

CR 86-208

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Karen A. Case, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed Order relating to updating sales and use tax rules for changes in the sales and use tax law and federal law and a Wisconsin Tax Appeals Commission decision was duly approved and adopted by this department on April 16, 1987.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 16th day of April, 1987.


Karen A. Case
Secretary of Revenue

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Revisor of Statutes
Bureau

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

To amend Tax 11.05(title) and (3)(p), 11.08(4), 11.09(4)(d) and (6), 11.10(4)(c), 11.12(4)(a), (4)(a)7, and (4)(b)6.b., 11.14(10), 11.16(1)(f) and (3)(b)1, 11.27(2)(c), 11.28(2)(intro.) and (a), 11.39(3)(f), 11.41(3)(a)4, 11.45(3)(d), 11.49(2)(a), 11.65(title) and (2)(b), 11.66(title), 11.68(9)(a), 11.80(4)(b), 11.83(title), 11.84(4)(e), 11.85(title), 11.88 (title), 11.94(2)(c), 11.96(1)(a) and (2)(a) and (b); to repeal and recreate 11.88(3) and (6); and to create 11.14(2)(c), 11.65(2)(e), 11.66(1)(f), 11.83(11) and 11.85(2)(f), relating to updating sales and use tax rules for changes in the sales and use tax law and federal law and a Wisconsin Tax Appeals Commission decision.

Analysis by the Department of Revenue

The changes in this Order affect sales and use tax rules. These revisions do not reflect any substantive changes in interpretations other than those required because of changes in the law and one court decision.

SECTION 1. A new statutory reference to s. 77.54(32) is added to the title of s. Tax 11.05.

SECTION 2. Rule Tax 11.05(3)(p) is amended to reflect the exemption for copying of public records made by 1983 Wisconsin Act 287, which created s. 77.54(32), Stats., effective April 27, 1984. The exemption language was revised by 1985 Wisconsin Act 149, effective April 2, 1986, to clarify that the exemption applies to charges made by governmental units for copying public or confidential records.

SECTIONS 3 and 14. Rules Tax 11.08(4) and 11.45(3)(d) are amended to reflect the exemption added to s. 77.54(22)(e), Stats., by 1985 Wisconsin Act 29, for scooters used by disabled persons, effective September 1, 1985. The same Act clarified the motorized wheelchair exemption.

SECTIONS 4 and 5. The definition of "hospital" in s. Tax 11.09(4)(d) formerly was in s. 140.24, Stats., but it is now found in s. 50.33(2), Stats., pursuant to 1983 Wis. Act 538. Effective May 10, 1984, 1983 Wisconsin Act 405, amended s. 77.54(3) and s. 77.57, Statutes, to provide that if a purchaser certifies in writing by using an exemption certificate, other than a resale certificate, that the property purchased will be used in an exempt manner, and the property is then used in some other manner, the "sales" tax is payable by the purchaser. Previously these provisions indicated the "use" tax is payable. Therefore, sales tax is now inserted in s. Tax 11.12(4)(a) and (4)(a)7 in place of use tax because an exemption certificate was used to acquire the property without tax.

A sales or use tax may be due in ss. Tax 11.09(6), 11.10(4)(c) and 11.12(4)(b)6.b., because the purchaser may not have used an exemption certificate to acquire the item without tax. For example, if an item is purchased out-of-state without tax and shipped to the Wisconsin user, the purchaser has not used a certificate to acquire the property without tax and the use tax would apply. Because a "sales" tax or "use" tax may be payable these sections are amended to indicate either tax may be payable.

SECTION 6. Rule Tax 11.14(2)(c) is created to reflect the amendment of s. 77.54(3) and s. 77.57, Stats., by 1983 Wisconsin Act 405, effective May 10, 1984, to provide that if a purchaser certifies in writing that the property purchased will be used in an exempt manner, and the property is then used in some other manner, the "sales" tax is payable by the purchaser. A sales tax is payable if an exemption certificate other than a resale certificate, was issued by the purchaser, whereas a use tax is payable if no certificate was issued by the purchaser.

SECTIONS 7 and 8. Rules Tax 11.14(10) and 11.16(1)(f) are amended to reflect the change in the law described in Section 6. A sales or use tax may be payable because the purchaser may or may not have issued an exemption certificate.

SECTION 9. The federal government transferred the registration of boats from the customs service to the Coast Guard in 32 Federal Register 2463, effective February 27, 1967. This is reflected in the amendment of rule Tax 11.16(3)(b)1 which adopts the same wording used in rule Tax 11.85(2)(b).

