

CR 90-214

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 April 8, 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 8th day of April, 1991.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:dab
CKLEG/699

RECEIVED

APR 10 1991
8:20 am
Revisor of Statutes
Bureau

7-1-91

ORDER OF THE DEPARTMENT OF REVENUE
REPEALING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal Tax 11.10 and Tax 11.13 and to create Tax 11.33, Tax 11.34 and Tax 11.35 relating to the occasional sales exemptions 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(9) and (14g)(h), 77.52(2)(a)2 and (12) and 77.54(7) and (7m), Stats.

SECTION 1. Tax 11.10 and 11.13 are repealed because the information with respect to these sections can now be found in ss. Tax 11.33, 11.34 and 11.35. This is done to allow all sections dealing with occasional sales to be grouped into one area of ch. Tax 11 of the Administrative Code. Also see SECTIONS 2, 3 and 4.

SECTION 2. Tax 11.33 is created to address much of the information in old Tax 11.10 with the following exceptions:

1. The title is revised to add s. 77.54(7m), Stats., created by 1987 Wisconsin Act 27.
2. Subsection (1) is renumbered and changed to update language per Legislative Council Rules Clearinghouse standards.
3. Subsection (3) is now a note to Tax 11.35. (See SECTION 4)
4. Subsection (4)(a) and (b) are renumbered and amended to update style per Clearinghouse standards.
5. Subsection (4)(c) is renumbered and amended to add all-terrain vehicles because of amendment to s. 77.54(7), Stats., by 1987 Wisconsin Act 27.
6. Subsection (4)(e) regarding bingo sales is renumbered and expanded to include more information as provided in s. 77.54(7), Stats.
7. Subsection (4)(f) is renumbered and amended to exclude grocers as grocers sell many taxable items in addition to nontaxable items.
8. Subsection (5)(a) and (b) are renumbered.
9. Subsection (1) is new and defines the scope of the section.
10. Subsection (4)(c) and (d) of Tax 11.33 are new and are added to reflect information regarding transfers of motor vehicles, etc., in s. 77.54(7), Stats., not previously addressed in Tax 11.10.
11. Subsection (4)(e) of Tax 11.33 is new and is added to reflect the creation of s. 77.54(7m), Stats., by 1987 Wisconsin Act 399 with regard to nonprofit organizations.
12. Subsection (4)(f) of Tax 11.33 is new and is added to reflect the creation of s. 77.51(9)(am), Stats., by 1987 Wisconsin Act 399 which revised the occasional sales exemption for the sale of a business or business assets.

SECTION 3. Tax 11.34 is created and reflects the same information that was in Tax 11.13 with the following exceptions:

1. Subsection (1) is new and defines the scope of the section.
2. Tax 11.13(1)(b), now Tax 11.34(2)(b), is reworded for better understanding.

3. Tax 11.34(3) reflects the creation of s. 77.54(9)(am), Stats., by 1987 Wisconsin Act 399.

4. Subsection (5)(b) adds information about the department's position regarding the termination and subsequent resumption of the same business.

5. The language and style are changed to reflect Clearinghouse standards.

SECTION 4. Tax 11.35 is created to reflect the creation of s. 77.54(7m), Stats., repeal of s. 77.54(9)(c), Stats., and the amendment of s. 77.54(7), Stats., by 1987 Wisconsin Act 399, effective January 1, 1989. Section 77.54(7) and (7m), Stats., were subsequently amended by 1989 Wisconsin Act 31 and are reflected in this rule.

SECTION 1. Tax 11.10 and 11.13 are repealed.

SECTION 2. Tax 11.33 is created to read:

Tax 11.33 OCCASIONAL SALES. (ss. 77.51(9), 77.52(2)(a)2 and 77.54(7) and (7m), Stats.) (1) SCOPE. This section describes the general rules for exempt occasional sales.

(2) GENERAL. Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

(3) STATUTES. (a) "Occasional sale" is defined in s. 77.51(9), Stats.

(b) Section 77.54(7), Stats., exempts most occasional sales from the sales and use taxes.

(4) SALES WHICH ARE OCCASIONAL SALES. Sales which are exempt occasional sales include:

(a) Auction sales of tangible personal farm property and household goods.

(b) Sales by a sole proprietor, who is required to hold a seller's permit, of tangible personal property which has not been used in the course of the person's business and is not the type of property sold in the course of the person's business. However, all tangible personal property sold by a corporation or partnership which holds or is required to hold a seller's permit shall be considered to be used or sold in the course of the organization's business activities and is taxable.

