

cation as "a publication that has at least 24 pages, is issued at regular intervals not exceeding 3 months, that devotes not more than 75% of its pages to advertising and that is not conducted as an auxiliary to, and essentially for the advancement of, the main business or calling of the person that owns and controls it".

Example: A taxpayer publishes a quarterly publication which it mails to current and prospective customers. The publication contains articles of interest to customers which contain endorsement of the taxpayer's business and products. The publication also contains advertising of the taxpayer's products as well as products of other vendors. This publication is conducted essentially for the advancement of the taxpayer's business and does not qualify as a controlled circulation publication.

(c) The exemption for periodicals is limited to publications which are sold by subscription and which are regularly issued at average intervals not exceeding 3 months each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To qualify for the exemption, the publication must qualify for the second class mail rate or as a controlled circulation publication under U.S. postal laws and regulations.

(d) The newspaper and periodical exemption does not apply to books complete in themselves, even those issued at stated intervals; paperback books, a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The exemption also does not apply to catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price or order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

Example: Books sold by the Book of the Month Club or similar organizations do not qualify for the newspaper and periodical exemption.

(4) **PRINTED ADVERTISING MATERIALS FOR OUT-OF-STATE USE.** (a) Printed advertising materials, including catalogs and their mailing envelopes, may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54 (25), Stats., when those materials are purchased and stored for the purpose of subsequently transporting the same outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. The exemption applies to catalogs designed to be used by a retailer's potential customers.

(b) The exemption does not apply to materials shipped to Wisconsin addresses. It also does not apply to parts price lists, parts stock order books, order forms, stocking and purchasing guides, stockholders' annual reports or proxy statements, display racks, or 3-dimensional plastic items designed to be used by wholesalers and retailers. Envelopes which do not contain exempt advertising, matchbooks, calendars, calendar pads, desk pads, folders, binders and playing cards also do not qualify for the exemption.

(5) **EXEMPT PURCHASERS.** Sales of printed material to governmental units, public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to governmental

units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained. Sales to persons holding a certificate of exempt status can be shown to be exempt by recording the certificate number on the bill of sale.

Note: The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state in sub. (2) (a) became effective March 1, 1970; (b) The exemption for advertising materials used out-of-state in sub. (4) (a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective on August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2) (d) became effective July 2, 1983; (f) The definition of newspaper in sub. (3) (a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2) (b) and (3) (b) became effective September 1, 1983, pursuant to 1983 Wis. Act 149; and (h) The exemption for foreign publishers described in sub. (2) (e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wis. Act 336.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (c) and (4) (b), Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (b) and (3) (c), cr. (2) (d), r. and recr. (3) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (a) and (b), (3) (b) and (4) (a), Register, June, 1990, No. 414, eff. 7-1-90; am. (1), (2) (a), (c) and (d), (3) (d), (4) (a) and (b) and (5), cr. (2) (e), Register, March, 1991, No. 423, eff. 4-1-91.

**Tax 11.26 Other taxes in taxable gross receipts and sales price.** (s. 77.51 (4) (a) 4 and (15) (a) 4, Stats.) (1) **GENERAL RULE.** (a) Tangible personal property sold at retail often is subjected to many direct and indirect taxes prior to reaching a retailer. The taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. The tax may be imposed by Wisconsin, the federal government or a municipality.

(b) In determining the measure of sales and use taxes, certain separately stated or separately passed on taxes are included in gross receipts and the sales price, while others are not. However, the same taxes that are included or excluded from gross receipts are also included or excluded from sales price. Thus, the treatment of the taxes for sales and use tax purposes is identical, even though the measure of tax for each is gross receipts and sales price, respectively.

(2) **TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE.** The following taxes are included in a retailer's gross receipts and sales price, except as provided in sub. (3):

- (a) The fermented malt beverage tax imposed by s. 139.02, Stats.
- (b) The taxes imposed upon intoxicating liquors, including wine, by s. 139.03, Stats.
- (c) Any federal stamp tax and manufacturer's or importer's excise tax. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel, tires, firearms, sporting goods and air or ship transportation.
- (d) A federal, county or municipal fuel tax included in the price of special fuels and general aviation fuel subject to sales tax.