SECTIONS 10 and 11. Rules Tax 11.27 and 11.28 also are amended to reflect the change in the law made by 1983 Wisconsin Act 405 which amended s. 77.54(3) and s. 77.57 by indicating a "sales" tax is payable, where it previously said "use" tax. A reference to "sales" tax is added in these rules because it could be a sales or use tax as explained in Section 6.

SECTION 12. Rule Tax 11.39(3)(f) is amended to remove any reference to an exemption added to s. 77.54(5)(d), Stats., by 1985 Wisconsin Act 29, for mobile mixing and processing units, including the truck chassis and motor which propels the truck down the highway, effective July 20, 1985. This is not an exemption for manufacturing machines. Therefore, it is added to rule Tax 11.83 in Section 23.

SECTION 13. The Wisconsin Tax appeals Commission decision of May 25, 1984 in Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue held that cleaning compounds used in maintaining manufacturing machinery are exempt under s. 77.54(2), Stats., whether used during the time the manufacturing process takes place or at some other time. Therefore, the phrase "during the manufacturing process" limitation is stricken from s. Tax 11.41(3)(a)4. The decision also held that where standards of sanitation are required by a regulatory agency, there is a broad exemption under s. 77.54(2), Stats., for chemicals and cleaners.

SECTION 15. If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle on the public highway, s. 77.54(11), Stats., imposes a sales/use tax on the transaction under 1985 Wisconsin Act 29, effective September 1, 1985. Tax 11.49(2)(a) is amended to reflect this change in the law.

SECTION 16. New statutory references to ss. 77.54(10) and (35) are added to the title of s. Tax 11.65. Admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society became exempt pursuant to 1985 Wisconsin Act 29, effective July 20, 1985.

SECTION 17. Rule Tax 11.65(2)(e) is created to reflect the new exemption in s. 77.54(35), Stats., for receipts from the sales of tangible personal property, tickets or admissions by any baseball team affiliated with the Wisconsin Department of American Legion baseball. The exemption is effective September 1, 1985, pursuant to 1985 Wisconsin Act 29.

SECTION 18. New statutory references to ss. 77.51(4)(m), (7)(p) and (7m) are added to the title of s. Tax 11.66 to recognize the provisions of Section 19 which created s. 77.51(4)(m) and (7)(p), Stats.

SECTION 19. Rule Tax 11.66(1)(f) is created to reflect the tax imposed on services provided interexchange carriers under s. 77.51(4)(m) and (7)(p), Stats., pursuant to 1985 Wisconsin Act 29, effective July 20, 1985. These services provided by telephone companies permit the interexchange carrier to originate and terminate telephone messages in Wisconsin.

SECTIONS 20, 21 and 30. Rules Tax 11.68(9)(a), 11.80(4)(b) and 11.94(2)(d) are also revised to reflect the amendment of s. 77.54(3) and s. 77.57 by 1983 Wisconsin Act 405. This is the change described in Section 6.

SECTION 22. A new statutory reference to s. 77.54(5)(d) is added to the title of s. Tax 11.83 to recognize the provisions of Section 23.

SECTION 23. Rule Tax 11.83(11) is created to reflect an exemption added to 77.54(5)(d), Stats., by 1985 Wisconsin Act 29, for mobile mixing and processing units, effective July 20, 1985.

SECTION 24. The sales tax status of items purchased by service providers, such as persons supplying certain services to farmers, was clarified by 1983 Wis. Act 27. If the tangible personal property transferred to the customer by the service provider is more than incidental to the service, the property may be purchased without tax for resale by the service provider. This would apply to the chemicals, sprays, fertilizer and seed referred to in s. Tax 11.84(4)(e). Therefore, the rule's separate itemization requirement no longer is necessary and has been deleted.

SECTION 25. A new statutory reference to s. 77.53(17m) is added to the title of s. Tax 11.85 to recognize the provisions of Section 26.

SECTION 26. A boat purchased in a state contiguous to Wisconsin by a person domiciled in that state is exempt under s. 77.53(17m), Stats., from the Wisconsin use tax if the boat is berthed in state's boundary waters adjacent to the state of the domicile of the purchaser, if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made, pursuant to 1985 Wisconsin Act 29, effective September 1, 1985.

