

CR 90-203

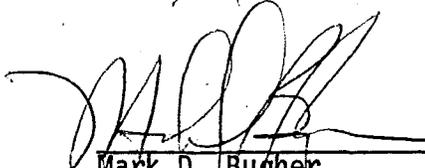
CERTIFICATE

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 Tax 11.51 was duly approved and adopted by this department on April 1, 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 1st day of April, 1991.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:dab
CKLEGELC/678

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APR 3 1991
2:30 pm
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7-1-91

APR 3 1991

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ORDER OF THE DEPARTMENT OF REVENUE
AMENDING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to amend Tax 11.51(1) and (2)(a), (b) and (c)(intro.), 2., 3. and 4.; and to create Tax 11.51(2)(c)5. and (3) relating to sales by grocers.

Analysis by the Department

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

Statutes interpreted: ss. 77.52(1) and 77.54(15) and (20), Stats.

SECTION 1. Tax 11.51 is amended to add to the lists of taxable and exempt sales by grocers items not previously mentioned which the department has ruled on, to remove reference to brand names and to update language and style per Legislative Council Rules Clearinghouse standards. In addition, information regarding sales of fruit juices is clarified to make it easier for a grocer to determine whether a fruit juice is exempt from sales tax. This is possible because of strict federal labeling requirements for manufacturers. Also, federal food stamp receipts are now mentioned in a separate subsection (See SECTION 3).

SECTION 2. Tax 11.51(2)(c)5 is created to address the department's position regarding deli sales by grocers.

SECTION 3. Tax 11.51(3) is created to more specifically address federal food stamp receipts.

SECTION 1. Tax 11.51(1) and (2)(a), (b) and (c)(intro.), 2., 3. and 4. are amended to read:

Tax 11.51(1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption necessary for the home preparation of meals. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages {, including bases or concentrates to produce soft drinks and fruit drinks}, beer, intoxicating liquors, candy, paper products and detergents. The following lists shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

(2)(a) Taxable sales by grocers. ~~Gross~~ Taxable gross receipts ~~from the sale of~~ include gross receipts from sales of the following are-taxable items:

Adhesive tape.	Breath mints.	Clothespins.
<u>Air fresheners.</u>	Brooms.	Clothing.
Albums.	Brushes.	Cocktail mixes.
Ammonia <u>Ammonia.</u>	Bubble bath.	Cod liver oil.
Anti-acid products.		Cold remedies.
Anti-freeze.	Cake decorations	Coloring extracts.
Appliances.	{, non-edible}.	Combs and brushes.
Ash trays.	Calcium tablets.	Confections.
Aspirin.	Cameras and supplies.	Cough drops.
Auto supplies.	Candied fruits.	Cracker-jacks.
	Candy.	Crayons.
Baby needs {, except food}.	Candy apples.	
Bags { <u>of</u> all kinds}.	Canning and freezer	<u>Deli items, see par. (c)5.</u>
Bakeware.	supplies.	Dental aids.
Barbeque <u>Barbecue</u> supplies.	Can openers.	Deodorants.
Baskets.	Carbonated beverages.	<u>Deodorizers.</u>
Batteries.	Cat food <u>and supplies.</u>	Detergents.
Beauty aids.	Charcoal <u>and</u> starter.	Dinnerware.
Beer.	Chewing gum.	Disinfectants.
Beer making supplies.	Cigarette lighter fluid,	Distilled spirits.
Binders { notebook }.	wicks, flints.	Dixie-cups.
Bird food and supplies.	Cigarettes.	Dog food and supplies.
Bleach.	Cigars.	Dolls.
Blueing.	Cleaning equipment and	Drain cleaners.
Bobby pins and rollers.	supplies.	Drug sundries.
Books.	Cleansers.	Dry cleaners.
<u>Bottles.</u>	Clocks.	Dye.
Bowl cleaner.	Clothes lines.	