Example: Fuel taxes are included in the price of fuel used in aircraft, boats and for other nonhighway use. The taxes are included in gross receipts.

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- (e) The cigarette tax imposed by ss. 139.31 and 139.33, Stats.
- (f) The Canadian or any other country's export gallonage tax on fuels.
- (g) The tobacco products tax imposed under ss. 139.76 and 139.78, Stats.

(3) TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE. The following taxes are excluded from a retailer's gross receipts or sales price:

(a) The federal communications tax imposed upon telegraph service and telephone service.

(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if that federal, state or municipal tax is measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax.

Examples. Taxes which are not included in a retailer's gross receipts include:

- 1) The room tax imposed under s. 66.75, Stats., which municipalities impose on persons furnishing lodging to transients.
- 2) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the internal revenue code.
- 3) The county sales and use tax imposed under s. 77.71, Stats.

Note: The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (2) (d) and (e) and cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; cr. (2) (g), Register, December, 1983, No. 336, eff. 1-1-84; am. (3) (b), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (a) and (b), (2) (intro.), (b), (c), (d) and (e) and (3) (a), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (intro.), (c), (3) (intro.) and (b), Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.27 Warranties.** (s. 77.51 (4) (a), Stats.) (1) RECEIPTS FROM WARRANTIES. The total gross receipts from a sale of taxable personal property by a retailer, who sells a warranty applicable to such property and includes a charge for the warranty in the sales price are taxable.

(2) REPAIRS BY RETAILERS. (a) A retailer who performs repair work, including supplying parts and services, without charge under a warranty of a manufacturer or other person is not subject to tax on the amount of the reimbursement received from the warrantor whether the reimbursement is in the form of money or the replacement of parts used to perform the repair work.

(b) Gross receipts from charges by a retailer to a customer for repair parts or service performed under a warranty are taxable, including gross receipts from the sale of service contracts. Charges by a manufacturer or other person for service contracts are taxable.

(c) A retailer who provides free parts or services or both to a customer in order to maintain good customer relations, although not required to do so under the sales agreement, shall report and remit a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) measured by the retailer's purchase price of any parts used in providing such free service.

(3) REPAIRS NOT BY RETAILER. If a retailer does not repair property under a warranty but instead has another person perform such repairs,

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that person's gross receipts from the retailer for such repairs are exempt, since the repair parts and service are for resale by the retailer to its customer (payment occurred at the time of the original sale of the property and warranty). Such repairs are exempt whether or not the original sale occurred in this state. The person performing such repairs shall obtain a resale certificate from the retailer as evidence of the exempt status of its charges to the retailer.

Note: The interpretations in s. Tax 11.27 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1), (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87.

**Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps.** (ss. 77.51 (4) (a) and (14) (k) and 77.56 (3), Stats.) (1) DEFINITIONS. (a) Section 77.51 (14) (k), Stats., provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms includes the sale of tangible personal property to a purchaser even though the property may be used or consumed by another person to whom the purchaser transfers the property without valuable consideration, such as gifts and advertising specialties distributed gratis apart from the sale of other tangible personal property or services.

(b) Section 77.51 (4) (a) (intro.), Stats., provides that "gross receipts" means the total amount of the sale, lease or rental price from sales at retail of tangible personal property or taxable services, valued in money or otherwise.

(2) GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALITIES AND SALES INCENTIVE PLANS. Persons who make gifts of taxable tangible personal property or distribute tangible personal property gratis to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to persons making gifts. Taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring the property for the purpose of giving it to retailers for use in selling merchandise to customers.

Examples: 1) A paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint.

2) A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given to customers.

3) Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer and the sales or use tax, pursuant to s. Tax 11.14 (2) (c), applies to the cost of the ingredients.

