

CR 90-154

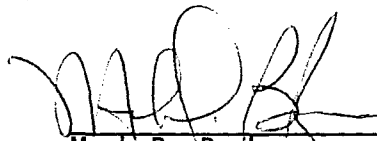
CERTIFICATE

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 tax was duly approved and adopted by this department on March 6, 1991.

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 6th day of March, 1991.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:ssa
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ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal Tax 11.11(1)(b) and (3); to renumber Tax 11.11(4)(title) and (5)(title), (a), (b), (c) and (d); to renumber and amend Tax 11.11(1)(a), (2)(a), (b) and (c) and (4)(a) and (b), 11.46(4) and 11.72(1); to amend Tax 11.11(title) and (1)(title), 11.46(title), (1)(intro.) and (a) and (2)(intro.), 11.68(title), (1)(b)1, 2 and 3, (2)(a) and (b), (3)(b) and (c), (4)(a)(intro.) and (b), (5)(intro.), (b), (e), (f), (h) and (j), (6)(a)2, 4, 5, 6, 9 and 10 and (b), (7), (8), (9)(a), (10)(a), (b) and (d) and (11) and 11.72(title), (2) and (3)(a); and to create Tax 11.11(2)(c), 11.46(4), 11.68(3)(d) and (e) and 11.72(1)(b) 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(1m), (2), (3m), (4)(b)6 and (c)4, (13)(e) and (f), (14)(intro.), (g), (i) and (L) and (15)(b)5 and (c)2, 77.52(1), (2)(a)1, 6, 10, 11 and 20 and (2m)(a), 77.54(5)(d), (6)(a), (7m), (26), (26m), (31) and (40), 77.71(3) and 77.77(3), Stats.

SECTIONS 1 AND 2. Tax 11.11(title) is amended per Legislative Council Rules Clearinghouse standards. Tax 11.11(1)(title) and (1) as renumbered are amended to improve readability.

SECTION 3. Tax 11.11(1)(b) is repealed because much of this information is found in chs. Tax 6 and 12.

SECTION 4. Tax 11.11(2)(a), (b) and (c) are renumbered and amended to improve readability and to follow Clearinghouse standards.

SECTION 5. Tax 11.11(2)(c) is created to provide that electricity does not qualify as an exempt supply per department policy.

SECTION 6. Tax 11.11(3)(a) and (b) are repealed to remove information that can be found in chs. Tax 6 and 12. Information still of value is provided in sub. (2)(a). Subsection (3)(c) is moved to a note and information in sub. (3)(d) is moved to new sub. (4)(c).

SECTION 7. Tax 11.11(4) and (5) are renumbered to improve readability. Tax 11.11(2)(b) as renumbered is amended to update language and style per Clearinghouse standards.

SECTION 8. Tax 11.46(title) is amended to add s. 77.54(7m), Stats., as created by 1987 Wisconsin Act 399, to the statutory references. Tax 11.46(1)(intro.) and (a) are amended to update language and style per Clearinghouse standards and (2)(intro.) is amended to reflect the creation of s. 77.54(7m), Stats., by 1987 Wisconsin Act 399.

SECTIONS 9 AND 10. Tax 11.46(4) is renumbered and new sub. (4) is created to reflect the creation of s. 77.54(7m), Stats., by 1987 Wisconsin Act 399 which addresses occasional sales by nonprofit organizations not previously discussed in this section. Subsection (5) as renumbered is amended to update language and style per Clearinghouse standards and to change the per night fee from \$3 to \$5 based on an increase in consumer price index since 1970.

SECTION 11. Tax 11.68(title) is amended to add statutory references due to the creation of ss. 77.51(4)(b)6 and (15)(b)5 (as renumbered) and 77.54(5)(d) and (31), Stats., by 1985 Wisconsin Act 29, the amendment to s. 77.54(26) by 1987 Wisconsin Act 399, the amendment to s. 77.54(6)(a), Stats., by 1985 Wisconsin Act 149, the creation of s. 77.54(5)(d), Stats., by 1985 Wisconsin Act 29 and the creation of s. 77.54(26m), Stats., by 1983 Wisconsin Act 426. Subsections (1)(b)1, 2 and 3, (2)(a) and (b) and (3)(b) are amended to update language and style per Clearinghouse standards. Subsection (3)(c) is amended due to the creation of s. 77.54(5)(d), Stats., by 1985 Wisconsin Act 29 and to update language per Clearinghouse standards.