Electrical supplies.		Insect and pest control products.
Eskimo-pies.	Games.	<u>Insulated containers.</u>
Facial tissues.	Garbage bags and cans.	Internal remedies.
Farm and garden implements.	Garden needs.	Intoxicating liquor.
Feminine hygiene needs <u>including napkins and tampons.</u>	Gifts <u>{, non-food} and nonexempt food.</u>	Iron tablets.
Fermented malt beverages.	Ginseng.	Jewelry.
Fertilizers.	Glassware.	Koolaid-and-similar-items.
Fiddle-faddle.	Gloves.	Kotex-and-similar-items.
Film.	Glue.	Laundry products.
First aid products.	<u>Granola bars.</u>	Lawn furniture.
Fizzies.	Greeting cards.	Life-savers.
Flash bulbs.	Grooming aids.	Light bulbs and fuses.
Flatware.	Gum.	Lozenges.
Floor care products.	Hair care products.	Lunch boxes.
Flowers and seeds.	Hardware.	Lye.
Foil <u>{, aluminum and similar products}.</u>	Health and beauty aids.	Lyso.
Food coloring.	Heated foods and beverages <u>{, see par. (c)1}.</u>	Magazines.
Foot care products.	Hosiery.	Manicure needs.
Frames.	Household equipment and supplies.	Mason jars.
<u>Fruit drinks, liquid and powdered, see par. (c)2.</u>	Ice <u>{, cube and block}.</u>	Matches.
Fuel and lubricants.	Ice cream bars <u>and similar products.</u>	Medicinal preparations.
Fudgies.	Ice cream in cones.	Milk of magnesia.
Furniture polish.		Mineral tablets.

Nail polish and remover.	Raisins (<u> </u> , candy or <u> </u> yogurt coated).	Steel wool.
Nails.	Razors and blades.	Stockings.
Napkins.	Records.	Sun glasses.
Notebooks.	Relaxids.	Sun tan lotion.
Nursery stock.	Root beer and extracts.	Tableware.
Nuts (<u> </u> , chocolate <u> </u> candy or <u> </u> yogurt coated).	Rotisseries.	Taffy apples.
	Rubber bands.	Tape.
Pails.	Salt (<u> </u> , water softener).	Thermos-bottles.
Paint and paint supplies.	Sandwiches (<u> </u> , hot or cold).	Thread.
Paper products (<u> </u> , including tissues, plates, cups, towels, napkins and writing paper).	Sanitary goods.	Tobacco products.
Peanuts (<u> </u> , candy or <u> </u> yogurt coated).	School supplies.	Toilet tissue.
Pens and pencils.	Scissors.	Tonics.
Pepto-bismol.	Sewing aids.	Tools.
Periodicals.	Shampoo and rinse.	Tooth brushes.
Pet food and supplies.	Shaving supplies.	Toothpaste and powders.
Plastic utensils.	Shelf coverings.	Toothpicks.
Polishes.	Shoe laces and polishes.	Toys.
Popcorn (<u> </u> , raw or popped).	Soaps.	Funs.
Popsicles.	Soda water beverages (<u> </u> , see par. (c)2).	Utensils.
Pots and pans.	Soft drinks (<u> </u> , see par. (c)2).	Vitamins.
Powder (<u> </u> , face and body).	Sponges.	Wash cloths.
<u>Powdered fruit drinks, see par. (c)2.</u>	Starch.	Waste baskets.
	Stationery.	Watches.
		Water (<u> </u> , bottled, sparkling, spring and distilled).

Water conditioners.	Wine-making supplies.	
Waxing.	Wrap {, foil, plastic	Yogurt bars, cones and
Wax paper.	and wax paper}.	sundaes.
Wearing apparel.	Writing supplies.	
		Zippers.