(a) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event, such as an open house, celebrity appearance or "farm days," cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in this volume. In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person furnishing the property to the retailer is subject to the sales or use tax pursuant to s. Tax 11.14 (2) (c) on its cost of the property donated.

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	Cash Sales Price	Sales Tax	Finance Charge	Total
1. Sales price and tax	\$ 15,000.00	\$ 750.00	-	\$ 15,750.00
2. Down payment allocation (1)	<u>2,047.62</u>	<u>102.38</u>	-	<u>2,150.00</u>
3. Balance to finance	\$ 12,952.38	\$ 647.62	-	\$ 13,600.00
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$ 12,952.38	\$ 647.62	\$ 1,360.00	\$ 14,960.00
6. Payments on contract (2)	<u>5,887.45</u>	<u>294.37</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance - date of repossession	\$ 7,064.93	\$ 353.25	\$ 741.82	\$ 8,160.00
8. Wholesale value of repossession (2)	<u>5,194.81</u>	<u>259.74</u>	<u>545.45</u>	<u>6,000.00</u>
9. Deductible loss	\$ <u>1,870.12</u>			\$ 1,870.12
10. Nondeductible loss		\$ <u>93.51</u>	\$ <u>196.37</u>	<u>289.88</u>
11. Total loss				\$ <u>2,160.00</u>
12. Percentage of sales price and tax (Line 1)	95.2381%	4.7619%		100%
13. Percentage of contract balance (Line 5)	86.5801%	4.3290%	9.0909%	100%

(1) The down payment on line 2 is allocated between the total cash sales price of the motor home and the sales tax thereon on the basis of the percentage of each to their total. The percentages are shown on line 12.

(2) The payments on the contract on line 6 and the wholesale value on the date of repossession of the property repossessed on line 8 are allocated on the basis of the contract balances on line 5. The percentages thereof are shown on line 13.

(3) **TAX RATE CHANGE.** If a deduction for bad debts is being claimed in a period when the tax rate is different from the tax rate in effect when the sale or sales were reported on tax returns, an adjustment to the deduction shall be made to compensate for the tax rate differential.

**Example:** If tax was reported on a \$1,000 sale when the tax rate was 4%, \$40 tax was reported. If a bad debt deduction is taken for the sale in a 5% tax rate period, only 80% of the \$1,000, or \$800, may be taken as a bad debt, resulting in a tax credit of \$40. Four percent divided by 5% equals 80%.

**Note:** The interpretations in s. Tax 11.30 are effective under the general sales and use tax law on and after September 1, 1969, except that the 4% tax rate was increased to 5% on May 1, 1982.

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (a) and cr. (3), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c) 1. and (d) 1., Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.32 "Gross receipts" and "sales price".** (ss. 77.51 (4) (a) (intro.) and 4, (b) 1 and 6 and (c) 2 and (15) (a) (intro.) and 4, (b) 1 and 5 and (c) 1 and 77.61 (3), Stats.) (1) **GENERAL.** The amount to which the sales and use tax rate is applied is "gross receipts" for sales tax and "sales price" for use tax. Both "gross receipts" and "sales price" mean the total amount of the sale, lease or rental from retail sales of tangible personal property or taxable services, valued in money, whether received in money or otherwise.

(2) **HANDLING AND SERVICE CHARGES.** A retailer's gross receipts from charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments and similar charges for services related to retail sales are included in gross receipts derived from the sale of taxable tangible personal property or taxable services. Cancelled order charges are not taxable if there is no transfer of merchandise to a customer.

(3) **CASH DISCOUNTS OR PRICE REBATES.** (a) Cash discounts allowed by a retailer directly to customers reduce the gross receipts subject to the

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tax. The customer must receive the discount for the retailer to exclude it from gross receipts.

Example: A payment made to a nonprofit organization based on a percentage of the purchases made by the group's members is not a cash discount for sales and use tax purposes.

(b) A retail cooperative's rebates to members, which are made after the net profit is determined at the end of a year, are patronage dividends rather than cash discounts, and are not deductible from the cooperative's gross receipts.