SECTION 27. Rule Tax 11.88 (title) is amended to show new statutory references to ss. 77.51(11)(b)6, (12)(b)5, (18), 77.52(2)(a)1 and 77.54(31) to recognize the provisions of Section 28.

SECTION 28. Rule Tax 11.88(3) is repealed and recreated to show the following new exemptions created for mobile homes which are personal property: (a) and (b) Effective January 1, 1987, 1985 Wisconsin Act 29 created s. 77.54(31), Stats., which exempts 100% of the selling price of a used mobile home and amended ss. 77.51(11)(b)6 and (12)(b)5 to exempt 35% of the selling price of a new mobile home, (c) The rental of a mobile home as defined under s. 66.058(1)(e) is exempt, pursuant to 1983 Wisconsin Act 341, effective July 1, 1984 and (d) Mobile homes transferred to specified relatives are exempt under s. 77.54(7), Stats.

SECTION 29. The Definition in rule Tax 11.88(6) for "mobile home dealer" is repealed and 4 new Definitions are added to "mobile home dealer" in recreated Tax 11.88(6). The new definitions are required because of the new exemptions referred to in Section 28.

SECTION 31. Nondelinquent sales and use taxes due on or after November 1, 1975 to August 1, 1981 were subject to interest at the rate of 9% per year. This is shown in the "note" at the end of the rule and s. Tax 11.96(1)(a) is amended to provide this information. Section 77.60(1)(a), Stats., was amended by 1983 Wis. Act 27, effective September 1, 1983, to provide that sales/use tax refunds will bear interest to the date on which the refund is certified on the refund roll.

Pursuant to the authority vested in the Department by section 227.11, Stats., the Department of Revenue hereby repeals, amends and creates rules interpreting ss. 77.51(4)(1) and (m), (7)(e), (f) and (p), (24), (27) and (29), 77.52(2)(a)1, 77.53(1) and (17m), 77.54(2), (3), (5)(d), (10), (11), (22)(e), (32) and (35), 77.57 and 77.60(1) and (2), Stats., as follows:

SECTION 1. Tax 11.05(title) is amended to read:

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), (30) and (32), Stats.)

SECTION 2. Tax 11.05(3)(p) is amended to read:

Tax 11.05(3)(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. Also, charges by an "authority", as defined in s. 19.32(1), Stats., for copying a public record or confidential record, including charges for search of records.

Note to Revisor: The "Note" at the end of Tax 11.05 should be revised to read as follows:

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 and (g) A governmental unit's charges for copying public records became exempt April 27, 1984 pursuant to 1983 Wisconsin Act 287. The exemption language in s. 77.54(32), Stats., was amended by 1985 Wisconsin Act 149, effective April 2, 1986, to clarify that the exemption also applies to confidential records.

SECTION 3. Tax 11.08(4) is amended to read:

Tax 11.08(4) CRUTCHES AND WHEELCHAIRS. Section 77.54(22)(e), Stats., exempts gross receipts from the sale of "Crutches and wheelchairs including motorized wheelchairs and scooters for the use of 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.

Note to Revisor: The "Note" at the end of s. Tax 11.08 should be revised to read as follows:

Note: The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983 pursuant to 1983 Wisconsin Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985 pursuant to 1985 Wisconsin Act 29.

SECTION 4. Tax 11.09(4)(d) and (6) and 11.10(4)(c) are amended to read:

Tax 11.09(4)(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~~ 50.33(2), Stats., and does not include nursing homes.

Tax 11.09(6) TAXABLE USE OF MEDICINES. Persons who sell medicines are subject to the use tax or sales tax pursuant to s. Tax 11.14(2)(c) on samples furnished without charge to hospitals, physicians, surgeons, podiatrists or dentists.

Tax 11.10(4)(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 or sales tax pursuant to s. Tax 11.14(2)(c) 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.

SECTION 5. Tax 11.12(4)(a), (4)(a)7. and (4)(b)6.b. are amended to read:

Tax 11.12(4)(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 sales 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."

Tax 11.12(4)(a)7 'Sales or use tax'. A person who buys without tax by claiming the farming exemption owes the use sales tax at the time the person uses the item purchased more than nominally for a nonexempt purpose.

Tax 11.12(4)(b)6.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 consumer, not a seller, the contractor must pay the sales tax to the supplier or report the use tax or sales tax pursuant to s. Tax 11.14(2)(c) 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.