(b) Exempt sales by grocers. ~~Gross Exempt gross receipts from the sale~~ of include gross receipts from sales of the following are-exempt items:

Apple cider, sweet.	Chicken.	Dressings.
Baby food.	Chinese-food.	Dried fruits.
Bakery goods.	Chip dip.	Dried milk products.
Baking chocolate.	Chips, potato, corn and	
Baking powder and soda.	similar items.	Eggs.
Barbeque <u>Barbecue</u> sauces.	Chocolate, instant and	
Berries.	baking.	Federal-food-stamp
Biscuit mix.	Citrus fruits.	receipts.
Boullion <u>Bouillon</u> cubes.	Cocoa.	Fish and fish products.
Bread and rolls.	Coffee and coffee substi-	Flavoring extracts.
Brownies.	tutes.	Flour.
Butter.	Condiments.	Frites.
	Cones, ice cream cups.	Frozen desserts.
Cake mixes and flour.	Cookies and crackers.	Frozen fruit juices
Cakes, Hostess-and-similar	Cooking oils.	{ <u>see par. (c)3</u> }.
items prepared, mixes	Cream.	Frozen fruits and vege-
<u>and snack type.</u>		tables.
Canned foods.	Desserts and toppings.	Frozen pizza.
Catsup.	Dietary foods { <u>see</u>	Frozen TV dinners.
Cereal and cereal products.	<u>par. (c)4</u> }.	Fruit.
Gersto-and-other-peetins	Dinners, frozen.	
Cheese.	Doughnuts.	Garlic.

Gelatin.	Meat extracts and tender-	<u>(c)(5)</u> .
Gravy extracts and mixes.	izers.	Poultry and poultry
Grits.	Melons.	products.
Hash.	Meritene .	Preserves.
Honey.	Milk and milk products.	Pretzels.
	Mustard.	Puddings.
Ice cream, pints or larger.	Newspapers.	Raisins.
	Noodles.	Ravioli.
Jams.	Nuts, except candy <u>or</u>	Relishes.
Jellies.	<u>yogurt</u> coated.	Rice.
Jello.		Rolls and biscuits.
Juices, pure fruit (<u>see</u>		
<u>par. (c)3</u>).	Oil, cooking, salad.	
	Oleo margarine.	Saccharin .
	Olives.	Salad dressing.
		Salt and salt substitutes.
<u>Ketchup</u> .		Salted nuts.
	Pancake mix.	Sardines.
Lobster.	<u>Pasta</u> .	Seafoods <u>Seafood</u> .
Luncheon meats.	Peanuts, in shell or	Seasonings.
	canned, salted or not.	Sherbet.
Macaroni.	Peanut butter.	Shortening.
Malted milk powder.	<u>Pectins</u> .	Soup.
Maraschino cherries.	Pepper.	Spaghetti products.
<u>Margarine</u> .	Pickles.	Spices.
Marshmallows.	Pie and pie fillings.	Spreads.
Mayonnaise.	Pie crust and mixes.	Sugar.
Meal.	Potato chips.	Sweeteners.
Meat and meat products.	Potato salad, <u>see par.</u>	

Syrup.	extract.	Waffle mix.
Tea and ice tea.	Vegetable juices.	Yeast.
Turkey.	Vegetables.	
	Vinegar.	Yogurt, other than par.
Vanilla and vanilla		(a) items.

(c) Explanations of some items noted above. As indicated in pars. (a) and (b)-above:

2. Sales of soda water beverages, bases, concentrates and powders which may be reconstituted into soft drinks, and fruit juice drinks, ades, cocktails, punches and nectars which have additives known as extenders are taxable. Extenders commonly used are citric acid, peel oil and artificial color.

3. Sales of pure fruit juices as defined in ch. 97 (~~Stats.~~ 1967 Stats.), are not taxable. Fruit juices are the clean, unfermented liquid product obtained by the first pressing of fresh ripe fruits. The only permissible additives are sugar and one of the preservatives such as sodium benzoate, sorbic acid or sodium sorbate. Frozen concentrates conforming to the above description are also tax exempt. To be exempt, the title of the fruit juice on the label shall contain the word juice to the exclusion of all other words such as cocktail, drink, punch, ade or nectar in compliance with requirements set by the United States food and drug administration.

