), Stats. However, s. 71.09 (7) (n), Stats., also provides that the following are final when determined or redetermined by the department of revenue:

1. Denial of a claim based upon the late filing of a homestead credit claim, and

2. Denial or correction of a claim based upon a determination or redetermination of the arms-length value of "rent constituting property taxes accrued".

(c) The filing fee required by s. 73.01 (5) (a), Stats., does not apply to appeals under s. 71.09 (7) (n), Stats., of department of revenue redeterminations.

(9) **OFFSET OF CLAIM AGAINST DELINQUENT ACCOUNTS.** Section 71.09 (7) (e) provides "The amount of any claim otherwise payable under this subsection may be applied by the department of revenue against any liability outstanding on the books of the department against claimant, or against any other individual who was a member of his household in the year to which the claim relates."

**Note:** Blank forms for filing a homestead credit claim, certificates of rent paid and instructions for claiming the credit may be obtained at any department of revenue office throughout the state or by writing to the Wisconsin Department of Revenue, Post Office Box 8903, Madison, Wisconsin 53708.

**History:** Cr. Register, February, 1980, No. 290, eff. 3-1-80.

**Tax 14.02 Qualification for credit.** (s. 71.09 (7) (a) 1, 2, 3, 4 and 5; (b); (f); (g); (gn); (go); (gp); (p); (q); (r); (s) and (t); Stats.) (1) **PURPOSE.** This rule clarifies the requirements to qualify for the Wisconsin homestead credit for the calendar year 1975 and thereafter.

(2) **DEFINITIONS.** (a) Under s. 71.09 (7) (a), Stats.:

1. "Claimant" means a person who has filed a claim under this subsection . . ."

2. "Homestead" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. ('Owned' includes a vendee in possession under a land contract and of one or more joint tenants or tenants in common.) It does not include personal property such as furniture, furnishings or appliances, but a mobile home may be a homestead." See rule Tax 14.04 (10), for homesteads which are part of a unit larger than 1 acre.

(b) 1. In the definition of homestead, "dwelling" means the principal dwelling of a qualified claimant.

2. "Household" means a claimant and an individual related to the claimant as husband or wife residing in the same homestead as the claimant.

3. "Domicile" has the same meaning for Wisconsin homestead credit purposes as for Wisconsin individual income tax.

4. "General Relief" is a basic assistance program provided by a county or municipality, under ch. 49, Stats., to an eligible individual in need of relief who is not covered by any other federal or state assistance program. "Relief" is defined in s. 49.01 (1), Stats. as "services, commodities or money as are reasonable and necessary under the circumstances to provide food, housing, clothing, fuel, light, water, medicine, medical, dental, and surgical treatment (including hospital care), optometrical services, nursing, transportation, and funeral expenses, and includes wages for work relief."

a. General relief is administered by a municipality or county. The municipality or county determines the amount and method of payment, raises necessary funds and determines guidelines for payments.

b. General relief does not include assistance programs subsidized by state or federal funds, such as old age assistance, blind aid, disabled aid, social security, state supplemental payments, supplemental security income, federal food stamps and Title XX benefits.

(3) GENERAL QUALIFICATIONS FOR CREDIT. To qualify for the Wisconsin homestead credit a claimant shall have owned or rented a homestead in Wisconsin which the claimant occupied during the calendar year to which the claim relates and shall be:

(a) A natural person, alive at the time of filing the homestead credit claim.

(b) Domiciled in Wisconsin during the entire calendar year to which the homestead credit relates.

(c) 18 years of age on or before December 31 of the calendar year to which the homestead credit relates.

(4) DISQUALIFYING CONDITIONS. A claimant shall not qualify for the homestead credit if the claimant:

(a) Is claimed as a dependent for federal income tax purposes by another person during the year for which the homestead credit claim is made, unless the person is 62 years of age or older as of December 31 of such year. However, a claimant shall not be disqualified if the claimant:

1. Is incorrectly claimed as a dependent on a federal income tax return;

2. Qualifies to be claimed as a dependent on a federal income tax return but is not claimed; or

3. Is properly claimed as a dependent on a federal income tax return but on a later amended federal income tax return is not so claimed.

(b) Is a member of a household having household income in excess of:

1. \$7,500 in the calendar years 1975 and 1976.

2. \$9,300 in the calendar years 1977 and 1978. However, if a claimant, spouse or dependent of the claimant is 65 years of age or older at any time during the year to which a 1977 or 1978 claim relates, total household income shall not be in excess of \$9,900 (See Tax 14.03 (4)).

3. \$14,000 in the calendar year 1979 and thereafter.

(c) Receives general relief from municipalities or counties at the time of filing the claim. (See sub. (2) (b) 4 of this rule for the definition of general relief.)

(d) 1. For calendar years 1975 through 1978, receives aid for dependent children, including foster children, under s. 49.19, Stats., at the time of filing the claim. However, for claims relating to the calendar year 1978 the claimant shall qualify for the homestead credit if the aid is for foster children under s. 49.19 (10) (a), Stats., or is received as a relative, other than a parent, for the benefit of any dependent children residing in the homestead of the claimant, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.

2. For the calendar year 1979 and thereafter, under s. 71.09 (7) (p), Stats., receipt of general relief or aid for dependent children does not disqualify a claimant, but causes property tax accrued or rent constituting property tax accrued to be reduced by one-twelfth for each month or portion of a month such aid is received, as described in rules Tax 14.04 and 14.05.

(e) For claims relating to the calendar year 1977 and thereafter, resides in a nursing home and receives federal Title XIX medical assistance under s. 49.45, Stats., at the time of filing the homestead credit claim.

(f) For claims relating to the calendar year 1977 and thereafter, resides for the entire year to which the claim relates in housing exempt from taxation under ch. 70, except housing for which payments in lieu of taxes are made under s. 66.40 (22), Stats. However, the claimant shall qualify for the homestead credit for any portion of the year exempt housing did not constitute the claimant's homestead.

(g) Received title to the claimant's homestead primarily for the purpose of receiving homestead credit benefits.

(h) Qualified for and claimed the farmland preservation credit for the same year to which a homestead credit claim relates. However, if a person who has claimed a farmland preservation credit withdraws such claim on or before December 31 of the year following the year to which the homestead credit claim relates, the person shall not be disqualified from receiving a homestead credit because of the filing of the farmland preservation credit claim. Withdrawal of the farmland preservation credit claim shall be in writing and should be mailed to the Department of Revenue, Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708. To be timely filed, a homestead credit claim filed after the withdrawn farmland preservation credit shall be filed by its normal due date. For example, a 1979 homestead credit claim filed after withdrawal of a 1979 farmland preservation claim must be filed on or before December 31, 1980.

(5) **TWO MEMBERS OF A HOUSEHOLD MEETING QUALIFICATIONS.** (a) *One homestead.* 1. Only one member of a household existing at the end of a calendar year may claim a homestead credit for that year. Thus, if a husband and wife reside in one homestead at the end of a calendar year and both qualify for the homestead credit, only one of them may claim the credit.

2. Section 71.09 (7) (a) 5, Stats., provides: "When 2 individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue and the secretary's decision shall be final."

3. Requests for such determination shall be addressed to the Wisconsin Department of Revenue, Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708.

(b) *Separate homesteads.* 1. If a husband and wife do not live together but reside in separate homesteads at the end of a calendar year to which a homestead credit claim relates, 2 households exist at the end of the year. For example, one spouse may permanently reside in a nursing home while the other spouse continues to maintain and occupy a homestead the 2 owned or rented for many years. In this situation, each spouse may claim a homestead credit for the year, if otherwise qualified, based on the income and property tax accrued or rent constituting property tax accrued of their respective households and combined households as described in subd. 2.

2. As an example, assume the following factual situation: a husband and wife reside in their jointly owned homestead from January 1, 1978 to July 31, 1978, when the wife moves permanently to a nursing home not exempt from the property tax. The husband pays all of the property tax for the year 1978, amounting to \$600. Rent paid by the wife for occupancy only at the nursing home for the period August 1 through December 31, 1978 is \$500. The husband's income is \$2,500 from January 1 through July 31, and \$2,000 for the remainder of the year. The wife's income is \$1,500 from January 1 through July 31, and \$1,000 for the balance of the year. Both husband and wife are otherwise qualified for the homestead credit. Household income, property tax accrued and rent constituting property tax accrued applicable to each claimant for the year 1978 are computed as follows:

<u>Household Income</u>	<u>Husband</u>	<u>Wife</u>
(H) January 1 - July 31	\$2,500	\$2,500
(W) January 1 - July 31	1,500	1,500
(H) August 1 - December 31	2,000	--
(W) August 1 - December 31	--	1,000
	<hr/>	<hr/>
Total Household Income	<u>\$6,000</u>	<u>\$5,000</u>



Property Tax Accrued

	<u>Husband</u>	<u>Wife</u>
(H) January 1 - July 31 (7/12 x \$600 x 1/2)	\$ 175	\$ 175
(W) January 1 - July 31 (7/12 x \$600 x 1/2)	\$ 175	\$ 175
(H) August 1 - Dec. 31 (5/12 x \$600 x 1/2)	125	--
(W) August 1 - Dec. 31	(see below)	--
	<hr/>	<hr/>
Total Tax	\$ 475	\$ 350

Rent Constituting Property Tax Accrued

(H) 25% of wife's share of property tax paid by husband for the period August 1 through Dec. 31 (5/12 x \$600 x 1/2) x 25%	\$ 31.25	
(W) 25% of rent paid for occupancy only (25% x \$500)		\$ 125
	<hr/>	<hr/>
Total Allowable Tax and Rent	<u>\$506.25</u>	<u>\$ 475</u>

The income and taxes for the time the claimants were members of the same household are reported on both claims. The husband may claim 25% on the wife's share of property tax for the period she did not reside in the jointly owned home, since he paid the tax (see Tax 14.04 (6) (b)).

(6) MORE THAN ONE HOUSEHOLD IN A HOMESTEAD. One claimant from each household is entitled to claim homestead credit whether the household is the sole occupant of a homestead or whether several households share the homestead.

(7) MARRIAGE, SEPARATION OR DIVORCE DURING A CLAIM YEAR. (a) A new household is established when marriage occurs during a year. Either the husband or wife shall qualify for a homestead credit for the year of marriage but not both. The spouse filing a claim shall be entitled to property tax accrued or rent constituting property tax accrued for the homestead of the claimant for the portion of the year prior to marriage plus the total of such amounts for the joint homestead after marriage. Household income shall include the claimant's income for the entire year and the claimant's spouse's income after marriage. For example, assume X marries Y on September 1, and they decide that X is to be the claimant. Prior to marriage, X pays rent of \$125 per month and Y, \$175 per month, all for occupancy only. They pay \$250 a month for their apartment after marriage. X's income during the year is \$2,000 prior to marriage and \$1,000 after. Y's income for the year is \$5,000 prior to marriage and is \$2,500 thereafter. In this situation, household income reportable by X is \$5,500 (i.e., X's income for the entire year (\$3,000) plus Y's income after marriage (\$2,500)). Rent constituting property tax accrued which may be claimed by X is \$500 (i.e., 25% of the sum of X's rent of \$125 per month for 8 months (\$1,000) and 4 months rent at \$250

per month after marriage (\$1,000), totalling \$2,000 for the year). Since Y is not the claimant, Y's rent of \$175 per month and income of \$5,000 for the first 8 months are not considered in computing the homestead credit claim.