SECTION 12. Tax 11.68(3)(d) is created due to amendment to s. 77.54(26), Stats., by 1987 Wisconsin Act 399. Paragraph (e) is created due to the creation of s. 77.54(26m), Stats., by 1983 Wisconsin Act 426.

SECTION 13. Tax 11.68(4)(a)(intro.) and (b) and (5)(intro.), (e), (h) and (j), (6)(a)5, 6 and 10 and (b), (7), (8), (10)(a), (b) and (d) and (11) are amended to update language and style per Clearinghouse standards. Subsection (5)(b) is amended to set forth the department's position regarding central vacuum systems. Subsection (5)(f) is amended to reflect the definition of personal property as provided in s. 70.04(2), Stats. Subsection (6)(a)2 is amended to set forth the department's position with respect to satellite dishes, roof mounted antennas and CATV wiring, subd. 4 is amended due to the amendment to s. 77.54(6)(a), Stats., by 1985 Wisconsin Act 149 and subd. 9 is amended due to the creation of s. 77.51(4)(b)6 and (15)(b)5 (as renumbered) and 77.54(31), Stats., by 1985 Wisconsin Act 29. Subsection (9)(a) clarifies that for purposes of claiming credit for sales tax paid to another state, it must be legally owing.

SECTION 14 AND 15. Tax 11.72(title) is amended to reflect the creation of ss. 77.51(1m) and (3m) and 77.54(40), Stats., by 1989 Wisconsin Act 335 and sub. (1) is renumbered and amended to improve readability.

SECTION 16. Tax 11.72(1)(b) is created to reflect the creation of s. 77.54(40), Stats., and the amendment to s. 77.52(2)(a)6, Stats., by 1989 Wisconsin Act 335; to improve readability; and to clarify the department's position with respect to coin-operated, self-service machines.

SECTION 17. Tax 11.72(2) and (3)(a) are amended to update language and style per Clearinghouse standards.

SECTION 1. Tax 11.11(title) and (1)(title) are amended to read:

Tax 11.11(title) INDUSTRIAL AND GOVERNMENTAL WASTE TREATMENT FACILITIES. (s. 77.54(26), Stats.) (1)(title) GENERAL.

SECTION 2. Tax 11.11(1)(a) is renumbered (1) and amended to read:

Tax 11.11(1) ~~The~~ Section 77.54(26), Stats., provides a 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.~~

SECTION 3. Tax 11.11(1)(b) is repealed.

SECTION 4. Tax 11.11(2)(a), (b) and (c) are renumbered Tax 11.11(4)(a), (c) and (b) and amended to read:

Tax 11.11(4)(a)(title) Exempt purchases. The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates ~~such~~ the property into an approved industrial waste treatment facility or who incorporates ~~such~~ the 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.

Note to Revisor: Insert the following note after new sub. (4)(a):

Note: Form S-207 may be obtained by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b)(title) Taxable purchases. 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.

(c)(title) Determining exemptions. Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department 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~~ its purchases. ~~As-described-in-sub.--(3)(d),-approvals~~ Approvals are not required for municipal waste treatment facilities and, therefore, contractors may purchase without tax construction materials which become a component part of the exempt facility.

Note to Revisor: Insert the following notes after new sub. (4)(c):

Note: Contractors and others may determine whether an industrial waste treatment 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)266-8606.

Note: Refer to ss. Tax 6.40 and 12.40 for information on how to request approvals for property tax exemption.

SECTION 5. Tax 11.11(2)(c) is created to read:

Tax 11.11(2)(c) The sale of electricity for the operation of an industrial waste treatment facility is not a supply and, therefore, is not exempt.

SECTION 6. Tax 11.11(3) is repealed.

SECTION 7. Tax 11.11(4) and (5)(title), (a), (b), (c) and (d) are renumbered Tax 11.11(2) and (3)(title), (b), (a), (c) and (d) and Tax 11.11(2)(a) and (b) as renumbered are amended to read:

Tax 11.11(2)(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., as approved by the department of revenue, it qualifies for the sales and use tax exemption under s. 77.54(26)7, 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~~ the exempt property and the repair parts and replacements ~~therefor~~ related to that property 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, except as provided in par. (c).

Note to Revisor: Replace the note at the end of s. Tax 11.11 with the following note:

Note: The interpretations in this section are effective July 31, 1975, when ss. 70.11(21) and 77.54(26), Stats., were revised, except: (a) The exemption for chemicals and supplies used or consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979.