Examples: 1) A beverage with the title "ABC Orange Drink, contains 10% fruit juice" is not an exempt juice.

2) A beverage with the title "Cranberry Juice Cocktail" is not an exempt juice.

3) A beverage with the title "ABC Fruit Punch" is not an exempt juice.

4) A beverage with the title "ABC Orange Juice" is an exempt juice.

4. "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal, Slimfast Powder Drinks and Bars

and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine and Ensure and Enrich nutrition supplements, and compressed or concentrated foods taken in wafer form which can be identified as food because of higher concentrated food values of carbohydrates and proteins. ~~For example, a protein concentrate used by persons engaged in athletic activities is an exempt food.~~ Dietary foods do not include patent medicines, tonics, vitamins and medical-type preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form used for medicinal or remedial purposes. The sales of such these items are taxable.

Examples: 1) A protein concentrate used by persons engaged in athletic activities is an exempt food.

2) Items such as protein tablets, high fiber tablets, wheat germ tablets and raw glandular tablets sold by most health food stores do not qualify as dietary foods and are subject to tax.

SECTION 2. Tax 11.51(2)(c)5 and (3) are created to read:

Tax 11.51(2)(c)5 Deli sales for off premise consumption sold by a weight or measure such as by the pound or the dozen, and not at a stated price for any particular combination of the separate ingredients which can be designated as either a meal or sandwich, are exempt. Deli sales for off-premise consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable. Sales of sandwiches are taxable. A meal usually consists of a diversified selection of foods which are not susceptible of consumption in the absence of at least some articles of tableware and which are not conveniently consumed while one is standing or walking.

Examples: 1) A grocer's deli sells potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls at room temperature. These items are sold by the pound or dozen. The sale of these items are not taxable.

2) A grocer's deli sells a serving of each of the following for \$3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls. Because the sale is at a stated price for a particular combination of ingredients which can be considered a meal, the sale is taxable.

3) A grocer's deli sells party trays in an unheated condition. The price varies based on the size of the tray. The types of party trays include shrimp

and sauce, meats, fresh vegetables, fresh fruits, cheeses or cookies. The trays do not include combinations of items which could constitute a meal or sandwich. The sale of these party trays are not subject to tax.

(3) FEDERAL FOOD STAMPS. A grocers' receipts from federal food stamps are not subject to sales tax even if the items purchased by the customer are not exempt food, food products and beverages under s. 77.54(20), Stats.

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.

Date: April 1, 1991

By: [Signature]

DEPARTMENT OF REVENUE

Mark D. Bugher
Secretary of Revenue

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FISCAL ESTIMATE

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

DOA-2048 (R 10/88)

Subject

Sales and Use Tax Rule Relating to Sales by Grocers

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
- 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 _____

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The rule updates and clarifies the sales and use tax treatment of sales by grocers. Since the rule does not change this treatment, it has 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

Harriet M. Debus

Date

9/10/90

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 11.51	Amendment No.
--	---------------

Subject
Sales and Use Tax Rule Relating to Sales by Grocers

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:**

A. State Costs by Category	Increased Costs	Decreased Costs
	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	Increased Costs	Decreased Costs
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.

	Decreased Rev.	Increased Rev.
GPR Taxes	\$ -	\$ +
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
 Dennis Collier, 266-9706

Authorized Signature/Telephone No. 266-2700 Date
August M. Deus 9/10/90



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. Bugar
Secretary of Revenue

April 1, 1991

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

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Re: Clearinghouse Rule 90-203

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to Tax 11.51.

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

Sincerely,

Mark D. Bugar
Secretary of Revenue

MDB:MPW:dab
CKLEGELC/677
Enclosure

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



State of Wisconsin ● DEPARTMENT OF REVENUE

126 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

April 1, 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 90-203.

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

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:dab
CKLEGELC/676
Enclosure

cc: Revisor of Statutes

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