Example: A taxpayer operates a service station as a sole proprietor and holds a seller's permit for the purpose of selling cigarettes and repairing motor vehicles. The gross receipts from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the gross receipts from the sale of a desk and refrigerator which were used in the service station's business activities are subject to the sales tax.

(c) The transfer of a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft to a spouse, parent, stepparent, child or stepchild of the transferor provided the property has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property.

(d) The transfer of a motor vehicle from the transferor's individual ownership to a corporation owned solely by the transferor provided the motor vehicle has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property. Transferor for purposes of this paragraph means a natural person.

(e) Sales by nonprofit organizations meeting the requirements in s. 77.54(7m), Stats.

Note: Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

(f) The sale of a business or business assets, not including inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property or taxable services as provided in s. 77.51(9)(a) and (am), Stats.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(g) The sale of tangible personal property or taxable services by a person not otherwise required to hold a seller's permit, if the total taxable gross receipts from sales of tangible personal property and taxable services are less than \$1,000 during the calendar year. However, purchases of tangible personal property or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person, except when the person is able to claim exemption under s. 77.54(9a), Stats.

Examples: 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (g). However, purchases by the seller of tangible personal property which are sold are taxable.

2) Sales of soft drinks by employe groups are not taxable if the gross receipts from soft drink sales do not exceed \$1,000 per year. These groups are deemed consumers and a supplier's sales to them are taxable retail sales.

(5) SALES WHICH ARE NOT OCCASIONAL SALES. Sales which are not exempt occasional sales, except as provided in sub. (4), include:

(a) Sales by a person who holds or is required to hold a seller's permit.

Example: Sales of used equipment by a retail store or vending machine operator are not occasional sales and would be subject to sales or use tax.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(c) The sale of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers, semitrailers and all-terrain vehicles. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14(2)(c) shall be paid by the purchaser at the time the motor vehicle,

aircraft, boat, mobile home not exceeding 45 feet in length, snowmobile, trailer, semitrailer or all-terrain vehicle is registered or titled within Wisconsin.

(d) A sale made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of this property.

(e) Sales of bingo supplies to players or the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(f) A sale by persons engaged primarily in the business of making nontaxable sales of personal property, such as manufacturers and wholesalers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

Note: The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3)(b) became effective March 1, 1979; (b) Non-retailer sales of all-terrain vehicle as described in sub. (4)(c) became taxable and the sale of an all-terrain vehicle as described in sub. (3)(c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wisconsin Act 27; and (c) The exemption for the sale of a business or business assets in sub. (3)(e) became effective May 17, 1988, pursuant to 1987 Wisconsin Act 399.

SECTION 3. Tax 11.34 is created to read:

Tax 11.34 OCCASIONAL SALES EXEMPTION FOR SALE OF A BUSINESS OR BUSINESS ASSETS. (ss. 77.51(9)(a) and (am) and (14g)(h), 77.52(12) and 77.54(7), Stats.) (1) SCOPE. This section describes the occasional sales exemption for the sale of a business or business assets as provided in s. 77.51(9)(a) and (am), Stats.

(2) GENERAL. (a) The sale of business assets, consisting of tangible personal property, by a person who holds or is required to hold a seller's permit at the time of the sale is subject to sales tax, except as provided in sub. (3)(c).

(b) Except as provided in sub. (3)(c), the tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.
2. A single transaction or series of transactions at the time of termination of a business.
3. Piecemeal sales, whether part of a continuing business or upon termination.

(c) The tax does not apply to merchandise inventory sold to another retailer who purchases it for resale and sells it in the regular course of that retailer's business.

(3) EFFECT OF HOLDING A SELLER'S PERMIT. (a) Pursuant to s. 77.51(9)(a) and (am), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sales exemption, except as provided in par. (b).

(b) A sale is exempt from sales and use tax as an occasional sale if all of the following conditions are met:

1. The sale is of personal property, other than inventory held for sale, previously used by a person to conduct a trade or business at a location.
2. The sale occurs after the person ceased operating the business at that location.
3. The person delivers the seller's permit to the department of revenue for cancellation within 10 days after the last sale of personal property at that location.

(c) A sale meeting the conditions in par. (b) is exempt from sales or use tax even though the person holds a seller's permit for one or more other locations.

(d) The holder of a seller's permit shall wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

(4) DELIVERY OF SELLER'S PERMIT. A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

(a) Retailers may personally deliver their seller's permits to a representative of the department's income, sales, inheritance and excise tax division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(b) The seller's permit may be mailed to the department accompanied by a letter requesting that the permit be cancelled on or after the postmark date. Delivery is effective as 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the permit, the retailer may use certified mail, return receipt requested.