SECTION 8. Tax 11.46(title), (1)(intro.) and (a) and (2)(intro.) are amended to read:

Tax 11.46(title) SUMMER CAMPS. (ss. 77.52(1) and (2)(a)1 and 77.54(7m), Stats.) (1)(title) DEFINITIONS. In this ~~rule~~ section:

(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).~~

Example: The YMCA and Boy Scouts of America are agency camps.

(2)(intro.) TAXABLE RECEIPTS. Receipts from the following are taxable unless sub. (4) applies:

SECTION 9. Tax 11.46(4) is renumbered Tax 11.46(5) and amended to read:

Tax 11.46(5) An allocation between taxable and exempt receipts ~~must~~ shall be made when a single ~~(, combined),~~ charge is made for all the privileges extended by a camp. Adequate records ~~must~~ shall 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 the overhead costs)~~ to the cost of the food and labor for food preparation to cover the overhead costs.

(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 5 per person per night.

SECTION 10. Tax 11.46(4) is created to read:

Tax 11.46(4) OCCASIONAL SALES. (a) Gross receipts from the sale of tangible personal property or taxable services by agency camps not engaged in a trade or business and not otherwise required to hold a seller's permit are exempt from Wisconsin sales tax if entertainment as defined in s. 77.54(7m), Stats., is not provided.

(b) An agency camp is not engaged in a trade or business if its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year or if its taxable receipts for the calendar year are \$15,000 or less.

Note to Revisor: Insert the following note after new sub. (4):

Note: See Wisconsin Publication 206, Sales Tax Exemption for Nonprofit Organizations, for more detailed information about when one is engaged in a trade or business or required to hold a seller's permit.

Note to Revisor: Replace the note at the end of s. Tax 11.46 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 provisions of sub. (4) became effective January 1, 1989, pursuant to 1987 Wisconsin Act 399; and (b) The amount shown in sub. (5)(b) became effective January 1, 1991. From September 15, 1970 to December 31, 1990, the rate was \$3 per person per night and prior to September 15, 1970, the rate was \$2 per person per night.

SECTION 11. Tax 11.68(title), (1)(b)1, 2 and 3, (2)(a) and (b) and (3)(b) and (c) are amended to read:

Tax 11.68(title) CONSTRUCTION CONTRACTORS. (ss. 77.51(2), (4)(b)6 and (c)4, (14)(intro.), (g) and (i) and (15)(b)5 and (c)2, 77.52(2)(a)10, 11 and 20, 77.54(5)(d), (6)(a), (26), (26m) and (31), 77.71(3) and 77.77(3), Stats.)

(1)(b)1. Property which retains its character as personal property after sale and installation. ~~{See subs. (4) and (6).}~~

Note to Revisor: Insert the following note after sub. (1)(b)1 and 2:

Note: Refer to subs. (4) and (6) for the classification of property.

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.}~~

Note to Revisor: Insert the following note after sub. (1)(b)3:

Note: Refer to sub. (10) for a description of real property which retains its character as tangible personal property for repair purposes.

(2)(a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in such activities such 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~~).

Example: A hot water heater or water softener sold and installed in a purchaser's residence by a retailer becomes real property after installation. The retailer is considered to be a real property contractor.

(3)(b) Property which a construction contractor will resell as personal property may be purchased without tax for resale. ~~Such~~ This 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).~~) This property also includes personal property furnished as part of a real property construction activity when provided as part of a taxable landscaping service.

Note to Revisor: Insert the following note after sub. (3)(b):

Note: Refer to subs. (4) and (6) for the classification of property.

(c) Machinery and equipment (~~such as, including~~ road building equipment, tunnel shields, construction machines, and cement mixers and ~~trucks~~), tools (~~such as, including~~ power saws and hand tools), and supplies (~~such as, including~~ 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~~ the personal property and shall pay the tax on its purchases of ~~such~~ the property. However, an exemption is provided in s. 77.54(5)(d), Stats., for mobile cement mixers used for mixing and processing and the motor vehicle or trailer on which a mobile mixing unit is mounted, including accessories, attachments, parts, supplies and materials for the vehicles, trailers and units.

SECTION 12. Tax 11.68(3)(d) and (e) are created to read:

Tax 11.68(3)(d) Under s. 77.54(26), Stats., contractors may purchase without sales or use tax tangible personal property which becomes a component part of an industrial waste treatment facility that would be exempt under s. 70.11(21)(a), Stats., if the property were taxable under ch. 70, Stats., or a municipal waste treatment facility, even though they are the consumers of the property.