SECTION 6. Tax 11.14(2)(c) is created to read:

Tax 11.14(2)(c) Under ss. 77.54(3) and 77.57, Stats., if a purchaser certifies in writing by using an exemption certificate, other than a resale certificate, that the property purchased will be used for activities or under circumstances which makes the purchase of the property exempt from the sales tax, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

SECTION 7. Tax 11.14(10) is amended to read:

Tax 11.14(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 or sales tax pursuant to s. Tax 11.14(2)(c) 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.

SECTION 8. Tax 11.16(1)(f) is amended to read:

Tax 11.16(1)(f) If a vehicle purchased without tax is converted to private use, a use tax or sales tax pursuant to s. Tax 11.14(2)(c) 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.

SECTION 9. Tax 11.16(3)(b)1 is amended to read:

Tax 11.16(3)(b)1 Vessels and barges primarily engaged in interstate commerce or commercial fishing ~~which have a document issued by the U.S. customs service~~ that are documented under the laws of the United States showing a net tonnage of 50 tons or more.

SECTION 10. Tax 11.27(2)(c) is amended to read:

Tax 11.27(2)(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 or sales tax pursuant to s. Tax 11.14(2)(c) measured by the retailer's purchase price of any parts used in providing such free service.

SECTION 11. Tax 11.28(2)(intro.) and (a) are amended to read:

Tax 11.28(2)(intro.) 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 or sales tax pursuant to s. Tax 11.14(2)(c) 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.

Tax 11.28(2)(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 or sales tax pursuant to s. Tax 11.14(2)(c) on its cost of the property donated.

SECTION 12. Tax 11.39(3)(f) is amended to read:

Tax 11.39(3)(f) Cement and concrete plants, ~~including concrete mixing units mounted on trucks and 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 used in manufacturing.~~

Note to Revisor: The "Note" at the end of s. Tax 11.39 should be revised to read as follows:

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

SECTION 13. Tax 11.41(3)(a)4 is amended to read:

Tax 11.41(3)(a)4 Cleaning compounds and solvents for maintaining manufacturing machinery whether used during the manufacturing process or while the machinery is idle. A food processor, who is required to maintain strict sanitation standards by a regulatory agency, may also purchase chemicals and cleaning agents used to clean the walls, ceilings, floors and drains of the rooms in which manufacturing takes place without tax.

Note: Refer to the Wisconsin Tax Appeals Commission decision of May 25, 1984, in Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue.

SECTION 14. Tax 11.45(3)(d) is amended to read:

Tax 11.45(3)(d) Crutches and wheelchairs including motorized wheelchairs and scooters for use ~~of~~ by invalids-and-crippled persons who are ill or disabled, 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.

Note to Revisor: The "Note" at the end of s. Tax 11.45 should be revised to read:

Note: The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, effective September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983 pursuant to 1983 Wisconsin Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985 pursuant to 1985 Wisconsin Act 29.

SECTION 15. Tax 11.49(2)(a) is amended to read:

Tax 11.49(2)(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.~~ If motor fuel or special fuel is purchased without tax under s. 77.54(11), Stats., because it is subject to the excise tax imposed under Ch. 78, Stats., and then the excise taxes are later refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle upon the public highways, the fuel is subject to the tax, unless otherwise exempt under ss. 77.54(1), (3), (5), (6)(c), (9a), (12), (13), (30)(a) or other exemptions in Subch. 3, Ch. 77, Stats.

Note to Revisor: The "Note" at the end of s. Tax 11.49 should be revised to read as follows:

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979 pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1, 1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985.

SECTION 16. Tax 11.65 (title) and (2)(b) are amended to read:

Tax 11.65 ADMISSIONS. (ss. 77.52(2)(a)2, 77.54(10) and (35), Stats.)

Tax 11.65(2)(b) Admissions to museums of history, art or science, and to auto or trade shows, if professional entertainment is not provided at the show. Also, all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society, such as the Circus World Museum.

SECTION 17. Tax 11.65(2)(e) is created to read:

Tax 11.65(2)(e) The gross receipts from the sales of tangible personal property, tickets or admissions by any baseball team affiliated with the Wisconsin Department of American Legion baseball.

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

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law, effective September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973 under Chap. 156, Laws of 1973; (b) Admission fees to any museum operated under a lease with the State Historical Society became exempt under s. 77.54(10) on July 20, 1985 and gross receipts from American Legion baseball became exempt September 1, 1985, both pursuant to 1985 Wisconsin Act 29. The Historic Sites Foundation, Inc. d/b/a Circus World Museum vs. Dept. of Revenue Wisconsin Tax Appeals Commission decision of January 21, 1986, held the Circus World Museum receipts are not taxable.