(b) If a husband and wife are divorced or separated during a year, have not remarried by year-end and occupy separate homesteads in Wisconsin at December 31 of that year, each may claim a homestead credit for the year, if otherwise qualified. In this event, each spouse shall be entitled to the total property tax accrued or rent constituting property tax accrued on the joint homestead for the portion of the year they maintained a common homestead in Wisconsin plus such amounts for the portion of the calendar year the spouse was not married or was separated. The claimant's income for the entire year plus the claimant's spouse's income while they were members of the same household shall be included on each claim. For example, assume X and Z were married, lived together through May 31, and paid rent of \$200 per month to that date. On June 1 they both moved and thereafter X paid \$150 per month rent and Z paid rent of \$175 per month, all for occupancy only. X's income for the year was \$2,000 through May 31 and \$3,000 thereafter; Z earned \$1,000 through May 31 and \$2,500 after that date. In this situation, household income and rent constituting property tax accrued for each claim is computed as follows:

	<u>X</u>	<u>Z</u>
<b>Income:</b>		
(X) Jan. 1-May 31	\$2,000	\$2,000
(Z) Jan. 1-May 31	1,000	1,000
(X) June 1-Dec. 31	3,000	--
(Z) June 1-Dec. 31	--	2,500
	<u>\$6,000</u>	<u>\$5,500</u>
<b>Rent:</b>		
(X) & (Z) Jan. 1-May 31	\$1,000	\$1,000
(X) June 1-Dec. 31	1,050	--
(Z) June 1-Dec. 31	--	1,225
	<u>\$2,050</u>	<u>\$2,225</u>
<b>Rent Constituting Property</b>		
Tax Accrued (25% of Rent)	<u>\$ 512.50</u>	<u>\$ 556.25</u>

The income and rent for the time the claimants shared a common homestead are reported on both claims.

(c) If a claimant is separated and divorced from one spouse and remarried to another during a year to which a homestead credit claim relates, property tax accrued or rent constituting property tax accrued shall include the total amount of rent or property tax applicable to each homestead the claimant occupied throughout the year. The claimant shall include property tax accrued or rent constituting property tax accrued applicable to each homestead occupied by the claimant alone, as well as, each household during the year. The claimant shall include in household income all of the claimant's income during the entire year and any income of a spouse during the period the spouse was a member of

claimant's household and resided with the claimant in the same household. Income of a spouse during a period in which the claimant and the spouse occupy separate homesteads shall not be considered as household income of the claimant. For example, assume X and Z decide, after many years of marriage, to separate on March 31. X and Z occupy separate homesteads during the period April 1 to November 1. On May 1, X and Z are divorced. On November 1 of the same year, X marries Y and X and Y share the same homestead for the rest of the year. Z does not remarry during the year. Each individual earns income during the year as follows:

	<u>X</u>	<u>Y</u>	<u>Z</u>
Jan. 1-March 31	\$1,000	\$ 750	\$ 500
April 1-Oct. 31	3,000	2,000	1,500
Nov. 1-Dec. 31	<u>1,000</u>	<u>250</u>	<u>1,000</u>
	<u>\$5,000</u>	<u>\$3,000</u>	<u>\$3,000</u>

Rent paid for occupancy only is:

	<u>X</u>	<u>Y</u>	<u>Z</u>	<u>X+Z</u>	<u>X+Y</u>
January 1-March 31	--	\$300	--	\$450	--
April 1-October 31	\$875	\$700	\$700	--	--
November 1-December 31	--	--	\$200	--	\$250

Since X and Y are one household at the end of the year, only one may file a claim for homestead credit. Z is also entitled to file a homestead credit claim for the year. Household income and rent constituting property tax accrued are computed as follows:

<u>Income</u>		<u>X</u>		<u>Y</u>		<u>Z</u>
January 1-March 31	(X)	\$1,000	(Y)	\$ 750	(Z)	\$ 500
January 1-March 31	(Z)	500	(X)	1,000	(Z)	1,000
April 1-October 31	(X)	3,000	(Y)	2,000	(Z)	1,500
November 1-Dec. 31	(X)	1,000	(Y)	250	(Z)	1,000
November 1-Dec. 31	(Y)	<u>250</u>	(X)	<u>1,000</u>		
		<u>\$5,750</u>		<u>\$4,000</u>		<u>\$4,000</u>

<u>Rent</u>		<u>X</u>		<u>Y</u>		<u>Z</u>
January 1-March 31	(X+Z)	\$ 450	(Y)	\$ 300	(X+Z)	\$ 450
April 1-October 31	(X)	875	(Y)	700	(Z)	700
November 1-Dec. 31	(X+Y)	<u>250</u>	(X+Y)	<u>250</u>	(Z)	<u>200</u>
		<u>\$1,575</u>		<u>\$1,250</u>		<u>\$1,350</u>

Rent constituting property tax accrued (25% of rent) =

<u>X</u>	<u>Y</u>	<u>Z</u>
<u>\$393.75</u>	<u>\$312.50</u>	<u>\$337.50</u>

(8) DECEASED CLAIMANT. (a) Section 71.09 (7) (b), Stats., provides that "The right to file a claim under this subsection shall be personal to the claimant and shall not survive his death . . . When a claimant dies after having filed a timely claim the amount thereof shall be disbursed to another member of the household as determined by the secretary of revenue. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within 2 years of the filing of the claim, the amount of the claim shall escheat to the state."

(b) A homestead credit claim completed and signed but not filed until after a claimant's death shall not be allowed.

(9) **MEMBER OF ARMED FORCES.** A member of the United States armed forces who retains a Wisconsin domicile and maintains a Wisconsin homestead shall be qualified for the Wisconsin homestead credit even though such member does not occupy the homestead during the year to which the claim relates or at the time of filing the claim. Household income shall include the income of the household, including the armed forces member.

(10) **TEMPORARY ABSENCE FROM HOMESTEAD.** A person who is temporarily absent from a homestead and who did not establish a homestead elsewhere shall be considered to reside in such homestead for the period of the temporary absence. For example, if a person is in a hospital at the end of a calendar year and if it can reasonably be assumed that the absence is temporary, the person shall be considered a member of the homestead from which the person is temporarily absent. A person seasonally employed away from the homestead shall be similarly treated. The household income of such persons is described in sub. (5) of rule Tax 14.03.

(11) **CITIZENS OF OTHER COUNTRIES.** A citizen of a country other than the United States shall not be eligible for the Wisconsin homestead credit unless the person is in a permanent immigrant status. For example, a citizen of another country in the United States for educational purposes and required to leave the United States when the educational program is completed, shall not be eligible for the homestead credit.

**History:** Cr. Register, February, 1980, No. 290, eff. 3-1-80.

**Tax 14.03 Household income.** (s. 71.09 (7) (a) 1 and 3, Stats.) (1) **PURPOSE.** This rule clarifies the meaning of "household income" and "income" includable in household income in connection with homestead credit claims for the calendar year 1975 and thereafter.

(2) **DEFINITIONS.** (a) Section 71.09 (7) (a) 3, Stats., defines "household income" as "all income received by all persons of a household in a calendar year while members of such household". However, see sub. (4) of this rule for persons age 65 or over and sub. (2) (b) 2 of rule Tax 14.02 for the definition of a household.

(b) In s. 71.09 (7) (a) 1, Stats., "income" means "Wisconsin adjusted gross income" as defined in s. 71.02 (2) (e), Stats., for the calendar year to which the homestead claim relates plus all other items of income for the year, whether or not included in "Wisconsin adjusted gross income", including receipt of:

1. Alimony.
2. Support money, including support for dependents under Chapter 52, Wis. Stats.
3. Cash public assistance and relief, including:
  - a. Aid to families with dependent children.
  - b. Reimbursement for amounts originally paid for by the recipient, but for the calendar year 1978 and thereafter income does not include reimbursements for services under federal Title XX.
  - c. Payments by the Wisconsin department of health and social services under s. 48.48 (12), Stats., to adoptive parents of children having physical, mental or emotional problems.

d. Veteran administration payments for reimbursement of services purchased by the recipient.

e. Federal H.U.D. payments for housing.

4. The gross amount of a pension or annuity, including any amounts withheld by the payor, nontaxable recoveries of cost, or disability income exclusions from taxable income. For example, assume a claimant was entitled to \$3,000 pension during a year but receives only \$2,800 after \$200 was withheld by the payor for payment towards health insurance of the claimant and that \$1,000 of the \$3,000 is a return of the claimant's contribution. Gross pension includable in household income in this situation shall be \$3,000. Pensions and annuities also include:

a. Railroad retirement benefits.

b. Veterans disability pensions.

5. All payments received for the benefit of a claimant or the claimant's spouse under the federal social security act, including:

a. Lump sum death benefits.

b. Medicare premiums deducted from social security benefits received by all members of a household.

c. Supplemental security income (S.S.I.) benefits received by persons over 65 years of age, or blind or disabled.

6. Compensation and other cash benefits received from the United States for past or present service in the armed forces.

7. Payments made to surviving widows or parents of war veterans by the United States, but not including insurance proceeds received by beneficiaries of National Service Life Insurance.

8. Proceeds from a personal endowment insurance policy or annuity contract purchased by the recipient.

9. The gross amount of "loss of time" insurance proceeds.

10. Nontaxable interest received from the federal government or any of its instrumentalities.

11. Scholarship and fellowship gifts, grants or income.

12. Unemployment compensation, including railroad unemployment compensation.

13. Worker's compensation.

14. The annual exclusion from Wisconsin adjusted gross income provided by s. 71.01 (3) (e), Stats., for federal civil service retirement annuities.

15. Net income or loss from sources outside Wisconsin includable in Wisconsin adjusted gross income. Examples of income received by Wisconsin residents not includable in Wisconsin adjusted gross income are the gain from an installment sale made by a Wisconsin resident prior to January 1, 1975 of property located outside Wisconsin but which gain is received after January 1, 1975 and the gain from a sale made after January 1, 1975 of property located outside Wisconsin by a nonresident but

which gain is received after the seller becomes a resident (see rule Tax 2.30).

(3) **EXCLUSIONS FROM HOUSEHOLD INCOME.** Household income shall not include:

(a) For the year 1978 and thereafter, cash reimbursements received under Title XX of the federal social security act.

(b) Gifts from natural persons.

(c) Surplus food or other relief in kind provided by a governmental agency, including food stamps, and payments directly to a supplier of medical care, tuition, food and clothing.

(d) Insurance proceeds received for the recipient's disability or loss of limb and proceeds from life insurance or annuity contracts received by a beneficiary.

(e) Wisconsin homestead credit received.

(f) Social security payments received on behalf of a claimant's children or the children of the claimant's household.

(4) **HOUSEHOLD INCOME OF PERSONS AGED 65 OR OVER.** For claims relating to the calendar years 1977 and 1978, household income shall be reduced by \$600 if the claimant, spouse or any dependent of the claimant allowable under s. 71.09 (6p), Stats., is 65 years of age or older prior to the close of the year to which the claim relates.

(5) **TEMPORARY ABSENCE FROM HOMESTEAD.** Income received while temporarily absent from a homestead shall be included in household income. For example, the net income from rental of a homestead during a planned temporary absence or earnings from seasonal employment away from the homestead are includable in household income. (See also Tax 14.02 (10)).

(6) **MARRIAGE, SEPARATION OR DIVORCE DURING A CLAIM YEAR.** (a) Household income of a claimant married during a year shall include the claimant's income for the portion of the calendar year prior to marriage and the total income of the household for the remainder of the year after marriage.

(b) Household income of a claimant divorced or permanently separated during a year shall include the claimant's income for the entire year and the claimant's spouse's income while the 2 persons occupied a common homestead. If the income of the claimant's spouse during the period of the year they occupied a common homestead cannot be exactly determined, a reasonable estimate of such income may be made and shall be clearly indicated as an estimate on the homestead credit claim.

(c) If a claimant is both divorced and remarried during a year to which a claim relates, household income shall include the claimant's income for the entire year and the income of each spouse during the period the spouse resided with claimant in the same homestead as a member of claimant's household.

