

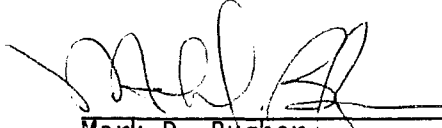
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to sales and use taxes was duly approved and adopted by this department on December 4, 1990.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 4th day of December, 1990.



Mark D. Bugher
Secretary of Revenue

MDB:VLG:1c
CKLEG/ELC3250K

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

The Wisconsin Department of Revenue adopts an order to amend Tax 11.41(title), (2), (3)(title) and (b) and (4)(title) and (intro.), 11.78(2)(a), 11.925(1), (2)(a)1, 3 and 4, (3)(b)2 and (5)(c) and 11.95(title) and (1); to repeal and recreate Tax 11.62; and to create Tax 11.41(5)(c) and 11.78(2)(e), relating to sales and use taxes.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(13)(i) and (20), 77.52(2)(a)10, 77.54(2), (6)(a) and (30)(a)4, 77.57, 77.61(2) and (4)(c) and 77.76(3), Stats.

SECTION 1. Tax 11.41(title) is amended to add reference to s. 77.54(30)(a)4, Stats., as created by 1987 Wisconsin Act 27. Subsections (2), including (2)(title), (3)(title) and (b) and (4)(title) and (intro.) are amended to update language and style per Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 11.41(5)(c) is created to clarify the department's position that certain liquids used as fuel are not within the exemption in s. 77.54(2), Stats.

SECTION 3. Tax 11.62 is repealed and recreated to improve readability and format and to state that a purchaser of tangible personal property is liable for use tax if the property was purchased without tax and then used in a taxable manner, as provided in s. 77.57, Stats., as created by 1983 Wisconsin Act 405.

SECTIONS 4 AND 5. Tax 11.78(2)(a) is amended and par. (e) created to clarify the department's position that sales of U.S. stamps above face value used for mailing, and not collecting or trading, are exempt from sales and use tax.

SECTION 6. Tax 11.925(1) is amended to change the security limit from \$5,000 to \$15,000 as provided by s. 77.61(2), Stats., amended by 1985 Wisconsin Act 29. Tax 11.925(2)(a)1, 3 and 4, (3)(b)2 and (5)(c) are amended to update language and style per Clearinghouse standards.

SECTION 7. Tax 11.95(title) and (1) are amended due to the amendment of s. 77.785(2), Stats., by 1987 Wisconsin Act 141. Dealers now may remit county taxes directly to the Department of Revenue along with other sales and use taxes.

SECTION 1. Tax 11.41(title), (2)(title) and (intro.), (3)(title) and (b) and (4)(title) and (intro.) are amended to read:

Tax 11.41 (title) EXEMPTION OF PROPERTY CONSUMED OR DESTROYED IN MANUFACTURING. (s. 77.54(2), (6)(a) and (30)(a)4, Stats.)

(2)(title) RELATIONSHIP OF S. 77.54(2) AND (6)(a), STATS. In construing the exemption provided in s. 77.54(2), Stats., it is necessary to refer to another exemption provided in s. 77.54(6)(a), Stats. The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing-~~(this~~. This exemption is interpreted in rule s. Tax 11.40). ~~Section 77.54(2) and (6)(a) do not overlap and are mutually exclusive.~~ ~~Accordingly, machines~~ Machines, processing equipment and parts thereof ~~must~~ shall be within the exemption provided by s. 77.54(6)(a) ~~and if,~~ Stats., if they are exclusively and directly used in manufacturing tangible personal property. If they are not within the exemption in s. 77.54(6)(a), Stats., they cannot be within the exemption provided by s. 77.54(2), Stats.

(3)(title) PERSONAL PROPERTY WITHIN S. 77.54(2), STATS., EXEMPTION.

(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.~~

Examples: 1) Property sold to an automobile repair shop or other repair business does not qualify for exemption under s. 77.54(2), Stats.

2) 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 the construction.

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

SECTION 2. Tax 11.41(5)(c) is created to read:

Tax 11.41(5)(c) Gasoline, fuel oil, kerosene, natural gas, liquid propane gas, also called LPG, or other natural or synthetic liquids used as fuel.

SECTION 3. Tax 11.62 is repealed and recreated to read:

Tax 11.62 BARBER OR BEAUTY SHOP OPERATOR. (ss. 77.51(13)(i), 77.52(2)(a)10 and 77.57, Stats.) (1) NONTAXABLE SALES AND SERVICES. Charges by a barber or beauty shop operator for services on human beings are not subject to sales tax.

(2) TAXABLE SALES AND SERVICES. (a) Over the counter sales by a barber or beauty shop operator of packaged cosmetics, hair tonics, lotions, shampoo, wigs, falls, toupees and other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property are subject to sales tax unless par. (b) applies. A barber or beauty shop operator who engages in sales subject to sales tax under this subsection shall register as a retailer and is responsible for collecting and remitting to the department the tax on taxable sales or charges.

(b) A barber or beauty shop operator is not required to register as a retailer and collect Wisconsin sales tax if the gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year.

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) TAXABLE AND NONTAXABLE PURCHASES. (a) Persons exempt as occasional sellers under sub. (2)(b) shall pay sales or use tax on all purchases of property used in the business, including items that may be resold to customers.

(b) Persons who register and collect sales tax under sub. (2)(a) may purchase tangible personal property, such as hair pieces, for resale without paying tax by issuing their supplier a properly completed resale certificate.