SECTION 18. Tax 11.66(title) is amended to read:

Tax 11.66 COMMUNICATIONS AND CATV SERVICES. (ss. 77.51(4)(m), (7)(p), (7m) and (28), 77.52(2)(a)3, 4 and 12 and 77.54(24), Stats.)

SECTION 19. Tax 11.66(1)(f) is created to read:

Tax 11.66(1)(f) Transfers of services, commonly called "access services", to an interexchange carrier, including a reseller, which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange. Resellers may purchase without tax Measured Toll Service (MTS) and Wide Area Transport Service (WATS) services they purchase, repackage and resell to customers.

Note to Revisor: The "Note at the end of s. Tax 11.66 should be revised to read as follows:

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982, and (d) Access

services provided to an interexchange carrier became taxable pursuant to 1985 Wisconsin Act 29, effective July 20, 1985.

SECTION 20. Tax 11.68(9)(a) is amended to read:

Tax 11.68(9)(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 or sales tax pursuant to s. Tax 11.14(2)(c), but may claim a credit against this use tax for any sales or use tax paid in the state where the purchase was made.

SECTION 21. Tax 11.80(4)(b) is amended to read:

Tax 11.80(4)(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax or sales tax pursuant to s. Tax 11.14(2)(c) ~~under s. 77.53(1), Stats.~~

SECTION 22. Tax 11.83(title) is amended to read:

Tax 11.83(title) MOTOR VEHICLES. (ss. 77.51(4)(j) and (7)(am), 77.52(1) and (15), 77.53(1), (16) and (18), 77.54(5)(d) and (7), 77.56(2) and 77.61(1), Stats.)

SECTION 23. Tax 11.83(11) is created to read:

Tax 11.83(11) EXEMPTION FOR MIXING AND PROCESSING UNITS. Sales, leases and rentals of mobile units used for mixing and processing and the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units are exempt from the sales and use tax.

Note to Revisor: The "Note" at the end of Tax 11.83 should be revised to read as follows:

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 5% 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 5% 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; (c) an exemption was added to s. 77.54(5)(d), Stats., by 1985 Wisconsin Act 29, effective July 20, 1985, for mobile mixing and processing units as shown in sub. (11).

SECTION 24. Tax 11.84(4)(e) is amended to read:

Tax 11.84(4)(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in ~~this~~ the business of crop dusting, spraying, fertilizing and seeding for farmers may purchase weed killers, fertilizer and seed without tax for resale, if these items are ~~separately itemized on the invoice to the farmer~~ used in conjunction with but not incidental to providing the service.

SECTION 25. Tax 11.85(title) is amended to read:

Tax 11.85 BOATS, VESSELS AND BARGES. (ss. 77.51(7)(am), 77.52(2)(a)9 and 10, 77.53(17), (17m) and (18), 77.54(7) and (13) and 77.61(1), Stats.)

SECTION 26. Tax 11.85(2)(f) is created to read:

Tax 11.85(2)(f) Section 77.53(17m), Stats., exempts: "A boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser, if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made, if the boat is not located in this state more than 60 consecutive days other than while it is in storage and if this state is not the state of principal use."

Note to Revisor: The "Note" at the end of s. Tax 11.85 should be revised to read:

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Boats documented under laws of the United States did not qualify for the occasional sale exemption pursuant to Chap. 1, Laws of 1979, effective February 28, 1979;

(b) Charges by governmental units for docking and storing boats became taxable pursuant to Chap. 221, Laws of 1979, effective June 1, 1980; (c) Boats of nonresidents kept in waters contiguous to the nonresidents' state of domicile as described in sub. (2)(f) became exempt from the use tax pursuant to 1985 Wisconsin Act 29, effective September 1, 1985.

SECTION 27. Tax 11.88 (title) is amended to read:

Tax 11.88 (title) MOBILE HOMES. (ss. 77.51(7)(am), (11)(b)6, (12)(b)5 and (18), 77.52(2)(a)1, 77.53(17), 77.54(7) and (31) and 77.61(1)(a) and (c), Stats.)

SECTION 28. Tax 11.88(3) is repealed and recreated to read:

Tax 11.88(3) SALES AND RENTALS OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) Under s. 77.54(31), Stats., the total gross receipts from the sale of a used mobile home, which is a primary housing unit, are exempt from the sales and use tax.