Note: Persons mailing their permit to the department should send it to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708.

(c) If the retailer's seller's permit is not available to be delivered, for example, it has been lost or destroyed, the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual seller's permit.

(5) CANCELLATION OF SELLER'S PERMIT. (a) Although a seller's permit may be deemed to have been delivered and canceled on a postmark date under sub. (4), cancellation shall not be effective prior to the postmark date.

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sales exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption if the person contemplates resumption of those activities which would require that person to hold a seller's permit.

(c) The fact that a business ceases operating and no longer conducts its day-to-day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. If the permittee does not surrender the permit as provided in sub. (3)(b), the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

Note: Refer to s. Tax 11.33 regarding the general occasional sales exemption. Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

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 procedure in sub. (3) became effective May 4, 1976, and reflects the Wisconsin Supreme Court's decision in Three Lions Supper Club, Ltd. vs. Dept. of Revenue (May 4, 1976), 72 Wis. 2d 546; and (b) The exemption described in par. (2)(b) became effective May 17, 1988, pursuant to 1987 Wisconsin Act 399.

SECTION 4. Tax 11.35 is created to read:

Tax 11.35 OCCASIONAL SALES BY NONPROFIT ORGANIZATIONS ON OR AFTER JANUARY 1, 1989. (ss. 77.51(9) and 77.54(7m), Stats.) (1) DEFINITIONS. In this section:

(a) "Admission event" means that access to the event involving entertainment is generally restricted to only those who pay a required fee, who make a required donation or who are required to make a purchase of some kind such as a meal or raffle ticket.

(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate \$300 or more per event by all persons for performing, for reimbursement of expenses or for prize money.

(c) "Gross receipts" means gross receipts as defined in s. 77.51(4), Stats., from all sales in Wisconsin of otherwise taxable tangible personal property and services after subtracting allowable exemptions.

(d) "Nonprofit organization" includes a neighborhood association, church, civic group, garden club, social club or similar organization not operated or organized for profit where no part of the net income inures to the benefit of any private shareholder or individual. A governmental unit described in s. 77.54(9a)(a) through (e) is considered a "similar organization" for purposes of this paragraph.

(2) SCOPE. This section describes the occasional sales exemption for nonprofit organizations as provided in s. 77.54(7) and (7m), Stats.

(3) GENERAL. A nonprofit organization is required to charge Wisconsin sales tax on sales of tangible personal property and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to gross receipts from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(4) STANDARDS. Under s. 77.54(7m), Stats., a nonprofit organization shall meet all of the following standards for its sales to qualify as exempt occasional sales:

(a) The organization is not engaged in a trade or business.

(b) Entertainment is not involved.

(c) The organization does not have or is not required to have a Wisconsin seller's permit, except for conducting bingo.

(5) NOT ENGAGED IN A TRADE OR BUSINESS. A nonprofit organization is not engaged in a trade or business for purposes of sub. (4)(a) if it meets at least one of the following:

(a) Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

Example: A boy scout troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the 20-day test, the troop should use the days of delivery rather than days orders are taken.

(b) Its taxable gross receipts for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur. Nontaxable gross receipts shall not be included for purposes of the \$15,000 gross receipts test.

Examples: 1) A church sells cookies and cakes at a bake sale. Since the sale of cookies and cakes for off-premises consumption is exempt from sales tax, the sale of these items is not counted as gross receipts for purposes of the \$15,000 receipts test.

2) A nonprofit organization, which sells hundreds of Christmas trees, sells 5 Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as gross receipts for purposes of the \$15,000 receipts test.

(6) ENTERTAINMENT. (a) To qualify as an exempt occasional sale, entertainment shall not be involved at an event for which charges constitute admissions.

Examples: 1) Four different bands are paid \$100 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (\$400) exceeds the \$300 limit in sub. (1)(a), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

2) Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band \$200. Since the total payment for entertainment (\$400) exceeds the \$300 limit in sub. (1)(a), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

3) A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of the \$300 limit in sub. (1)(a). There is no separate admission charge. However, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the nonprofit organization at this event are taxable.

4) A nonprofit organization holds a pig roast at the city park and hires a band to play at the park gazebo so that patrons, if they so wish, can be entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. Entertainment is deemed not to be involved. Therefore, the sales by the nonprofit organization may still qualify as exempt occasional sales.