(d) Comprehensive examples of the computation of household income in each of the situations described in pars. (a), (b) and (c) are given in sub. (7) of rule Tax 14.02.

(7) **TREATMENT OF NET OPERATING LOSS CARRYFORWARD.** (a) Under s. 71.05(1)(d), Stats., a Wisconsin net operating loss from a prior year may be subtracted from net income in an amount not in excess of the Wisconsin taxable income computed before the net operating loss deduction. Any unused net operating loss may be carried forward to consecutive succeeding years for a period not to exceed 5 years subsequent to the loss year. A net operating loss shall be applied in the same manner for Wisconsin homestead credit purposes.

(b) *Example.* Assume the net operating loss carryforward and Wisconsin adjusted gross income of a husband and wife are as follows:

	<u>Husband</u>	<u>Wife</u>
Wisconsin adjusted gross income before net operating loss	\$2,000	\$5,000
Net operating loss carryforward	<u>(5,000)</u>	<u>5,000</u>
Wisconsin total income	<u>\$ 0</u>	<u>\$5,000</u>

In this situation household income for homestead credit purposes shall be computed as follows:

Wisconsin total income (husband)	\$ 0
Wisconsin total income (wife)	5,000
Social security benefits received	<u>4,000</u>
Total household income	<u>\$9,000</u>

The husband's Wisconsin total income is zero after applying the loss carryforward, not a negative \$3,000.

**History:** Cr. Register, February, 1980, No. 290, eff. 3-1-80.

**Tax 14.04 Property taxes accrued** (s. 71.09(7)(a)8, Stats.) (1) **PURPOSE.** This rule clarifies the meaning of "property taxes accrued" as the term applies to homestead credit claims for the calendar year 1975 and thereafter.

(2) **DEFINITION.** Section 71.09(7)(a)8 defines "property taxes accrued" as "property taxes (exclusive of special assessments, delinquent interest and charges for service) levied on a claimant's homestead--- under ch. 70, less the tax credit, if any, afforded in respect to such property by s. 79.10(3)." The credit under s. 79.10(3) is for general property tax relief provided by the state of Wisconsin to localities. 71.09(7)(a)8 amended by ch. 34, February 1979 to delete reference to 79.25(5).

(3) **QUALIFYING PROPERTY TAX.** (a) Property tax shall be levied on a homestead to qualify as "property tax accrued". Such tax is levied when the tax roll is delivered to the local treasurer with the warrant for collection, usually on or shortly after December 15 of each year.

(b) The property tax on a homestead for the year to which a claim relates need not be paid prior to filing a homestead credit claim. However, if such tax is delinquent at the time of filing the claim and the claimant does not intend to pay the tax, the property tax shall not be accruable and, therefore, shall not be considered in computing the homestead credit. The fact that the property taxes on a claimant's homestead are delinquent for years prior to the year to which a claim relates shall not disqualify the claimant.

(c) A vendee (buyer of the homestead) in possession of a homestead under a land contract shall be entitled to the property tax accrued on the homestead.

(4) **LIMITATION OF AMOUNT.** (a) The maximum amount which may be claimed as "property tax accrued" is: 1. For the calendar year 1979 and thereafter: \$1,000.

2. For the calendar years 1977 and 1978: \$800.

3. For the calendar years 1975 and 1976: \$535.

(b) For the calendar year 1979 and thereafter, under s. 71.09 (7) (p), Stats., property tax accrued shall be reduced by one-twelfth for each month or portion of a month of such year for which the claimant received general relief equal to or in excess of \$400, or received aid for dependent children under s. 49.19, Stats. However, property tax accrued is not reduced if the aid is for foster children under s. 49.19 (10) (a), Stats., or is received as a relative, other than a parent, for the benefit of any dependent children residing in the homestead of the claimant, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.

(5) **HOMESTEAD OWNED BY ONE PERSON OR ONE HOUSEHOLD.** A qualified person who owns and resides in a Wisconsin homestead may claim the property tax accrued on such homestead. If the tax is paid by another person not a member of the owner's household, the owner-occupant nevertheless shall be entitled to the property tax accrued for homestead credit purposes. For example, if a parent and adult son or daughter occupy a homestead owned by the parent, the parent may claim the property tax accrued on the homestead even though the son or daughter paid the tax. The payment by the son or daughter shall be considered a gift to the parent, unless another intent is established.

(6) **OWNERSHIP OF HOMESTEAD BY MORE THAN ONE PERSON.** (a) Section 71.09 (7) (a) 8, Stats., provides that "if a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common and one or more such persons or entities is not a member of claimant's household, 'property taxes accrued' is that part of property taxes levied on such homestead (reduced by the tax credit under ss. 79.10 (3) and 79.25 (5)) as reflects the ownership percentage of the claimant and the claimant's household".

(b) If a qualified claimant residing in a jointly owned homestead pays the homestead property tax for an owner not residing in the homestead, the claimant shall be entitled to both the claimant's appropriate share of property tax accrued" as described in par. (a) and "rent constituting property tax accrued" equal to 25% of the homestead property tax paid for each absent owner. On the other hand, if such a claimant pays the property tax for another owner who also resides in the homestead but who is not a member of the claimant's household, both such owners are entitled to property tax accrued on the basis of ownership percentage as described in par. (a).

(c) Examples of allowable property tax accrued in various situations follow:

1. Assume A, B and C own a homestead throughout 1977 and qualify for the homestead credit. A and B are married and each owns one-third of the homestead, while C owns the remaining one-third. A and B oc-



cupy the homestead (C does not) and pay all property taxes, which equal \$900 after credits for the year. Either A or B may claim the homestead credit and may claim two-thirds of the net property tax as "property tax accrued" and 25% of C's share of the net tax as "rent constituting property taxes accrued". The amount eligible for homestead credit equals \$600 ( $\frac{2}{3}$  of \$900) plus \$75 (25% of \$300) for a total of \$675. If C had also occupied the homestead in 1977, A and B would have been entitled to property tax accrued of \$600 and C to \$300 even though A and B paid all the tax.

2. If a mother and adult son each own one-half of a homestead occupied solely by the mother and if the son pays all of the property tax on the homestead for 1978, the mother shall be entitled to one-half of the property tax accrued.

3. If a brother and sister own 75% and 25%, respectively, of a homestead they both occupy throughout 1978 and if the brother pays all the property tax on the homestead, each shall be entitled to property tax accrued based on their ownership percentage.

(7) SALE OF HOMESTEAD. (a) Section 71.09(7) (a) 8, Stats., provides "If a homestead is sold during the calendar year of the levy the 'property taxes accrued' for the seller and buyer shall be the amount of the tax levy prorated to each in the closing agreement pertaining to the sale of the homestead or, if not so provided for in the closing agreement, the tax levy shall be prorated between seller and buyer in proportion to months of their respective ownership, provided that the seller and buyer occupy the homestead during the periods of their respective ownership."

(b) The tax proration shown on a closing agreement or computed on the basis of ownership shall be further adjusted, if necessary, for homestead credit purposes to consider in the year of sale and purchase only the property tax accrued during the period the seller and buyer each maintained a homestead on the property. Thus, property tax shall be prorated on the basis of when the seller moved from the homestead or established a homestead elsewhere and when the buyer established a homestead on the property after moving from another homestead. For example, if ownership of a homestead is transferred on July 1, the prorated tax for 6 months on the closing statement is \$600, the seller moves from that homestead to a new homestead on May 31 and the buyer does not move into the homestead until August 1, the portion of prorated tax allowable to the seller is only \$500 (the tax from January 1 to May 31) rather than \$600 shown on the closing statement. The buyer is entitled to only 5/12ths of the tax for the homestead, rather than  $\frac{1}{2}$  of such tax.

(8) HOUSEHOLD OCCUPYING MORE THAN ONE HOMESTEAD IN A YEAR. Section 71.09(7) (a) 8, Stats., provides "If a household owns and occupies 2 or more homesteads in the same calendar year 'property taxes accrued' shall be the sum of the prorated taxes attributable to the household for each of such homesteads. If the household owns and occupies the homestead for part of the calendar year and rents a homestead for part of the calendar year, it may include both the proration of taxes on the homestead owned and 'rent constituting property taxes accrued' with respect to the months the homestead is rented, in computing the amount of the claim under pars. (g), (gn) and (go)." Thus, if a household owns and occupies a homestead in Wisconsin from January 1, 1978 to September 30, 1978 and then establishes a homestead in a rented dwelling for the remainder of the calendar year, property tax accrued shall be the pro-

rated portion of property tax attributable to the 9 months the household resided in the owned homestead and rent constituting property tax accrued shall be 25% of the rent paid for occupancy during the remainder of the year. Assuming the annual property tax of the owned homestead equaled \$800 and rent paid for occupancy for the last 3 months of the year totaled \$600, the tax and rent allowable for homestead credit purposes equals \$750, consisting of \$600 (9/12 of \$800) plus \$150 (25% of \$600).

(9) **HOUSEHOLD OCCUPYING MORE THAN ONE DWELLING AT THE SAME TIME.** As defined in sub. (2) (a) 2 and (2) (b) 1 of rule Tax 14.02, "homestead" means the principal dwelling in which a household resides. Therefore, property tax accrued or rent constituting property tax accrued shall not be allowed on 2 dwellings occupied concurrently by a household, such as a household occupying both a permanent house in the city and a summer cottage in the country during the same time period or a person residing temporarily in a nursing home while maintaining a homestead elsewhere. Only the tax or rent pertaining to the principal dwelling is allowable for homestead credit purposes.

(10) **PROPERTY TAX PAID ON A LARGER UNIT.** (a) Section 71.09 (7) (a) 8, Stats., provides "If a homestead is an integral part of a larger unit such as a farm, or a multipurpose or multidwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value, except that the claimant may use the total property taxes accrued for the larger unit, but not exceeding 120 acres of land, except as the limitations of par. (h) apply." The limitation under par. (h) refers to the maximum dollar limit of property tax accrued described in sub. (4) of this rule.

(b) Qualifying land of a larger unit shall be limited to land which is adjacent to the homestead property, forming one contiguous unit. A secondary parcel of land which is not adjacent to the homestead property shall not qualify, unless it is necessary to the use of the homestead as a home. However, a secondary parcel of land separated from the homestead property by such things as a street, river or utility right-of-way shall be considered to be adjacent. As an example, assume a farmer owns 3 parcels of land, 60, 40 and 20 acres in size, the homestead is located on the 60 acre parcel and the 60 and 20 acre parcels have a common border, while the 40 acre parcel is separated from the others by a neighboring farm. In this situation, qualifying land includes both the 60 acre homestead parcel and the 20 acre parcel, because it is adjacent to the homestead parcel. The 40 acre parcel does not qualify since it is not adjacent to the homestead parcel and is not necessary to the use of the homestead as a home. However, if the 3 parcels and the neighboring farm were so situated that a driveway must cross the 40 acre parcel, as well as a portion of the neighboring farm, to reach the homestead or if a substantial portion of farm buildings necessary to the operation of the farm were on the 40 acre parcel, then that parcel would qualify since it would be necessary to the use of the homestead as a farm home. If the 3 parcels were situated so that the 60 acre parcel bordered on the 20 acre parcel which in turn bordered on the 40 acre parcel, the taxes on all 3 parcels would qualify, since they form one contiguous unit.

(c) A qualified claimant owning and occupying a homestead in a larger unit such as a farm or multipurpose or multidwelling building shall be entitled to "property tax accrued" on the larger unit but not exceeding the maximum tax described in sub. (4) of this rule and not exceeding

the tax on the maximum permissible acreage described in par. (a). Thus, a claimant owning a 2-story dwelling and residing in the lower story while renting the upper to others may claim property tax accrued on the entire building, subject to the maximum described in sub. (4). Similarly, a claimant conducting a business from the claimant's homestead may claim property tax accrued on the entire homestead, subject to the maximum limitation described in sub. (4), even though a part of the dwelling is used exclusively for the business.