Note to Revisor: Insert the following note after sub. (3)(d):

Note: Refer to s. Tax 11.11 regarding industrial and municipal waste treatment facilities.

(e) Under s. 77.54(26m), Stats., contractors may purchase without sales or use tax waste reduction and recycling machinery and equipment, including parts, which are exclusively and directly used for waste reduction and recycling activities which reduce the amount of solid waste generated, reuse, recycle or compost solid waste or recover energy from solid waste, even though they are the consumers of the property.

Examples: 1) Equipment used in a foundry to clean sand so that the sand can be reused qualifies for exemption.

2) Equipment used to remove impurities from lubricating oil used in manufacturing machines so that the oil can continue to be used by the manufacturer qualifies for exemption.

3) Equipment used to produce fuel cubes qualifies for exemption. This equipment shreds waste paper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary and then compresses the materials into fuel cubes which are burned by homeowners or others to replace wood.

4) A roto-mill machine that mines old pavement and grinds up the mined materials to be reused in construction activities qualifies for exemption.

5) Large steel waste collection containers, including dumpsters, which may be picked up and dumped into waste collection trucks or hauled away on flatbed trucks, or which may mechanically compact the waste in the container do not qualify for exemption.

SECTION 13. Tax 11.68(4)(a)(intro.) and (b), (5)(intro.), (b), (e), (f), (h) and (j), (6)(a)2, 4, 5, 6, 9 and 10 and (b), (7), (8), (9)(a), (10)(a), (b) and (d) and (11) are amended to read:

Tax 11.68(4)(a)(intro.) 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. 2d 60)~~:

Note to Revisor: Insert the following note after sub. (4)(a)3:

Note: See Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc. (1976), 72 Wis. 2d 60, regarding determining whether personal property becomes a part of 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, including boilers, furnaces, stand-by generators, pumps, substations and transformers. When ~~such~~ this 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)(intro.) 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~~ this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

(b) Built-in household items, such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems and incinerators.

(e) Fixed ~~(or 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 except systems sold to and for use by farmers, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection.

(h) Residential water heaters, water softeners, intercoms, incinerators and garage door opening equipment {,except portable equipment}.

(j) Swimming pools {,wholly or partially underground}.

(6)(a)2. Communication equipment, including intercoms, pneumatic tube systems, satellite dishes, roof mounted antennas, CATV wiring 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.

4. Machinery, including safety attachments, 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., including 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.~~ Underground storage tanks at gasoline service stations are real property.

9. ~~Mobile~~ Except as provided in ss. 77.51(4)(b)6 and (15)(b)5 and 77.54(31), Stats., mobile homes located in a mobile home park on land owned by a person other than the mobile home owner. Exemptions are provided by ss. 77.51(4)(b)6 and (15)(b)5 and 77.54(31), Stats., for 35% of the total amount for which a new mobile home that is a primary housing unit is sold and the full amount for which a used mobile home that is a primary housing unit is sold or purchased. No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental.

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.~~

(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~~ the personal property, the cost of ~~such~~ the property to the construction contractor shall be used as the measure ~~{e.g., of gross receipts}~~ subject to sales tax. If a separate charge is made for any ~~such item of the items, it is~~ they are subject to the tax, but not less than on ~~its~~ their cost. ~~For example, a refrigerator or drapes may be included in the contract to construct a new house.~~

Example: A refrigerator or drapes are included in the contract to construct a new house. The cost of the refrigerator and drapes to the construction contractor are included in the measure of gross receipts subject to sales tax.

(7) Section 77.51(2), Stats., provides in part that "A contractor engaged primarily in real property construction activities may use resale

certificates only with 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~~ these supplies whether they will be consumed in construction contracts or resold to others. In ~~such~~ these 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 collect and remit the tax on the sales price to the 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~~ the 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 collect and remit sales tax on ~~such~~ these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

(8)(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~~ these 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 governmental building. A contractor shall also pay 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.~~

Examples: 1) A contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or governmental building, since the property becomes a part of realty after installation.

2) A contractor shall pay tax on its purchases of pumps and other equipment for use at a municipal well or pumping station, since the property becomes a part of realty after installation.

(b) A contractor may purchase without tax as property 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 the 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~~ This 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)(a) If a construction contractor, when the contractor acts as a consumer, purchases property outside ~~this state~~ Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax ~~or sales tax pursuant to s. Tax-17.14(2)(e)~~, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made.