(b) A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may obtain a temporary seller's permit from the department of revenue for the day or days involving entertainment, pay the sales tax on that event, and still have exempt occasional sales on days not covered by the temporary seller's permit. Days and receipts from events involving admissions to entertainment for which a temporary seller's permit was obtained are included with all other sales in determining the 20-day test and the \$15,000 taxable receipts test described in sub. (5).

Examples: 1) A nonprofit organization plans 5 events covering 3 days each for the year (total of 15 days). Entertainment will be involved at one event only. The sales by the nonprofit organization would qualify as exempt occasional sales, except for the involvement of entertainment at the one event. The nonprofit organization may obtain a temporary seller's permit for the one event involving entertainment; thus allowing the other 4 events to qualify as exempt occasional sales.

2) A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a temporary seller's permit because entertainment is involved and collects sales tax on its receipts of \$5,000 from that event. Taxable receipts from its other events must be combined with the \$5,000 of receipts from the event for which it held a temporary seller's permit for purposes of determining whether the \$15,000 taxable receipts tests is met.

(7) HOLDING A SELLER'S PERMIT. (a) A nonprofit organization is not required to hold a seller's permit if its sales are exempt from sales and use taxation by meeting the provisions of sub. (4)(a) and (b). However, an organization required to hold a seller's permit solely for the purpose of conducting bingo games may still qualify for exempt occasional sales on nonbingo sales if it otherwise qualifies under the provisions of sub. (4)(a) and (b).

(b) If a nonprofit organization holds a seller's permit in the current year, but intends or believes in good faith that its activities in the following year would qualify as exempt occasional sales except for its holding of a seller's permit, it may deliver that seller's permit to the department for cancellation and have its sales in the following year qualify as exempt occasional sales provided it meets the standards in sub. (4)(a) and (b) in that following year.

Example: A nonprofit organization has held seven 3-day events for a total of 21 days each year for the past 5 years. Receipts were always over \$20,000, and there were no admissions to entertainment. One event has lost money for the past 2 years. The organization intends to discontinue that event for the following year; thus, it may anticipate coming under the 20-day standard. Its seller's permit may be delivered to the department for cancellation in good faith.

(c) If a nonprofit organization did not hold or was not required to hold a seller's permit or delivered its seller's permit to the department for cancellation in good faith but later, due to unforeseen circumstances, exceeds the standards, only the sales occurring after the standards are exceeded do not qualify as exempt occasional sales and are subject to tax.

Examples: 1) A church held 18 days of events or sales in the current year. Receipts for the events equaled \$30,000 and no entertainment was involved. The church expects to hold the same 18 days of events in the following year. It delivers its seller's permit to the department for cancellation. However, in the middle of the following year, the church garage is destroyed by fire. An additional 4-day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

2) A garden club is organized in the current year. The garden club is not required to hold a seller's permit and does not apply for one. In the following year, the garden club holds 22 days of events with taxable receipts from the events of \$30,000. Only receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

(d) If a nonprofit organization has sales in the current year and then delivers its seller's permit to the department for cancellation, sales made in the current year before turning in the seller's permit to the department do not qualify as exempt occasional sales, even if the standards for exempt occasional sales in sub. (4)(a) and (b) are met.

Example: A nonprofit organization holds 15 days of sales in the current year. The organization holds a seller's permit, files sales and use tax returns and pays sales tax on all its receipts in the current year. At the end of the current year, the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. The organization may not claim a refund of taxes paid while it held a seller's permit.

(8) WHEN SALES DO NOT QUALIFY FOR OCCASIONAL SALES EXEMPTION. If a nonprofit organization has sales of tangible personal property or taxable services, and the sales do not qualify as exempt occasional sales, it is required to obtain a seller's permit and collect and remit sales tax on its taxable sales.

Note: To obtain a seller's permit, a nonprofit organization shall file Wisconsin Form A-101, Application for Permit, with the department. 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.

Note: The interpretations contained in this section became effective January 1, 1989, pursuant to 1989 Wisconsin Act 399.

Note: The following information applied to nonprofit organizations on or after September 1, 1969 and prior to January 1, 1989 except that the \$7,000 per calendar year standard became effective on January 1, 1988. The amount for calendar years 1985, 1986 and 1987 was \$2,500. Prior to January 1, 1985, the standard was \$1,000 per year.
insert from p. 15:

1) Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

2) No special statute exempts all sales by nonprofit organizations. However, the sales described in subs. (3), (4) and (5) shall be occasional sales under the standards given.