(d) "Property tax accrued" for a claimant residing in a cooperative apartment building shall equal the portion of the real property tax on the entire building represented by the claimant's ownership percentage in the capital equity of the cooperative or in the real estate, as the case may be, but limited to the maximum amount shown in sub. (4) of this rule. For example, assume a claimant has a 1/5 equity in a cooperative which owns an 8-unit apartment building in which the claimant resides in one unit. If otherwise qualified, the claimant may claim 1/5 of the property tax accrued on the building, subject to the maximum in sub. (4). If the apartment building were owned directly by the members of the cooperative and the claimant held a 1/5 interest in the building, the claimant would be entitled to 1/5 of the property tax accrued regardless of the claimant's equity in the cooperative. If the land upon which the apartment is located is not owned by the claimant, "rent constituting property tax accrued" may be claimed for rent paid by the claimant for use of the land as a homestead. For example, if the cooperative apartment referred to in the prior example were built on leased land, the tax on the building would be assessed as personal property tax and the owner of the land would charge the cooperative rent for the land. In addition to a 1/5 share of the personal property tax, the claimant also would be allowed 25% of the claimant's 1/5 share of the rent of the land (see sub. (11) of this rule).

(11) OTHER ASSESSMENTS OR PAYMENTS DEEMED TO BE PROPERTY TAX ACCRUED. (a) *Homestead on leased land*. Personal property tax assessed on a homestead constructed on leased land is deemed to be "property tax accrued". Such property includes a mobile home used as a homestead.

(b) *Mobile home parking fees and space rent*. Mobile home parking fees assessed under s. 66.058 (3) (c), Stats., are "property taxes accrued" under s. 71.09 (7) (a) 8, Stats. Also, 25% of gross rent paid to a landlord for parking a mobile home may be claimed as "rent constituting property taxes accrued". Any charges for utilities, services, furniture and furnishings or personal appliances shall not be included in such gross rent.

(c) *Property tax assessed on property subject to a life estate*. A property tax assessment on property subject to a life estate may only be claimed as "property tax accrued" for purposes of homestead credit by a person in possession of the life estate interest. The life estate must be in writing and incorporated in the warranty deed or other legal documentation and the person having the life estate interest must have paid the tax. For example, assume a widow and her son reside in the same homestead. Prior to the year of the claim, the widow transferred the property to her son by quit-claim deed but retained a life estate in the property; she also pays the tax, but the tax bill comes in her son's name. If otherwise qualified, the widow may file a claim for homestead credit and base that claim on the entire amount of the tax. The son may not claim home-

stead credit based upon any portion of the property taxes accrued on the homestead even though he resides in the property and is otherwise qualified.

**History:** Cr. Register, February, 1980, No. 290, eff. 3-1-80.

**Tax 14.05 Rent constituting property taxes accrued.** (s. 71.09 (7) (a) 6, Stats.) (1) **PURPOSE.** This rule clarifies the term "Rent constituting property taxes accrued" in connection with homestead credit claims for the calendar year 1975 and thereafter.

(2) **DEFINITIONS.** (a) 1. Section 71.09 (7) (a) 6, Stats., defines "Rent constituting property taxes accrued" as meaning "25 % of the gross rent actually paid in cash or its equivalent . . . by a claimant and his household solely for the right of occupancy of their Wisconsin homestead in such calendar year, and which rent constitutes the basis, in the succeeding calendar year of a claim for relief under this section by such claimant."

2. The "equivalent of cash" shall be the market value of property transferred in lieu of cash and shall not include the value of services performed.

For example, assume that a resident of an apartment building entered into an agreement with the owner to do some painting in the building. In exchange for this, the regular monthly rent of \$150 was reduced to \$50 per month for 3 months. Of the \$300 reduction in rent, \$100 constituted the cost of the paint which the resident bought, and \$200 constituted the value of the labor. Allowable rent for the year would be \$1,600, consisting of the amount actually paid ( $\$150 \times 9$  months plus  $\$50 \times 3$  months = \$1,500) plus the market value of the paint (\$100). The value of the labor, \$200, may not be used in determining rent.

3. Indirect payments of rent, such as amounts paid on behalf of a person directly to a nursing home by a governmental agency under a medical assistance program, shall not be considered to be rent paid by the person.

4. Property tax paid in lieu of rent by a tenant shall be considered a rental payment.

(b) 1. Under s. 71.09 (7) (a) 7 gross rent means "rental paid at arms-length, solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether expressly set out in the rental agreement or not".

2. Charges for services referred to in subd. 1 include the cost of nursing care or maid service.

(3) **LIMITATION OF AMOUNT.** (a) The maximum amount which may be claimed as rent constituting property taxes accrued is:

1. For the calendar year 1979 and thereafter: \$1,000.
2. For the calendar years 1977 and 1978: \$800.
3. For the calendar years 1975 and 1976: \$535.

(b) For the calendar year 1979 and thereafter, under s. 71.09 (7) (p), Stats., rent constituting property tax accrued shall be reduced by one-twelfth for each month or portion of a month of such year for which the

claimant received general relief equal to or in excess of \$400, or received aid for dependent children under s. 49.19, Stats. However, rent constituting property tax accrued is not reduced if the aid is for foster children under s. 49.19 (10) (a), Stats., or is received as a relative, other than a parent, for the benefit of any dependent children residing in the homestead of the claimant, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.

(4) **CERTIFICATION OF RENT PAID.** (a) Wisconsin department of revenue form I-017, Certification of Rent Paid, shall be completed by the claimant and the landlord and submitted by the claimant with Schedule H, Wisconsin Homestead Credit Claim.

(b) If a claimant rented more than one homestead during a year, a separate certification of rent paid shall be completed for each homestead and submitted by the claimant with Schedule H.

(c) Landlords shall reasonably determine the amount of rent constituting the value of utilities, services, furniture, furnishings and other items provided the claimant in addition to occupancy rights and subtract such amounts from total rent indicated on the certification of rent paid, to determine rent paid for occupancy.

(d) Section 71.09 (7) (u), Stats., provides that a landlord is prohibited from charging a fee for completing the certification of rent paid.

(e) If a claimant is unable to obtain a certification of rent paid from a landlord, rent receipts or cancelled checks substantiating amounts paid shall be acceptable evidence of gross rent paid. The claimant shall attach a statement to the homestead credit claim giving the name and address of the landlord, the address of the homestead for which credit is claimed, an explanation of the inability of the claimant to obtain a rent certification, and a description of the utilities, services and furnishings provided by the landlord. In the absence of more accurate data, the amount of gross rent allocable to utilities and furnishings, if entirely provided by the landlord, shall be: utilities (including heat)—15%, furnishings—10%. For example, if a claimant rented a furnished apartment for \$200 per month for the entire year and the landlord provided all the utilities, rent paid for occupancy only for the year would be \$1,800 (\$2,400 total rent less 15%, \$360, for utilities, and less 10%, \$240, for furnishings). If the landlord does not provide all utilities or all furnishings, these percentages shall be reduced accordingly. In this event, an explanation of the percentages used shall be attached to the homestead credit claim.

(5) **NON-ARMSLENGTH RENTAL.** Section 71.09 (7) (m), Stats., provides "In any case in which a homestead is rented by a person from another person under circumstances deemed by the department of revenue to be not at arms-length, it may, with the aid of its property tax division (currently named division of state and local finance), determine rent constituting property taxes accrued as at arms-length, and, for purposes of this section, such determination shall be final." For example, assume a claimant files a claim with a rent certification showing rent paid for occupancy only of \$3,600, or \$300 per month. Investigation by the department of revenue discloses the rent is too high for the locality and dwelling involved, and the landlord is financially dependent on others for support and is related to the claimant. The property tax division of the department of revenue is requested to and does determine that the fair rental value of the claimant's homestead for the year of the claim was

\$150 per month, or \$1,800 for the year. No utilities, furnishings or other items were furnished by the landlord. Allowable rent constituting property taxes accrued therefore would be \$450 (25% of \$1,800).

(6) **EXEMPT HOUSING.** (a) *Calendar year 1978 and thereafter.* 1. Section 71.09 (7) (t), Stats., as amended on May 18, 1978, provides in part that "No claim for credit under this section may be allowed to any claimant who: 1. Resided for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70, except housing for which payments in lieu of taxes are made under s. 66.40 (22). If the claimant lived in housing which was subject to taxation under ch. 70 for any part of the calendar year to which the claim relates, the property taxes accrued or rent constituting property taxes accrued, or both, shall be based on the period during which such housing constituted the claimant's homestead . . ." For example, assume a claimant lived in a rented apartment for 6 months of 1978 and then moved permanently to a tax-exempt nursing home. The claimant may file a claim based on rent constituting property taxes accrued for the first 6 months of 1978. The rent paid for the last 6 months may not be used in computing the homestead credit.

2. Payments in lieu of taxes under s. 66.40 (22), Stats., are made by most homes that are licensed with the state of Wisconsin as "housing authorities".

3. Section 66.40 (22), Stats., reads as follows: "TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES. The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes of the state or any state public body; provided, however, that the city in which a project or projects are located may fix a sum to be paid annually in lieu of such taxes by the authority for the services, improvements or facilities furnished to such project or projects by such city, but in no event shall such sum exceed the amount that would be levied as the annual tax of such city upon such project or projects."

(b) *Calendar year 1977.* 1. The Statutes applicable to 1977 homestead credit claims filed in 1978 were amended on May 18, 1978 as set out in par. (a) above. Section 71.09 (7) (t), Stats., as originally written, effective with 1977 claims filed in 1978, provided that "No claim for credit under this section may be allowed to any claimant who at the time of filing the claim: 1. Resides in housing which is exempt from taxation under ch. 70, except housing for which payments in lieu of taxes are made under s. 66.40 (22)." The determining factor under this provision was whether or not the claimant resided in tax-exempt housing at the time of filing the claim, rather than during the year to which the claim related. Therefore, if a person resided in taxable housing for all of 1977 but moved to tax-exempt housing on January 1, 1978, no claim could be filed. Conversely, if a person resided in tax-exempt housing for all of 1977 but moved to taxable housing on January 1, 1978, that person would be eligible to file a 1977 claim, based on rent constituting property taxes accrued at the tax-exempt housing.

2. Because of the amendment to Section 71.09 (7) (t), Stats., effective on May 18, 1978 and set out in par. (a) above, a claimant became eligible for homestead credit benefits for 1977 whether or not he or she resided in tax-exempt housing at the time of filing the claim. However, if the claimant filed under this amendment, a claim could not be based on tax-

exempt housing, except housing for which payments in lieu of taxes are made under s. 66.40 (22), Stats.

3. Claimants filing homestead credit claims after May 17, 1978 but before January 1, 1979 could elect to come under the provisions of the amended statute or the provisions of the law prior to amendment.

(c) *1976 and prior calendar years.* For 1976 and prior calendar years persons having a homestead in property exempt from tax under ch. 70 were eligible to claim a homestead credit for rent constituting property taxes accrued.

(d) Examples of other types of exempted housing include:

1. Federal low income housing under the H.U.D. program;
2. Student dormitories owned by nonprofit educational institutions;
3. Housing units of religious organizations; and,
4. Charitable, nonprofit nursing homes.