(c) Tangible personal property purchased by a barber or beauty shop operator and used in providing services is subject to sales or use tax.

(d) If a barber or beauty shop operator gives a resale certificate for tangible personal property to a supplier and then consumes the property in providing services, the barber or beauty shop operator is liable for use tax at the time the property is first used in a taxable manner.

SECTION 4. Tax 11.78(2)(a) is amended to read:

Tax 11.78(2)(a) United States ~~postage-stamps~~, coins and paper currency sold at face value.

SECTION 5. Tax 11.78(2)(e) is created to read:

Tax 11.78(2)(e) Uncancelled United States postage stamps intended for use as postage even if sold for an amount above face value.

SECTION 6. Tax 11.925(1), (2)(a)1, 3 and 4, (3)(b)2 and (5)(c) are amended to read:

Tax 11.925(1) Under s. 77.61(2), Stats., the department may require any a person liable ~~to-it~~ for sales and use taxes to ~~place-with-it~~, make a security deposit before or after a seller's permit is issued, ~~such-security-as-the department-determines~~. The amount of the security deposit determined by the department shall not exceed ~~\$5,000~~ \$15,000. If any a person fails or refuses to ~~place-such~~ make a security deposit as requested, the department may refuse to issue a permit or revoke the permit.

(2)(a)1 Evidence of adequate financial responsibility. ~~Such evidence~~
Evidence may include a person's assets and liabilities, liquidity of assets,
estimated expenditures and potential sales tax liability.

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).~~

Example: 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).~~

Example: A sole proprietor or partner having nonbusiness financial
resources may be a better risk than a corporation having limited assets.

(3)(b)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).~~

Note to Revisor: Insert the following note after subd. 2:

Note: Form S-127 may be obtained from any Department of Revenue office
or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902,
Madison, WI 53708, (608) 266-2278.

(5)(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.

Note to Revisor: Replace the note at the end of s. Tax 11.925 with the
following note:

Note: The interpretations in this section are effective under the general sales and use tax law on and after September 1, 1969, except that: (a) The return of deposit provisions in sub. (5) became effective March 13, 1980, pursuant to Chapter 125, Laws of 1979; and (b) The \$15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wisconsin Act 29.

SECTION 7. Tax 11.95(title) and (1) are amended to read:

Tax 11.95(title) RETAILER'S DISCOUNT. (ss. 77.61(4)(c) and 77.76(3), 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 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use 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.~~

Note to Revisor: Replace the note at the end of s. Tax 11.95 with the following note:

Note: The interpretations in this section are effective under the general sales and use tax law on and after September 1, 1969, except that (a) The amount of retailer's discount in sub. (1) became effective January 1, 1983, pursuant to Chapter 20, Laws of 1981; and (b) The requirement that county tax be remitted to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wisconsin Act 141.

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

Final Regulatory Flexibility Analysis

The rule order does not have a significant economic impact on a substantial number of small businesses.

RECEIVED DEPARTMENT OF REVENUE
Date: December 4, 1990 By: [Signature]
DEC 6 1990 Mark D. Bugher
Revisor of Statutes Secretary of Revenue
Bureau

1989 Session

LRB or Bill No./Adm. Rule No.

Tax 11

Amendment No. if Applicable

FISCAL ESTIMATE

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

DOA-2048 (R 10/88)

Subject Miscellaneous Sales Tax Rule Changes

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed revisions reflect recent statutory decisions, clarify the Department of Revenue's existing position and update language and style in conformance with Legislative Council Rules Clearinghouse standards. This rule has no fiscal effect.

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Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Wisconsin Department of Revenue
Department of Revenue, 266-2700

Authorized Signature/Telephone No. 266-2700

Date

[Handwritten Signature] *[Handwritten Date]*

FISCAL ESTIMATE WORKSHEET

1989 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R 10/88) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Tax 11	Amendment No.
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Subject
Miscellaneous Sales Tax Rule Changes

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).	Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
Salaries and Fringes		\$ -	\$ +
Staff Support Costs		-	+
Other State Costs		-	+
Local Assistance		-	+
Aids to Individuals or Organizations		-	+
TOTAL State Costs by Category		\$ -	\$ +
B. State Costs by Source of Funds			
GPR		\$ -	\$ +
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	-
C. FTE Position Changes			
		Increased Pos. + ()	Decreased Pos. - ()
III. State Revenues- Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.			
GPR Taxes		Decreased Rev. \$ -	Increased Rev. \$ +
GPR Earned		-	+
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
TOTAL State Revenues		\$ -	\$ +

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+	-	Total Revenues	+	-
NET Impact on State Funds	\$ (+) or (-)	None	NET Impact on Local Funds	\$ (+) or (-)	None



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugar
Secretary of Revenue

December 4, 1990

Gary L. Poulson
Assistant Revisor
2nd Floor
119 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703

Re: Clearinghouse Rule 90-102

Dear Mr. Poulson:

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(1), Stats.

Sincerely,

Mark D. Bugar
Secretary of Revenue

MDB:VLG:1c
CKLEG/ELC3250J

Enclosure

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

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State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugar
Secretary of Revenue

December 4, 1990

Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, Wisconsin 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 90-102.

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

Sincerely,

Mark D. Bugar
Secretary of Revenue

MDB:VLG:1c
CKLEG/ELC3250I

Enclosure

cc: Revisor of Statutes

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