(10)(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~~ these 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 the materials, ~~thereby becoming~~ and becomes 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 this 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 these services.

(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.~~

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) Section 77.51(4)(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, painting, 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~~ these 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~~ the property are not taxable. In the ~~no~~ tax nontaxable 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.

Note to Revisor: Replace the note at the end of s. Tax 11.68 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) Vault doors were not considered personal property until August 1, 1975; (b) 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 the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wisconsin Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wisconsin Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wisconsin Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wisconsin Act 149; and (i) Thirty-five percent of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wisconsin Act 29.

SECTION 14. Tax 11.72(title) is amended to read:

Tax 11.72(title) LAUNDRIES, DRY CLEANERS, AND LINEN AND CLOTHING SUPPLIERS. (ss. 77.51(1m), (3m), (13)(e) and (f) and (14)(L), 77.52(2)(a)6 and (2m)(a) and 77.54(40), Stats.)

SECTION 15. Tax 11.72(1) is renumbered Tax 11.72(1)(a) and amended to read:

Tax 11.72(1) LAUNDRIES AND DRY CLEANERS. (a) 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~~ as provided in sub. (b).

SECTION 16. Tax 11.72(1)(b) is created to read:

Tax 11.72(1)(b) The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are exempt from tax when:

1. The services are performed on raw materials or goods in process destined for sale.
2. The services are performed by the customer through the use of coin-operated, self-service machines. Coin-operated, self-service machines do not include machines activated by tokens or magnetic cards.
3. The services are performed on cloth diapers by a diaper service. "Cloth diaper" means a cloth diaper used for sanitary purposes. "Diaper service" means a business primarily engaged in the lease or rental, delivery or laundering of cloth diapers.

SECTION 17. Tax 11.72(2) and (3)(a) are amended to read:

Tax 11.72(2) The gross receipts of lessors from leasing or renting clothing ~~(e.g., including uniforms), towels, linens, diapers~~ or similar items, not including cloth diapers, 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 these agreements may be purchased by the lessor without paying sales or use tax.

(3)(a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and ~~must~~ shall 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 repellants, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. ~~The~~ They also ~~must~~ shall 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~~ laundries, dry cleaners and linen and clothing suppliers.

Note to Revisor: Replace the note at the end of s. Tax 11.72 with the following note:

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: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wisconsin Act 27; and (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wisconsin Act 335.

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

DEPARTMENT OF REVENUE

Date: March 6, 1991

RECEIVED By:

Mark D. Bugher
Secretary of Revenue

MAR 15 1991

Revisor of Statutes
Bureau

FISCAL ESTIMATE

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

DOA-2048 (R 10/88)

Subject

Miscellaneous Sales and Use Tax Rules

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

Under the proposed rule, the amount presumed to be gross receipts from lodging furnished by private camps, when there is no separate charge for lodging, is increased from \$3 to \$5 per person per night, effective January 1, 1991. This will be the first change in the amount since September 15, 1970. The change will increase sales tax revenues by a minimal amount.

Other changes interpret recently enacted legislation, eliminate unnecessary language, clarify Department of Revenue positions, and conform language and style with Legislative Council Rules Clearinghouse Guidelines. These changes have no fiscal effect.

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Long-Range Fiscal Implications

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

Authorized Signature/Telephone No. 266-2700

August A. Deuss

Date

7/3/90

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. Tax 11	Amendment No.
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Subject

Miscellaneous Sales and Use Tax Rules

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

II. Annualized Costs: <small>Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).</small>		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- <small>Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.</small>		Decreased Rev.	Increased Rev.
GPR Taxes		\$ -	\$ + minimal
GPR Earned		-	+
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
TOTAL State Revenues		\$ -	\$ + minimal

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+ minimal	-	Total Revenues	+ minimal	-
NET Impact on State Funds	\$ (+) minimal or (-)		NET Impact on Local Funds	\$ (+) minimal or (-)	

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

Authorized Signature/Telephone No. 266-2700

Date
 11/10/88



State of Wisconsin ● **DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-8466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 7, 1991

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MAR 15 1991

Revisor of Statutes
Bureau

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

Re: Clearinghouse Rule 90-154

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 tax.

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

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:ssa
CKLEG/627

Enclosure

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 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 7, 1991

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 90-154.

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

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:ssa
CKLEG/626

Enclosure

cc: Revisor of Statutes

RECEIVED

MAR 15 1991

Revisor of Statutes
Bureau