(7) **JOINT OCCUPANTS OF RENTAL UNITS.** (a) A claimant sharing a rental homestead with one or more joint occupants not members of the claimant's household shall be entitled to claim rent paid for occupancy of the homestead as "rent constituting property tax accrued". However, the total claims of the joint occupants for rent paid for occupancy shall not exceed 100% of such rent paid to the landlord, as shown on the rent certification. The amount of rent paid for occupancy shall be proportionate to the contribution of the claimant or the claimant's household to the cost of shared living expenses, such as rent, food, utilities and supplies, as follows:

<u>Portion of rent and other living expenses paid</u>	<u>Allowable occupancy rent</u>
All	All
1% to 99%	1% to 99%
None	None

The following example illustrates how to compute each person's rent paid for occupancy in a shared expense situation. In the example, "rent" means rent paid for occupancy only for the homestead, as shown on the rent certification.

<u>Living Expenses</u>	<u>Total</u>	<u>X</u>	<u>Y</u>	<u>Z</u>
Rent	\$1,800	\$1,800	\$ --	\$ --
Food	900	--	450	450
Utilities	300	--	150	150
<b>Total</b>	<b>\$3,000</b>	<b>\$1,800</b>	<b>\$ 600</b>	<b>\$ 600</b>
<b>% of Total</b>	<b>100%</b>	<b>60%</b>	<b>20%</b>	<b>20%</b>

Since X paid 60% of the shared living expenses, his share of rent paid for occupancy only would be \$1,080 (60% of \$1,800). Likewise, rent paid for occupancy only would be \$360 for both Y and Z (20% of \$1,800). Total rent paid for occupancy only for all 3 claimants is \$1,800 as shown on the rent certification obtained by X (\$1,080 + \$360 + \$360 = \$1,800).

(b) Landlords shall complete the certification of rent paid for only those tenants paying rent to the landlord and shall include on such certi-

fication only the information required thereon without considering any separate arrangements of the tenants.

(c) If a claimant described in par. (a) is entitled to more or less rent paid for occupancy than is shown on the certification of rent paid completed by the landlord for the claimant, the claimant shall in addition to such certification attach a schedule to the homestead credit claim showing the computation of claimed rent paid for occupancy and identifying the other occupants of the homestead with whom rent and living expenses were shared during the year to which the claim relates by giving the name, current address at the time of filing the claim (if known) and social security number (if known).

(8) **RENT PAID FOR LARGER UNITS.** The portion of s. 71.09 (7) (a) 8, Stats., pertaining to property taxes accrued on a larger unit such as a farm or multipurpose or multidwelling building shall also apply to rent constituting property taxes accrued on larger units (see Tax 14.04 (10)). For example, assuming that a claimant were renting an entire duplex, living in one unit and subleasing the other unit to another person, the claimant need not prorate the rent between his or her living unit and the unit being rented out, but may claim the rent paid for the entire duplex up to the maximum allowable as described in sub. (3) of this rule.

(9) **SHARECROPPERS.** (a) "Rent constituting property taxes accrued" of a person sharing the costs or proceeds or both from the operations of a farm with the owner of the farm property in consideration for the use of the homestead, utilities, furniture, furnishings, machinery, equipment or land equals 25% of the owner's share of the net proceeds applicable to occupancy of the homestead. For example, assume the following: A sharecropper resides on and operates a 120 acre dairy farm. The landlord and the sharecropper share equally the cost of seed and feed (\$10,000), the gross receipts from crop sales (\$5,000), and the gross milk receipts (\$20,000). The landlord furnishes the land, buildings and machinery, for which annual allowable depreciation is \$3,000. The homestead is furnished, and the landlord pays for the utilities. The annual rental value of the furnishings and utilities is \$1,500. In this situation, rent paid for occupancy of the homestead equals the owner's share of the proceeds less the value of the non-occupancy items furnished by the landlord, as follows:

Landlord's share of crop receipts	\$ 2,500	
Landlord's share of milk receipts	<u>10,000</u>	\$12,500
Less items furnished by landlord:		
Landlord's share of seed & feed	\$ 5,000	
Depreciation of buildings (not including the dwelling) and machinery	3,000	
Furnishings and utilities	<u>1,500</u>	<u>\$ 9,500</u>
Rent paid for occupancy		<u>\$ 3,000</u>
Rent constituting property tax accrued (25%)		<u>\$ 750</u>



(b) The portion of the rent applicable to occupancy of the homestead shall not include the rental value of land not a part of the homestead nor any land in excess of allowable acreage for "larger units". If the total acres rented include or exceed such land, the total rent paid for occupancy shall be prorated on the basis of the ratio of the number of acres comprising the homestead or the allowable acreage for "larger units" to total acres rented. For example, if a total of 160 acres were sharecropped in the above example, allowable rent paid for occupancy would be \$2,250 (120/160 times \$3,000).

(10) **MOBILE HOMES.** Section 71.09 (7) (a) 7, Stats., provides that "gross rent" includes "the space rental paid to a landlord for parking of a mobile home, exclusive of any charges for utilities, services, furniture and furnishings or personal appliances furnished by the landlord as a part of the space rental. 25% of such annual gross rental plus the monthly parking permit fees paid during the year shall be the annual 'property taxes accrued'."

(11) **LOW INCOME HOUSING.** (a) If subsidy payments are received from a governmental agency and applied toward rental of a homestead and if the application of such payments is not specified under the terms of an agreement with the paying agency, gross rental shall include both the subsidy payment and the balance of the rental paid by the tenant. In this event, the portion of the rent paid for occupancy eligible for the homestead credit may be computed using the following formula: (Gross rental less utilities and furnishings  $\div$  Gross rental)  $\times$  Rent paid by the tenant = Rent paid for occupancy. For example, assume a total of \$1,800 rent is paid by or for a claimant in a year. The value of furnishings and utilities provided is \$100 and \$200 respectively. The tenant pays \$600 of the rent, a government agency the \$1,200 balance. Qualifying rent paid for occupancy equals \$500, computed as follows: \$1,500 (gross rent of \$1,800 less utilities and furnishings of \$300)  $\div$  Gross rent of \$1,800 =  $83\frac{1}{3}\%$ ;  $83\frac{1}{3}\%$  times gross rent paid by the tenant of \$600 = \$500.

(b) If the conditions are the same as in par. (a) but the formula specified in that paragraph is not used, the portion of the tenant's payment, excluding the subsidy, allocable to utilities and furnishings shall be the sum of subdvs. 1 and 2. 1. *Utilities.* 15%, if all utilities, including heat, are provided. If all utilities are not provided, a reasonable percentage which reflects the landlord's prorata costs for utilities shall be used, but not more than 15%.

2. *Furnishings.* 10%, if the homestead is completely furnished by the landlord. If the furnishings are not entirely provided by the landlord, a reasonable percentage but not more than 10%.

3. *Example:* If the landlord provides all the utilities and furnishings in the example cited in par. (a), but their value is unknown, rent paid for occupancy only by the claimant would be \$450, computed as follows: Total rent paid by the claimant (\$600) less utilities (15% of \$600 = \$90), less furnishings (10% of \$600 = \$60) = \$450.

(c) If an agreement with the agency paying the subsidy specifies how the subsidy is to be applied, such agreement shall be controlling in the determination of the tenant's rental paid for occupancy.

(12) **RETIREMENT AND NURSING HOMES.** (a) Any one of the following methods may be used by residents of retirement or nursing homes to determine the amount of rent paid for occupancy:

1. A standard rate of \$15 per week but not more than the actual rent paid.

2. The percentage of building occupancy costs method (See Note 1 at the end of this rule).

3. The per resident cost of furnished items and services method (See Note 2 at the end of this rule).

4. Any other appropriate method, subject to prior approval by the department of revenue.

(b) If a fixed charge is made upon admission to a retirement or nursing home entitling a person to occupancy for the balance of the person's life and additional monthly charges are solely for current maintenance and services, only the initial charge for occupancy shall be "rent constituting property taxes accrued". The terms of the agreement between the occupant and the nursing home shall establish the year (s) in which the rent paid for occupancy shall be deemed to be paid. If the rent paid is refundable in part should the occupant leave the home or if the rental payment is held in a trust by the home for the occupant, the initial payment shall not be deemed to be paid entirely in one year but shall be prorated.

**History:** Cr. Register, February, 1980, No. 290, eff. 3-1-80.

**Note 1. Percentage of Building Occupancy Costs Method.** Under this method, the ratio that building costs of the retirement or nursing home related to occupancy for a year bears to gross income received in that year, both directly from the resident and indirectly from governmental aid, is determined. This ratio is applied to the resident's total direct payments during the year for which the claim is made, yielding the portion of such payments applicable to occupancy. However, for the calendar year 1977 and thereafter, a resident is not eligible for the homestead credit if receiving medical assistance under s. 49.45, Stats., at the time of filing the claim.

The above ratio shall be determined from the most recent cost and income data available at the time the homestead credit claim is filed, preferably using data from the same year for which the homestead credit is claimed.

Building occupancy costs shall be limited to property taxes on real estate occupied, interest paid on the purchase of such real estate, the portion of lease or rental expense for real estate occupied, depreciation on real estate occupied and upkeep and repair costs on such buildings.

The following format may be utilized to compute the amount of rent paid for occupancy (the form is filled in as an example of how to compute the percentage):

## WISCONSIN ADMINISTRATIVE CODE

Computation of Percentage of Building  
Occupancy Costs

## 1. Building Occupancy Expenses

a. Property taxes (real estate)	<u>\$38,175</u>
b. Interest (real estate only)	<u>93,137</u>
c. Lease or rent expenses (real estate only)	<u>12,096</u>
d. Depreciation (building only)	<u>42,504</u>
e. Building upkeep and repairs	<u>74,064</u>

Total Building Occupancy Expenses \$ 259,976

2. Gross Income From Residents 1,216,786

3. Line 1 divided by line 2 equals the Percentage Rate 21.4%

The Percentage Rate determined above will be multiplied by the amount entered on line 3c of the Certification of Rent Paid form prepared for each resident.

The amount so determined is to be entered on line 5 of that form as rent paid for occupancy only. Assuming a claimant's total direct payments during the year were \$9,000, rent paid for occupancy only would be \$1,926 ( $\$9,000 \times 21.4\%$ ).

**Note 2. Per Resident Cost of Furnished Items and Services Method.** Under this method a retirement or nursing home may determine the average cost of furnished items and services provided to each resident. This amount is then subtracted from total direct payments by a resident in a year to determine the amount paid for occupancy. The following format shows how this computation is to be made.

Using data from the financial statement showing the results of operations for the most recently completed operating year, the retirement or nursing home lists all expenses in column A and the portion applicable to furnished items and services in column B. Some expenses such as administrative costs, wages or salaries paid to nurses and attendants, utility expenses and food, relate entirely to furnished items or services, and the full amount should be shown in column B. Other items which may relate to furnished items, services and occupancy, such as repairs, taxes and depreciation, shall be prorated on an equitable basis.

The total of the amounts listed in column B is divided by the average number of residents during the year represented by the data, yielding the average cost per resident for that year. The average number of residents may be determined by averaging the number on hand at the end of each month of the year, or the beginning and end of the year or other method yielding an accurate result.

If a resident is receiving medical assistance under s. 49.45, Stats., the average cost of furnishings and services shall be prorated on the basis of the percent that direct payments by the resident bears to total direct and indirect payments made by or for the resident. However, for the calendar year 1977 and thereafter, such resident is not eligible for the homestead credit if receiving such assistance at the time of filing the homestead credit claim.

The average cost (prorated if necessary) of furnished items and services is entered on line 4d of the Certification of Rent Paid form. This amount is subtracted from the total direct payments by the resident shown on line 3c to determine the amount of rent paid for occupancy only.

The format shown below is filled in as an example of how to compute the per resident cost of furnished items and services. Assuming a claimant's total direct payments during the year were \$9,000.00, rent paid for occupancy only would be \$1,769.33 ( $\$9,000.00 - \$7,230.67$ ).