(b) Under s. 77.51(11)(b)6 and (12)(b)5, Stats., thirty-five percent of the total gross receipts from the sale of a new mobile home which is a primary housing unit is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of a new mobile home.

(c) Under s. 77.54(36), Stats., the rental of a mobile home, as defined in s. 66.058(1)(e), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(d) Under s. 77.54(7), Stats., mobile homes transferred to the spouse, parent or child of the transferor are exempt occasional sales 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 homes.

SECTION 29. Tax 11.88(6) is repealed and recreated to read:

Tax 11.88(6) DEFINITIONS. In this section: (a) "Mobile home dealer" has the meaning defined in s. 218.10(3), Stats.

(b) "New mobile home" has the meaning defined in s. 218.10(7), Stats.

(c) "Primary housing unit" has the meaning defined in s. 340.01(29), Stats.

(d) "Retailer" is a person who has a seller's permit issued under s. 77.52(9), Stats.

(e) "Used mobile home" has the meaning defined in s. 218.10(9), Stats.

Note to Revisor: The "Note" at the end of s. Tax 11.88 should be revised to read as follows:

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969 except as follows:

(a) Nonretailer sales of mobile homes were not taxable prior to August 1, 1977, (b) Nonretailer sales of mobile homes became taxable on August 1, 1977 pursuant to Chapter 29, Laws of 1977, (c) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt on July 1, 1978 pursuant to Chapter 418, Laws of 1977, (d) The rental of a mobile home which is personal property used for lodging for a continuous period of one month or more became exempt on July 1, 1984 pursuant to 1983 Wisconsin Act 341 as set forth in sub. (4)(c), and was clarified by 1985 Wisconsin Act 149, effective April 1, 1986. (e) The total gross receipts from the sale of a used mobile home became exempt, effective January 1, 1987, pursuant to 1983 Wisconsin Act 29, (f) Thirty-five percent of the gross receipts from the sale of a new mobile home became exempt effective January 1, 1987, pursuant to 1985 Wisconsin Act 29.

SECTION 30. Tax 11.94(2)(d) is amended to read:

Tax 11.94(2)(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14(2)(c) 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.

SECTION 31. Tax 11.96(1)(a) and (2)(a) and (b) are amended to read:

Tax 11.96(1)(a) For taxes due on or after November 1, 1975 and assessed by the department before August 1, 1981 interest shall be computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

Tax 11.96(2)(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~~ date on which the refund is certified on the refund rolls.

Tax 11.96(2)(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~~ date on which the refund is certified on the refund rolls.

Note to Revisor: The "Note" at the end of s. Tax 11.96 should be revised to read as follows:

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.

4. Refunds bear interest from the due date of the return to the date certified on the refund roll, effective September 1, 1983. Prior to that date interest was computed on refunds from the due date of the return to the first day of the month following the month in which the taxes were refunded.

The rules, amendments and repeals contained in this order shall take effect on the first day of the month following publication as provided by s. 227.22(2)(intro.), Wis. Stats.

Final Regulatory Flexibility Analysis

This rule order does not have an adverse economic impact upon small business.

Dated: _____

April 16, 1987

DEPARTMENT OF REVENUE

By: _____

Karen A. Case
Karen A. Case
Secretary of Revenue



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

Tommy G. Thompson
Governor

Karen A. Case
Secretary of Revenue

John W. Torgerson
Deputy Secretary

Mark D. Bugher
Executive Assistant

April 24, 1987

RECEIVED

APR 27 1987

Revisor of Statutes
Bureau

Orlan L. Prestegard
Revisor of Statutes
30 West Mifflin Street, Suite 904
Madison, Wisconsin 53703

Re: Clearinghouse Rule 86-208

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use taxes.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

Karen A. Case
Secretary of Revenue

KAC:bet
Enclosure
430810

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



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

Tommy G. Thompson
Governor

Karen A. Case
Secretary of Revenue

John W. Torgerson
Deputy Secretary

Mark D. Bugher
Executive Assistant

April 24, 1987

RECEIVED

APR 27 1987

Revisor of Statutes
Bureau

Douglas LaFollette
Secretary of State
Room 271, GEF 1
Madison, WI 53702

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 86-208.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

Karen A. Case
Secretary of Revenue

KAC:bet
Enclosure
430310a

cc: Revisor of Statutes