

CR 90-97

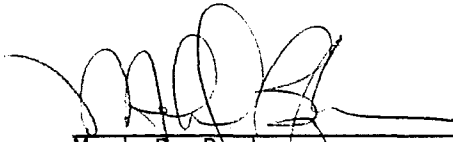
CERTIFICATE

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 determining "engaged in business" for sales and use tax purposes 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/414

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ORDER OF THE DEPARTMENT OF REVENUE
AMENDING RULES

The Wisconsin Department of Revenue adopts an order to renumber Tax 11.97(6); renumber and amend Tax 11.97(5)(a), (b) and (c); amend Tax 11.97(title), (1)(a) and (b) and (3)(intro.), (d) and (e); to repeal and recreate Tax 11.97(2)(b) and create Tax 11.97(4)(e) and (5), relating to determining "engaged in business" for sales and use tax purposes.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.51(13)(c) and (k), (13g), (13h) and (14)(j), 77.53(3), (5), (7), (9) and (9m) and 77.73, Stats.

SECTIONS 1 and 6. Tax 11.97(title) is amended and Tax 11.97(5) created to reflect the creation of s. 77.51(13h) by 1987 Wisconsin Act 399 and amendment by 1989 Wisconsin Act 336, which provides an exception for foreign publishers. The (title) is also amended to include reference to the county sales and use tax. Paragraph (1)(a) is amended to remove unnecessary language and par. (1)(b) is amended to correct a spelling error.

SECTION 2. Tax 11.97(2)(b) is repealed and recreated to replace complete restatement of the statute with a simple rewording.

SECTIONS 3, 5 and 7. Tax 11.97(3)(intro.), (d) and (e) are amended and Tax 11.97(5)(a), (b) and (c) are renumbered and amended to improve language, format and style as required by Legislative Council Rules Clearinghouse standards. Certain provisions are clarified. Accordingly, sub. (6) is renumbered.

SECTION 4. Tax 11.97(4)(e) is created to reflect department policy that the holding of a Certificate of Authority does not by itself create nexus in Wisconsin.

SECTION 1. Tax 11.97(title) and (1)(a) and (b) are amended to read:

Tax 11.97(title) "ENGAGED IN BUSINESS" IN WISCONSIN. (ss. 77.51(13)(c) and (k), (13g), (13h) and (14)(j), 77.53(3), (5), (7), (9) and (9m) and 77.73, Stats.)

(1)(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~~ 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.

Note to Revisor: Insert the following note after sub. (1)(a).

Note: Retailers having nexus in Wisconsin for use tax purposes do not necessarily have nexus in Wisconsin for franchise or income tax purposes. Refer to s. Tax 2.82 for nexus standards with respect to franchise and income taxes.

(b) Some United ~~State~~ States supreme court decisions concerning nexus include:

1. Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)
2. Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)
3. General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)
4. Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)
5. Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)
6. National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967)
7. National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977)

Note to Revisor: In subds. 1 through 7, only the name of the case, not the cites, should be in italics.

SECTION 2. Tax 11.97(2)(b) is repealed and recreated to read:

Tax 11.97(2)(b) Section 77.51(13g), Stats., defines the term "retailer engaged in business in this state" and s. 77.51(13h), Stats., provides an exception for foreign publishers.

SECTION 3. Tax 11.97(3)(intro.), (d) and (e) are amended to read:

Tax 11.97(3)(intro.) Unless otherwise limited by federal statute, a retailer engaged in business in ~~this state~~ Wisconsin who ~~must~~ shall register includes the following:

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser or solicitor operating in ~~this state~~ Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.

(e) Any person servicing, repairing or installing ~~its products~~ equipment or other tangible personal property in ~~this state~~ Wisconsin.

SECTION 4. Tax 11.97(4)(e) is created to read:

Tax 11.97(4)(e) A foreign corporation obtaining a certificate of authority from the Wisconsin secretary of state to transact business in Wisconsin.