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Computation of the Per Resident Cost  
of Furnished Items and Services

	COLUMN A	COLUMN B
	Total Expenses	Expenses Relating To Furnished Items and Services Only
1. Depreciation	\$ 31,046	\$ --
2. Taxes on business and business property	11,186	--
3. Rent on business property	--	--
4. Repairs	9,445	--
5. Salaries and wages	369,286	368,492
6. Insurance	15,438	15,438
7. Legal and Professional fees	8,922	8,922
8. Interest on business indebtedness	19,862	--
9. Other business expenses (specify):		
a. Utilities	11,857	11,857
b. Unassigned retirement	10,866	10,866
c. Food	38,378	38,378
d. Supplies	39,715	39,715
e. Other fringe benefits	74,663	74,663
f. Other expenses	21,679	--
g.		
10. TOTAL EXPENSES	\$662,343	\$568,331
11. Average Number of Occupants During the Year		78.6
12. Average Cost of Furnished Items and Services Provided to Each Resident (Divide line 10, Column B by line 11)		\$ 7,230.67

## Chapter Tax 15

## REAL ESTATE TRANSFER FEE

Tax 15.01	Definition of a conveyance	Tax 15.04	Land contracts
Tax 15.02	Value subject to real estate transfer fee	Tax 15.05	Exemption from fee
Tax 15.03	Imposition of real estate transfer fee	Tax 15.06	Inspection of real estate transfer returns

**Tax 15.01 Definition of a conveyance. (s. 77.21, Stats.)** Option contracts or agreements that provide for the right of first refusal of purchasing an interest in real estate are not conveyances within the scope of s. 77.21 (1), Stats.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**Tax 15.02 Value subject to real estate transfer fee. (s. 77.21, Stats.)** (1) The conveyance of a parcel of real property by a partner to a partnership is subject to both real estate transfer fee and return. The measure of value subject to the fee is the value of the ownership of the property actually relinquished.

(2) In an exchange of real properties, 2 separate and distinct conveyances are involved and the value should be separately determined for each.

**Note:** Explanatory example of Tax 15.02 (1): If a partner owns a one-third interest in the partnership, the fee is based upon two-thirds of the consideration paid by the partnership for the real property, or in the case of a gift, nominal consideration or an exchange, two-thirds of the market value of the property.

**Note:** Explanatory example of Tax 15.02 (2): If (i) 'A' conveys a parcel X of real property worth \$50,000 to 'B,' and (ii) 'B' in turn conveys a parcel Y of real property worth \$45,000 plus cash of \$5,000 to 'A,' both conveyances are taxable under s. 77.22 (1), Stats., and a return is required to be submitted for each conveyance. The basis of the real estate transfer fee for conveyance (i) is \$50,000 and for conveyance (ii) is \$45,000. Therefore, the real estate transfer fee for conveyance (i) is \$150 and that for conveyance (ii) is \$135.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**Tax 15.03 Imposition of real estate transfer fee. (s. 77.22 (1), Stats.)** A real estate transfer fee is imposed on the grantor of real estate on every conveyance not exempted under s. 77.25, Stats. Real estate conveyances which are taxable under s. 77.22, Stats., include:

(1) Corporation conveyances:

(a) From a corporation to a partnership, and from a partnership to a corporation.

(b) From an individual to a corporation, and from a corporation to an individual.

(c) From a corporation to its stockholders pursuant to a plan of liquidation.

(d) From one corporation to another, both of which have the same parent corporation, that is, conveyances between "sister" corporations.

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(d) From a corporation to another caused by a "spin-off." A spin-off occurs when, after a part of the assets of corporation 'A' is transferred to corporation 'B' controlled by the transferrer 'A,' stock or securities in the latter 'B' are distributed to the shareholders of the controlling corporation 'A,' without a surrender by corporation 'B's' shareholders of any of their stock or securities.

(f) From a corporation to another caused by a "split-up." In a split-up the distributing corporation 'A' transfers its assets to 2 or more newly created corporations in exchange for their stock and effects a complete liquidation, 'A's' shareholders receiving stock in the new corporations in exchange for the distributing corporation's stock.

(g) From one corporation to another pursuant to any bankruptcy provision.

(h) From a parent corporation to a subsidiary corporation in exchange for stock.

(2) Conveyances by means of a sheriff's sale:

(a) Where the grantee is third party with no prior interest in the deed or mortgage.

(b) Where the mortgagee (lender) purchases the property for less than the amount of the lien and demands a deficiency judgment in addition to the sale proceeds.

(c) Where the mortgagee (lender) purchases the property for more than the amount of the lien.

(3) Conveyances of real property between stepchildren, natural children or stepparent and stepchild.

(4) Conveyances by dissolution of a partnership.

(5) Conveyances between an individual and a tax-exempt organization.

(6) Conveyances of timber or mineral rights.

(7) Court ordered conveyances by a county to satisfy an old age assistance lien.

(8) Conveyances of a remainder interest in real property.

(9) Conveyances of real property from a trustor to a trustee.

(10) Bankruptcy court ordered conveyances.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**Tax 15.04 Land contracts. (s. 77.22 (2), Stats.)** (1) ORIGINAL LAND CONTRACT. Any original contract or any instrument evidencing the existence of a land contract, either of which indicates that such original land contract was made on October 1, 1969 or thereafter, requires the submission of a return as a condition to recording by the register of deeds. However, no fee is imposed at time of such recording.

(2) DEEDS IN FULFILLMENT OF A LAND CONTRACT. (a) Any deed or other instrument executed in fulfillment of a land contract, which land contract is dated December 17, 1971, or thereafter, requires the submission

of a return and payment of the fee provided by s. 77.22 (2) (b), Stats., as a condition to recording. The return must show that the deed is given in satisfaction of a land contract and the fee is based on the purchase price established by the terms of land contract.

(b) Deeds in fulfillment of recorded land contracts dated prior to December 17, 1971 are not subject to the fee. As a result of the changes made by Chapter 150, Laws of 1971, deeds presented allegedly in fulfillment of an unrecorded land contract dated prior to December 17, 1971 should not be recorded as exempt until the land contract or evidence of the existence of a land contract is recorded. This is necessary to establish that the land contract was in fact dated prior to December 17, 1971.

(3) **SALE OF A LAND CONTRACT VENDEE'S INTEREST.** A sale or assignment of a vendee's interest which is dated October 1, 1969, or thereafter is subject to both the fee and return as a condition to recording.

(4) **SALE OF A LAND CONTRACT VENDOR'S INTEREST.** A deed which transfers the interest of a vendor in a land contract to another person is excluded from the provisions of s. 77.22 (2), Stats. It is therefore not subject to the transfer fee. Under the doctrine of equitable conversion the vendor's interest in the land contract becomes personal property. Such a transfer is not a conveyance within the definition of s. 77.21 (1), Stats., because it does not provide for the passage of ownership interest in real estate.

**Note:** See *Mueller v. Novelty Dye Works* (1956), 273 Wis. 501, 78 N.W. 2d 881.

(5) **RECORDING OF A DEED ISSUED IN PARTIAL SATISFACTION OF AN ORIGINAL LAND CONTRACT.** The basis of the real estate transfer fee shall be prorated in proportion to the area covered by the deed.

**Note:** Explanatory example of Tax 15.04 (5): If a land parcel of 40 acres was sold under an original land contract for \$80,000, and subsequently a deed was issued in partial satisfaction of this land contract for \$4,500, and the area covered by the deed issued in partial fulfillment of the land contract was 5 acres, the real estate transfer fee is based upon 5/40 of \$80,000 or \$10,000.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**Tax 15.05 Exemption from fee. (s. 77.25, Stats.)** Conveyance of real property pursuant to any of the exemptions listed in s. 77.25, Stats., are not subject to the payment of real estate transfer fee except that returns are required at the time of recording.

(1) Conveyances from the United States, its agencies or instrumentalities are not subject to the fee imposed under s. 77.22 (1), Stats.

(2) Conveyances from the state, its instrumentalities, agencies and subdivisions are not subject to the fee imposed under s. 77.22 (1), Stats.

(3) A certificate of termination issued by the county court upon petition by interested persons in the realty upon the death of a person holding a life estate in real property or upon the death of a person who is a joint tenant in real property would be a conveyance as defined in s. 77.21 (1), Stats., since it transfers an interest in real estate. This conveyance is exempt from the real estate transfer fee by virtue of s. 77.25 (11), Stats., as a conveyance by descent or survivorship.

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(4) Conveyances between husband and wife pursuant to a divorce decree are not subject to the fee but a return must be submitted. The value of property transferred shall be stated on the real estate transfer return.

(5) Conveyance by means of a sheriff's sale when the mortgagee (lender) bids the amount of the lien to obtain the property is not subject to the fee imposed under s. 77.22 (1), Stats.

(6) Conveyances of cemetery lots, as distinct from land conveyed for use as a cemetery, are not subject to s. 77.22 (1), Stats.

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82.

**Tax 15.06 Inspection of real estate transfer returns.** (s. 77.23 (2), Stats.) A taxpayer or agent in a condemnation proceeding or an appeal from an assessment of real property will be allowed to inspect all returns. The taxpayer or agent requesting access to this information shall maintain the confidentiality of the return.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82.



## Chapter Tax 16

## LOCAL FINANCIAL REPORTING

Tax 16.01	Purpose	Tax 16.05	Audited financial report and schedules
Tax 16.02	Scope	Tax 16.06	Compliance
Tax 16.03	Definitions		
Tax 16.04	Schedules		

Note: The rules in this chapter shall first apply to schedules and financial reports covering the fiscal year ending December 31, 1986.

**Tax 16.01 Purpose.** The purpose of this chapter is to establish standards and procedures for the collection of financial information from towns, villages, cities and counties.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

**Tax 16.02 Scope.** This chapter is applicable to all towns, villages, cities and counties with a population of 25,000 or more according to the latest population estimate made by the state department of administration pursuant to s. 16.96, Stats. Any town, village, city or county whose population declines below 25,000 after December 31, 1986 shall continue to be governed by this chapter.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

**Tax 16.03 Definitions.** (1) "General purpose financial statements" are those financial statements, including disclosure notes, necessary to fairly present financial position and operating results and changes in financial position of the proprietary fund types in conformity with generally accepted accounting principles. They are listed as follows:

- (a) Combined balance sheet - all fund types and account groups.
- (b) Combined statement of revenues, expenditures and changes in fund balances - all governmental fund types and similar trust funds.
- (c) Combined statement of revenues, expenditures and changes in fund balances - budget and actual - general and special revenue fund types and similar governmental fund types for which annual budgets have been legally adopted.
- (d) Combined statement of revenues, expenses and changes in retained earnings or equity - all proprietary fund types and similar trust funds.
- (e) Combined statement of changes in financial position - all proprietary fund types and similar trust funds.
- (f) Notes to the financial statements.

(2) "Generally accepted accounting principles" means those governmental accounting and financial reporting principles promulgated by the national council on governmental accounting.

(3) "Generally accepted auditing standards" means those standards approved and adopted by the membership of the American Institute of Certified Public Accountants.

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- (4) "Local aid programs" means the following:
- (a) State shared revenues.
  - (b) Federal revenue sharing.
  - (c) Local transportation aids.
  - (d) State payments for municipal services.
- (5) "Local government" means a town, village, city or county.
- (6) "Schedules" means a financial presentation used to provide detailed information supporting general purpose financial statements in conformity with the provisions of this chapter.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

**Tax 16.04 Schedules.** (1) The governing body of each local government subject to this chapter shall provide for and cause to be prepared the following schedules required by the department for administration of local aid programs and other reporting purposes.

- (a) A schedule of revenues and expenditures - all governmental fund types and expendable trust funds.
- (b) A schedule of revenues and expenses - all proprietary fund types and similar trust funds.
- (c) A schedule of specified receipt, disbursement and other data.
- (d) A schedule of allocations.
- (e) A schedule of indebtedness.