3) ADMISSIONS OR TICKETS. Sales of admissions or tickets to an event conducted by a nonprofit organization shall be exempt occasional sales if:

(a) The event does not involve professional entertainment;

(b) The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

(c) The organization did not conduct more than 3 events involving sales of admissions or tickets in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less events in that year.

4) MEALS, FOOD AND BEVERAGES. Sales of meals, food, food products, and beverages, including beer, for direct consumption at an event, including a church supper or refreshment stand at a fair, by a nonprofit organization shall be exempt if:

(a) The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

(b) The organization conducted no more than 3 events involving sales of meals, food, food products and beverages in the previous calendar year, no more than 3 are anticipated during the current calendar year and the events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of the events in that year.

5) OTHER SALES OF TANGIBLE PERSONAL PROPERTY AND SERVICES. Except for sales under sub. (3) and (4), sales of tangible personal property and taxable services, including light bulbs, Christmas trees, candy or parking, by a nonprofit organization shall be exempt occasional sales if:

(a) The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

(b) The gross receipts from sales of property and services otherwise subject to tax under s. 77.52(1) and (2), 1985 Stats., do not exceed \$7,000 within a calendar year.

6) EXCEEDING THE \$7,000 STANDARD. Nonprofit organizations with sales exceeding \$7,000 annually are taxable on all receipts unless the department of revenue determines that their sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or

a partial vocation or occupation. Any organization may request a determination from the department as to whether it qualifies for the exemption. The request should be made in writing, listing items or services sold, unit costs and selling prices, anticipated total gross receipts from all sales activities for the calendar year, the number of days duration of sales throughout the year, and any other information that will assist the department in its determination.

7) SEPARATE TREATMENT OF SUBS. (4), (5) AND (6). Each category of sales listed in subs. (4), (5) and (6) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and collect and remit the tax on sales in all categories. If the \$7,000 standard described in sub. (6) is exceeded, all receipts from sales of property or services described in that paragraph and all subsequent receipts from admissions and meals shall be taxable.

Example: If a nonprofit organization engages in separate activities described in subs. (4), (5) and (6) during a year and has a fourth "admissions" event, but only one "meal" event and \$500 receipts from sales of other tangible personal property at that time, it shall obtain a seller's permit and pay the tax on receipts from the fourth "admission" event and all subsequent receipts from "meal" events and from subsequent sales of other taxable tangible personal property or services.

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 8, 1991

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

CKLEG/M021800Q

FISCAL ESTIMATE

DOA-2048 (R 10/88)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject Sales Tax Rule Relating to Occasional Sales

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 rule consolidates all sections dealing with occasional sales in one area of Tax 11 of the Administrative Code. It also reflects recent legislation, including changes in the treatment of occasional sales by nonprofit organizations in 1987 Wisconsin Act 399 and 1989 Wisconsin Act 31 and changes in the occasional sales exemption for the sale of a business or business assets in 1987 Act 399. Finally, the rule updates language and style to conform with Legislative Council Rules Clearinghouse Standards. The consolidation of the occasional sales sections, interpretation of new statutory language and updating of language and style have no fiscal effect.

Long-Range Fiscal Implications

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

Authorized Signature/Telephone No.

Therese M. Reuss

Date

10/12/90

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. Tax 11	Amendment No.
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Subject Sales Tax Rule Relating to Occasional Sales

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. \$ + See Text of Fiscal Note
GPR Earned		-	+
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
TOTAL State Revenues		\$ -	\$ + See Text of Fiscal Note

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+See Text of Fiscal Note	-	Total Revenues	+See Text of Fiscal Note	-
NET Impact on State Funds	\$ (+) or (-)	See Text of Fiscal Note	NET Impact on Local Funds	\$ (+) or (-)	See Text of Fiscal Note

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

Authorized Signature/Telephone No. 266-2700 | Date
[Signature] 10/12/90.



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708

April 8, 1991

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

Re: Clearinghouse Rule 90-214

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,

A handwritten signature in black ink, appearing to read 'Mark D. Bugher', written over a circular stamp.

Mark D. Bugher
Secretary of Revenue

MDB:MPW:dab
CKLEG/698

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

April 8, 1991

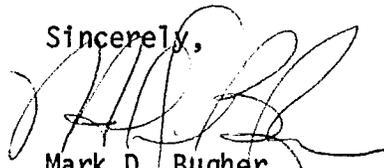
Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, Wisconsin 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 90-214.

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

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:dab
CKLEG/697

Enclosure

cc: Revisor of Statutes