SECTION 5. Tax 11.97(5)(a), (b) and (c) are renumbered Tax 11.97(6)(a), (7) and (6)(b) and amended to read:

Tax 11.97(6)(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, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form, ~~entitled~~ is titled "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.~~

Note to Revisor: Insert the following note after new sub. (6)(a).

Note: Form A-101 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, telephone (608) 266-2776.

(6)(b) Refer to s. Tax 11.002 for a description of ~~permit~~ use tax registration certificate requirements, how to apply for a ~~permit~~ use tax registration certificate, and the 15-day time period within which the department of revenue is required to act on ~~permit~~ certificate applications.

(7)(title) OUT-OF-STATE RETAILERS NOT ENGAGED IN BUSINESS IN THIS STATE. 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~~ apply for a use tax registration certificate with the department in the manner described in sub. (6). Holders of ~~such-permits~~ the use tax registration certificates shall collect the use tax from Wisconsin customers, give receipts therefor and report and pay the use tax to the Wisconsin department of revenue in the same manner as retailers engaged in business in this state.

SECTION 6. Tax 11.97(5) is created to read:

Tax 11.97(5) EXCEPTION FOR FOREIGN PUBLISHERS. (a) Under s. 77.51(13g) and (13h), Stats., a foreign corporation that is a publisher of printed materials does not have nexus in Wisconsin if its only activities in Wisconsin are:

1. Storage of its raw materials for any length of time in Wisconsin in or on property owned by a person, other than the foreign corporation, if the materials are for printing by that person.

2. Delivery of its raw materials to another person in Wisconsin, if the delivery is for printing by that other person.

3. Purchase from a printer of a printing service or of printed materials in Wisconsin for the foreign corporation and the storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation.

4. Maintaining, occupying and using, directly or by means of another person, a place in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

(b) In this subsection, "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

SECTION 7. Tax 11.97(6) is renumbered Tax 11.97(8).

Note to Revisor: Replace the note at the end of Tax 11.97 with the following note:

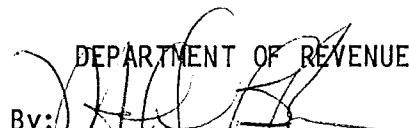
Note: The interpretations in this section are effective under the general sales tax law on and after September 1, 1969, except that the provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wisconsin Act 336.

This rule 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

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

Dated: December 7 1990

DEPARTMENT OF REVENUE
By: 
Mark D. Bughner
Secretary of Revenue

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FISCAL ESTIMATE

DOA-2048 (R 10/88)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

Subject

Nexus for Sales and Use Tax Purposes

Fiscal Effect

State: No State Fiscal Effect

Check contents below only if bill makes a direct appropriation or creates a sum sufficient appropriation.

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

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
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____

Funds Sources Selected

- GPR FED PRO PPS SEG SEG-S

Affected Ch. 20 Appropriations

Appropriations Used in Arriving at Fiscal Estimate

The proposed rule interprets new statutory provisions created by 1987 Wisconsin Act 399 and modifies some language to reflect existing Department of Revenue policy and to clarify the rule provisions. As such, the proposed rule has no fiscal effect.

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Long-Range Fiscal Implications

Agency/Proposed by: (Name & Phone No.)
Wisconsin Department of Revenue
Dennis Collier, 266-9706

Authorizing Signature/Telephone No. 266-2700

Allyson A. Reuss

Date

4/12/90

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. Amendment No.
 Tax 11.97

Subject
 Nexus for Sales and Use Tax Purposes

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

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).			
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-			
GPR Taxes	Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	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 (-)

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue Authorized Signature/Telephone No. 266-2700 Date



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 90-97

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to determining "engaged in business" for sales and use tax purposes.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,

Mark D. Bugar
Secretary of Revenue

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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. Bugher
Secretary of Revenue

December 4, 1990

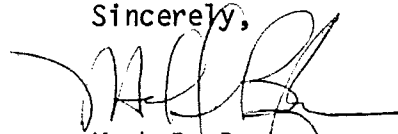
Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, Wisconsin 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 90-97.

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

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:VLG:1c
CKLEG/412

Enclosure

cc: Revisor of Statutes

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