(2) The required schedules shall be prepared on the forms provided by the department and in accordance with instructions issued by the department. Local governments may elect to submit the required schedules on their own forms so long as those forms meet the specifications established by the department. Local governments electing to submit their own forms shall submit an example of their forms for review and approval by the department prior to December 31 of the year for which the schedules are to be prepared.

(3) The required schedules shall be filed with the department within the time specified under s. 86.303(5)(c) or (d), Stats. Information in the schedules shall be complete and accurate.

(4) The expense of preparing the required schedules shall be the obligation of the local government for which the schedules were prepared.

(5) Upon failure, refusal or neglect of any local government to file the required schedules in compliance with the provisions of this chapter, the department may prepare or cause to be prepared the required schedules at the expense of the local government. The department shall notify the local government of the daily charge for preparing the required schedules prior to the commencement of any work.

(6) Receipt of an audited financial report and schedules submitted pursuant to s. Tax 16.05(4)(e) prior to the due date established by sub. (3) of this section will satisfy the requirements of this section.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

**Tax 16.05 Audited financial report and schedules.** (1) The governing body of each local government subject to this chapter shall provide for and cause to be prepared an audited financial report of the financial status and activities of all funds of the local government and the schedules enumerated in s. Tax 16.04(1) accompanied by an auditor's report.

(2) The audited financial report shall include the following:

(a) Table of contents.

(b) Auditor's report.

(c) The general purpose financial statements.

(d) Combining statements by fund type for all fund types for which more than one fund is reported.

(3) Schedules enumerated in s. Tax 16.04(1) shall be accompanied by an auditor's report on the supplemental information contained in those schedules. Certain amounts shown on the schedules enumerated in Tax 16.04(1) shall agree with or be reconciled to certain amounts reported in the general purpose financial statements, sub. (2)(c) in accordance with instructions issued by the department.

(4) (a) The governing body of each local government subject to this chapter shall provide for and cause to be conducted an annual audit of all the funds and account groups of the local government.

(b) The annual audit shall be conducted in accordance with generally accepted auditing standards by either a certified public accountant licensed to practice in the state of Wisconsin; or by a licensed public accountant, licensed on or before December 31, 1970 by the Wisconsin accounting examining board.

(c) The auditor's report in the financial report required by sub. (2) shall contain an unqualified opinion with respect to the combined financial statements taken as a whole, or if an unqualified opinion cannot be expressed, a qualified opinion, adverse opinion or a disclaimer of opinion together with an explanation of the reasons therefore. The auditor's report accompanying the schedules required by s. Tax 16.05(3) shall contain an opinion as to whether the supplemental information submitted as schedules is fairly stated in all material respects in relation to the financial report's combined financial statements taken as a whole. The auditor's opinion, unqualified, qualified, adverse or a disclaimer, with respect to the supplemental information in the schedule shall be at least the equivalent of the auditor's opinion with respect to the combined financial statements in the financial report.

(d) The expense of audits required by par. (a) shall be the obligation of the local government for which the audit is made.

(e) The local government shall submit together one copy of its audited financial report and schedules to the department within 30 days after its completion, but not later than July 31 of the year following the year for which the report and schedules were prepared.

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(5) Upon failure, refusal or neglect of any local government to file the required financial report and schedules in compliance with the provisions of this chapter, the department may prepare or cause to be prepared the required financial report and schedules at the expense of the local government. The department shall notify the local government of the daily charge for preparing the required financial report and schedules prior to the commencement of any work.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

**Tax 16.06 Compliance.** (1) Compliance with provisions of this chapter will release the unit of local government from any obligation to file the current financial report form authorized under s. 73.10(2)(a), Stats. Reports prescribed by this chapter should be prepared from accounting records maintained by the local government and should relate directly to those records.

(2) The department shall review schedules and financial reports filed pursuant to this chapter to determine compliance with standards and procedures prescribed by this chapter.

(3) The department may inspect and examine or cause an inspection and examination of the records of local government filing schedules or financial reports under this chapter.

(4) The department may review the auditor's workpapers prepared during audits conducted pursuant to this chapter to determine compliance.

History: Cr. Register, February, 1985, No. 350, eff. 3-1-85.

Note 1: Copies of the draft schedules required by s. Tax 16.04(1) and the specifications referenced in s. Tax 16.04(2) may be obtained from:

Wisconsin Department of Revenue  
Division of State/Local Finance  
125 South Webster Street  
P.O. Box 8933  
Madison, WI 53708  
Telephone (608) 266-1611

These schedules are new forms that substitute for the current annual financial report form filed by governmental units with the department of revenue.

Note 2: Generally accepted accounting principles and generally accepted auditing standards may be examined at the office of the administrator, division of state/local finance, 2nd floor, 125 South Webster Street, Madison. Generally accepted accounting principles may be obtained from:

National Council on Governmental Accounting  
180 North Michigan Avenue  
Chicago, IL 60601-7476

Generally accepted auditing standards may be obtained from:

American Institute of Certified Public Accountants  
1211 Avenue of the Americas  
New York, NY 10036

Note 3: The financial report referenced in s. Tax 16.05 represents the audited financial statements of local government units commonly referred to as an audit report or a comprehensive annual financial report and may include other statements, schedules and statistical information presented at the discretion of the local governmental unit.

## Chapter Tax 17

## PROPERTY TAX DEFERRAL LOAN PROGRAM

Tax 17.01	Administrative provisions	Tax 17.03	Application and review
Tax 17.02	Eligibility	Tax 17.04	Repayment of loan

Note: Chapter Tax 17 was created as an emergency rule effective February 18, 1986.

**Tax 17.01 Administrative provisions** (ss. 77.63, 77.64, 77.65, 77.655, 77.66 and 77.67, Stats.) (1) **PURPOSE.** This section describes the administrative provisions pertaining to the property tax deferral loan program, as authorized by ss. 77.66 (3) and 77.67 (4), Stats.

(2) **DEFINITIONS.** In this chapter and ch. 77, subch. IV, Stats.:

(a) "Applicant" means the person who has filed an application for a loan but has not yet been accepted into this program.

(b) "Co-owner" means a natural person who is age 60 or over on the date the initial application is submitted to the department and has an ownership interest in the qualifying dwelling unit. For purposes of this program, the spouse of a participant has an ownership interest in the dwelling unit. The spouse of a co-owner is not a co-owner, unless the spouse has an ownership interest in the dwelling unit.

(c) "Income" means household income as defined in s. 71.09 (7) (a) 1 and 3, 1983-84 Stats., and ss. Tax 14.02 (2) (b) 2 and 14.03.

(d) "Loan agreement" means an application signed by the participant and all co-owners, which has been approved by the department and on which a loan check has been issued.

(e) "Ownership interest" means to be named as an owner on a title instrument which is recorded in the records of the register of deeds for the county in which the dwelling unit is located, except that ownership interest for a spouse under s. 77.64(1), Stats., does not have to be recorded.

(f) "Property taxes" means the net real estate taxes after application of statutory state tax credits levied on a qualifying dwelling unit in 1985 or thereafter under ch. 70, Stats. If the qualifying dwelling unit is purchased during the year in which the loan application applies and the buyer is given credit in the closing agreement for the portion of property taxes allocable to the seller for that year, only the buyer's portion of the property taxes shall be used in applying for a loan under this program. In this paragraph, "real estate taxes" do not include any of the following:

1. Special assessments pertaining to realty.
2. Delinquent taxes, including delinquent interest and penalties, for years prior to the year for which the loan application applies.
3. Charges for service or other charges added to the property tax bill.

(g) "Qualifying dwelling unit" includes a unit in a condominium or cooperative building, regardless of the number of dwelling units within the building. However, it does not include a unit in other buildings with

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more than 4 units, such as an apartment building; nor does it include a mobile home as defined in s. 66.058, Stats. If 100% of a dwelling unit is not used exclusively as the applicant's personal residence and other use exceeds 20%, only the percentage used for personal residence shall qualify as a dwelling unit under this program. A qualifying dwelling unit also includes up to one acre of land connected to the qualifying improvements. It may also include an allocable portion of a garage and other buildings used to maintain the dwelling unit.

(h) "Temporary residency in a health care facility" includes a temporary stay at a hospital or nursing home.

**Note:** Example. If a person is in a hospital during the year preceding the year of participation and it can reasonably be assumed that the absence from his or her dwelling unit is temporary, up to 6 months of that hospital stay may be used to meet the eligibility requirements of s. 77.65 (2), Stats.

(3) **ALLOCATION OF PROPERTY TAXES.** To determine the proportion of property taxes eligible for a loan when the parcel of property includes more than a qualifying dwelling unit as defined in s. 77.64 (7), Stats. and sub. (2) (g) or more than one acre of land connected to it, or both the portion eligible for a loan may be determined on any reasonable basis, subject to the department's approval. The allocation may include consideration of any of the following factors:

(a) The fraction the assessed value of the qualifying dwelling unit and up to one acre of land connected to it on the current tax bill bears to the total assessed value of the property on the same tax bill.

(b) The fraction the insured value of the qualifying dwelling unit on the current insurance policy bears to the total insured value of the property on the same insurance policy.

(c) The fraction the square footage, or number of rooms or units, that are part of the qualifying dwelling unit bears to the total square footage, or number of rooms or units, in the property.

(d) The fraction the appraised value of the qualifying dwelling unit and up to one acre of land connected to it bears to the total appraised value of the property according to a current appraisal by a certified Wisconsin appraiser.

(4) **FLOOD PLAIN INSURANCE.** In addition to fire and extended casualty insurance required by s. 77.65 (3), Stats., separate flood insurance is required if the dwelling unit is located in a designated flood plain as defined under the National Flood Insurance Act of 1968, 42 United State Code §4001, et. seq.

(5) **ISSUANCE OF LOAN CHECK.** (a) The loan check shall be made payable to the participant only when satisfactory proof of payment of the property tax is furnished to the department.

(b) If satisfactory proof of payment is not furnished, the loan check shall be made payable to the participant and either the municipal or county treasurer according to which has authority to receive the property tax payment at the time the state's loan check is mailed.

(6) **PROHIBITED USE OF LOAN PROCEEDS.** (a) The department may not setoff any portion of a loan approved under this program against any Register, August, 1986, No. 368

delinquent account owed the department or another state agency by the participant, the participant's spouse or any co-owner.

(b) The loan may not be subject to garnishment, levy or attachment by any other creditor of the participant.

(7) **ASSUMPTION OF PARTICIPANT'S ACCOUNT BY CO-OWNER.** (a) If a participant ceases to reside in a qualifying dwelling unit or if the participant's total ownership interest in the qualifying dwelling unit is transferred to one or more co-owners, or if both of these events occur, a co-owner may assume the participant's account under this program if both of the following occur:

1. The co-owner applies to assume the outstanding loan within 90 days of the date the participant ceases to reside in the qualified dwelling unit or the date when the participant transfers his or her ownership interest in the qualifying dwelling unit, whichever occurs first.

2. The co-owner permanently resides in the qualifying dwelling unit on the date that he or she submits the application to assume the participant's account.

(b) A co-owner who meets all of the requirements of this program may qualify for additional loans by submitting an application under s. Tax 17.02 (2).

(8) **DISAGREEMENT WITH DEPARTMENT.** Applicants and participants who are aggrieved by the department's determination with respect to an application for a loan under this program or with respect to loan repayment may within 60 days after receipt of a notice of determination, file a written petition for redetermination with the department's appellate bureau. The appellate bureau shall render a decision on the petition and notify the petitioner of its decision within 60 days after the petition is filed. Applicants and participants aggrieved by the department's decision may appeal the decision to the circuit court as provided in s. 77.66 (8), Stats.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86.

**Tax 17.02 Eligibility.** (ss. 77.64, 77.65, 77.66, and 77.67, Stats.) (1) **PURPOSE.** This section clarifies to whom and under what conditions the department may make loans under this program.

(2) **LOAN APPLICATION.** To establish eligibility for a loan, a loan application, Form PT, shall be submitted to the department after being signed by the applicant, the applicant's spouse and all co-owners. The signatures shall denote acceptance of all terms of the application.

Note: Form PT may be obtained at any department of revenue office or by writing or telephoning the department as follows: Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708; telephone (608) 266-1961.

(3) **AGE AT TIME OF APPLICATION FOR LOAN.** To be eligible for a loan, an applicant shall be 65 years of age or older and an applicant's spouse and any other co-owners shall be 60 years of age or older, on the date the application is submitted to the department.

(4) **PROPERTY TAX PAID BY COOWNERS.** An applicant living in a qualifying dwelling unit having one or more co-owners who do not reside in the dwelling unit but who pay all or part of the unit's property taxes, shall

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not be ineligible for a loan under this program because of the payment arrangements.

(5) **TRANSFER OF ACCOUNT UPON DEATH OF A PARTICIPANT.** Upon the death of a participant, a co-owner who has no ownership interest in the qualifying dwelling unit, other than a surviving spouse who acquires title to the property, shall not be eligible for transfer of the loan account under s. 77.655, Stats.

(6) **DISQUALIFYING CONDITIONS.** An applicant shall not be eligible for participation in this program if:

(a) The applicant dies before the loan is issued.

(b) The applicant's interest in the qualifying dwelling unit is disposed of prior to the loan being issued.

(c) The applicant resides in a qualifying dwelling unit subject to a life estate, unless the persons holding the remainder interest qualify as co-owners and together with the applicant own the property free and clear, as defined in s. 77.64 (3), Stats.

(d) The applicant received title to the qualifying dwelling unit primarily to obtain a loan under this program.

(7) **TWO OR MORE PERSONS QUALIFYING FOR LOAN.** Only one person may apply for a loan for payment of real estate taxes for a year, on a qualifying dwelling unit, regardless of the number of co-owners. When 2 or more persons are qualified to apply for a loan on a single dwelling unit, they shall determine between them who the applicant shall be.

(8) **CO-OWNERS AS PARTICIPANTS.** Co-owners as defined in s. 77.64 (1), Stats., who could individually qualify as participants and who reside in separate dwelling units in an otherwise qualifying multi-unit building, may each apply for a loan under this program for the unit in which they each reside. The loan may not exceed the amount of the property tax allocable to the dwelling unit in which they each reside and when added to the sum of the taxes which are allocable to all other units, may not exceed the total of the property taxes for the entire multi-unit building.

(9) **NOMINAL LOANS.** Under s. 77.66 (1), Stats., the interest accruing on loans shall be sufficient to meet the expenses arising from the operation of this program. To satisfy the intent of the law and to insure equitable disbursement of program costs among all loans, loans will not be approved for amounts less than \$100.00, unless the applicant provides evidence to the satisfaction of the department that a financial hardship exists to pay property taxes.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86.

**Tax 17.03 Application and review (ss. 77.64, 77.65, 77.655 and 77.66, Stats.)** (1) **PURPOSE.** This section describes how to apply for a loan under this program and the review and verification procedures to be followed by the department of revenue.

(2) **APPLICATION.** Only one application for a loan to pay property taxes on a dwelling unit, including delinquent interest and penalties, may be filed for any one year. Form PT, titled "Senior Citizens Property Tax Deferral Loan Application" shall be used to apply for each loan under this program.

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(3) **HOW TO FILE.** (a) An application for each loan under this program shall be made on Form PT and submitted to the Wisconsin department of revenue as stated on the form.

(b) Form PT shall be legibly completed in its entirety and shall be signed and dated by the applicant, the applicant's spouse and all co-owners of the dwelling unit which is the subject of the loan application. If a person is unable to sign Form PT, the provisions of s. Tax 14.01 (5) (b) 4, shall apply.

(c) There shall be submitted with Form PT the following documents:

1. A copy of the real estate tax bill clearly identifying the property and the real estate taxes to which the loan proceeds will be applied.

2. Copies of any Wisconsin income tax returns or homestead credit claims which will be or have been filed by the applicant and the applicant's spouse for the calendar or fiscal year immediately preceding the calendar year in which the property taxes for which the loan is made are due.

3. Schedule PT-1, containing Parts I, II and III, as necessary.

(d) A separate application shall be submitted for each loan to pay each year's real estate tax.

(4) **WHEN TO FILE.** Under s. 77.65 (1), Stats., a loan shall be applied for by June 30 of the year in which the taxes are due. An application submitted by mail and postmarked after June 30 shall be rejected and returned to the applicant.

(5) **REVIEW AND VERIFICATION OF LOAN APPLICATIONS.** (a) The department of revenue shall review to the extent it considers necessary to meet this program's objectives, all loan applications prior to issuing loans under this program. The review may include verification that:

1. The application is complete and includes all required information and attachments.

2. The information, including computations, is correct.

3. Real estate taxes payable are supported by a copy of an authentic tax bill.

4. The dwelling unit has adequate insurance coverage and the department may be added as an insured party on the insurance policy covering the dwelling unit.

5. That all other requirements of the loan program are met.

(b) If a timely-filed application is rejected and returned to the applicant by the department for incorrect or insufficient information, the application may be revised and resubmitted for department approval within 30 days of its return to the applicant or by June 30 of the year in which the application is due, whichever is later.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86.

**Tax 17.04 Repayment of loan.** (s. 77.66, Stats.) (1) **PURPOSE.** This section describes loan repayment requirements and procedures, when the

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department may demand and collect amounts due, and the date from which interest applies.

(2) **REPAYMENT OF LOAN.** Sections 77.66 (4) (b), (5), and (6), Stats., state the provisions under which a loan shall become due and payable. Those statutory provisions shall also apply to:

(a) A co-owner who assumes the participant's account under s. 77.655, Stats.

(b) A participant, or co-owner who has assumed the participant's account under s. 77.655, Stats., who ceases to reside in the qualifying dwelling unit. A person shall not be considered to have ceased to reside in a qualifying dwelling unit where that person has established residency in a health care facility.

(3) **AUTHORITY AND ORDER OF APPLICATION OF REPAYMENT.** All loans issued under this program shall be repaid to the department of revenue as provided in this section and s. 77.66 (4) (b) and (c), Stats. In the case of multiple loans on any one dwelling unit, payment shall be applied to the loans as specified by the payor, and if not specified, the department shall apply the payment to the loan bearing the earliest issue date. Payment on any loan shall first be applied to fees and interest and any remainder shall be applied to the loan principal.

(4) **NOTIFICATION OF LOAN TERMINATING CONDITIONS.** The participant or a co-owner who has assumed the participant's account under s. 77.655, Stats., or the personal representative for the estate of either, shall notify the department within 90 days after any event specified in s. 77.66 (4) (b), Stats. or in sub. (2), which will require repayment of the loan, and shall make arrangements with the department to promptly repay the loan.

(5) **TIME WITHIN WHICH LOAN APPLICATION MAY BE VERIFIED.** Under s. 77.66 (6) Stats., the department may verify the correctness of a loan application and any other information regarding eligibility of the participant as long as the loan is outstanding. If the department finds the participant was not eligible under this program at the time the loan was issued or at any time the loan is outstanding, it may at any time accelerate and demand payment of the balance due, including interest, by a specified date.

(6) **CEASING TO MEET ELIGIBILITY REQUIREMENTS.** Under s. 77.66 (5), Stats., the department may require partial repayment of outstanding loans if a participant ceases to meet this program's eligibility requirements. In this event the department may determine the amount of the repayment due, including interest, and demand payment of that amount by a specified date.

(7) **EXCESSIVE LOANS ISSUED.** When the department determines that an excessive loan was issued, the department may accelerate and demand payment of a portion or all of the loan by a specified date.

(8) **INTEREST DUE ON LOANS.** (a) The annual rate of interest payable on loans issued under this program shall be determined each year by the secretary and specified in the loan agreement, on Form PT, between the department and the participant and co-owners.

(b) The rate of interest shall be simple interest, not compounded, and shall remain fixed at the rate specified for the life of the loan.

(c) The interest shall begin to accrue on the date the loan check is issued and shall be due and payable at the same time the loan is repayable.

(d) The interest rate shall be sufficient to recover all operating expenses of the program. Normal operating expenses may include the following:

1. Costs associated with preloan and postloan verifications, audits, and investigations of applications, participants, and co-owners.

2. Costs associated with independent audits of the overall operation of this program.

3. Issue costs, interest and other expenses associated with any revenue obligations issued under s. 77.67, Stats., to fund this program.

4. Costs to insure full recovery of outstanding loans on a dwelling unit in the event of deficiency.

5. All other necessary operating expenses associated with administration of this program.

(9) ENFORCEMENT OF LOAN REPAYMENT. Under s. 77.66 (9), Stats., when a loan becomes due and payable the department may enforce collection by instituting foreclosure action against the dwelling unit property in accordance with ss. 779.09 to 779.12, Stats. All costs associated with the foreclosure action, including attorney fees, shall be paid out of the proceeds from the sale of the property.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86.

## Chapter Tax 18

**DETERMINATION OF THE VALUE AND EQUALIZED  
VALUE OF AGRICULTURAL LAND**

(ss. 70.32 (1r) and 70.57 (3), Stats.)

Tax 18.01 Purpose

Tax 18.03 Definitions

Tax 18.02 Scope

Note: Chapter Tax 18 was created as an emergency rule effective January 29, 1986.

**Tax 18.01 Purpose.** The purpose of this chapter is to establish a definition of agricultural land for its valuation by the department of revenue and municipal assessors.

**History:** Cr. Register, July, 1986, No. 367, eff. 8-1-86.

**Tax 18.02 Scope.** This chapter is applicable to all conveyances of agricultural land transferred beginning January 1, 1986.

**History:** Cr. Register, July, 1986, No. 367, eff. 8-1-86.

**Tax 18.03 Definitions.** (1) (a) "Agricultural land" is the land used by establishments primarily engaged in agricultural production and related services. This includes buildings and dwellings associated with growing production and associated services and the land necessary for their location.

Note: Agricultural lands that have been voluntarily or involuntarily idled and capable of production are specifically included under this definition of agricultural land.

(b) Agricultural land does not include:

1. Swamp or waste, bog, marsh, lowland brush, other wetlands, or other nonproductive land which because of soil or site conditions does not produce and is not capable of producing.

Note: Examples of land that is not agricultural land include rock outcroppings, borrow pits, abandoned and depleted quarries, and other land not used and with no potential for use.

2. Impounded surface water consisting of flooded land behind dams used for storage within defined project boundaries.

(2) "Agricultural production" includes establishments primarily engaged in:

(a) The production of crops, plants, vines, or trees excluding forestry operations.

(b) Keeping, grazing or feeding of livestock for the sale of livestock or livestock products, excluding serums, for livestock increase or for value increase.

(c) Sod farming, maintaining mushroom cellars, and growing medicinal plants under sash or lath.

(d) The production of bulbs, flowers and vegetable seeds, vegetables, melons, berry crops and grapes.

(e) Private fish hatcheries licensed under s. 29.52, Stats.

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(3) "Establishments" includes, farms, ranches, dairies, nurseries, orchards and cranberry bogs.

(4) "Livestock" includes cattle, sheep, goats, hogs, poultry, animal specialties including horses, rabbits, bees, pets, fur-bearing animals in captivity and fish in captivity.

**History:** Cr. Register, July, 1986, No. 367, eff. 8-1-86.