(c) A manufacturer's cash rebate to a person who purchases tangible personal property or taxable services from a retailer is not a reduction in the retailer's gross receipts or sales price for the item, regardless of whether the rebate is paid in cash or is used to reduce the selling price.

Example: An automobile is sold for a sticker price of \$18,000. The manufacturer offers a \$1,500 rebate with the purchase. Regardless of whether the customer pays the retailer \$18,000 and later receives \$1,500 from the manufacturer or the customer pays the retailer \$16,500 (\$18,000 sticker price less \$1,500 rebate), the retailer shall report taxable gross receipts of \$18,000 from the sale.

(4) **SALES TAX COLLECTED FROM CUSTOMERS.** (a) Section 77.51 (4) (a) 4, Stats., provides in part that "if a retailer establishes to the satisfaction of the department that the sales tax . . . has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies.

Example: If taxable property is sold for \$100 and \$5 of tax is collected for a total of \$105, the tax payable by the retailer is determined by multiplying the tax rate times \$100.

(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible under the bracket system, no part of the retailer's gross receipts shall be treated as tax collected from customers.

Example: A vending machine operator whose only receipts are from sales of 5¢ items is unable to collect any sales tax from customers, and the tax applies to the total gross receipts.

(c) If a vending machine operator sells taxable property at a price such that a sales tax is collectible under the bracket system, part of the gross receipts from these sales shall include sales tax if customers are advised that vending machine prices include sales tax.

(5) **BRACKET SYSTEM.** (a) The following bracket system is used by retailers in computing the amount of the state tax which may be collected from the retailer's customers.

<u>Amount of Taxable Sale</u>	<u>5% Tax Collectible</u>
\$ .01 to \$ .09	\$.00
.10 to .29	.01
.30 to .49	.02
.50 to .69	.03
.70 to .89	.04
.90 to 1.09	.05

On sales exceeding \$1.00, the state tax equals 5% of each full dollar plus the tax shown above for the applicable fractional part of a dollar.

(am) In counties having a county tax, the following bracket system is used.

<u>Amount of Taxable Sale</u>	<u>Combined State and County Tax of 5½%</u>
\$ .01 - \$ .09	0¢
.10 - .27	1¢
.28 - .45	2¢
.46 - .63	3¢
.64 - .81	4¢
.82 - .99	5¢
1.00 - 1.18	6¢
1.19 - 1.36	7¢
1.37 - 1.54	8¢
1.55 - 1.72	9¢
1.73 - 1.90	10¢
1.91 - 2.09	11¢

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2.

Example: For a sale of \$11.50, the 5½ % tax is 63¢, consisting of 55¢ for \$10 of sales plus 8¢ for \$1.50 of sales.

(b) The bracket system method is designed so that the total amount of tax paid by customers approximates the tax payable by the retailer on the retailer's taxable gross receipts, if the retailer's sales fall equally throughout all the brackets. When more than one taxable item is sold in a single transaction, the tax is computed on the aggregate sales price of the taxable items sold.

(c) The gross sales tax payable by a retailer is the tax rate under s. 77.52 (1) or (2), Stats., times the retailer's taxable gross receipts, regardless of the amount of tax collected from customers.

(d) A retailer shall conspicuously post bracket system cards showing the tax collectible on the dollar amount of a sales transaction, as set forth in par. (a) or (am), to establish to the satisfaction of the department that the sales tax has been added to the sales price, unless a receipt is issued separately itemizing the tax.

(6) EXCHANGING TANGIBLE PERSONAL PROPERTY. Taxable gross receipts include the exchange of tangible personal property for taxable or nontaxable services, realty or intangibles if the person providing the tangible personal property receives gross receipts or sales price valued in money, whether received in money or otherwise.

Example: A restaurant operator exchanges meals having retail price of \$100 for radio or television advertising which has an established price of \$100 for this type of advertising service. The restaurant operator and the radio or television station each have to report gross receipts of \$100 as a result of the transaction.

(7) MOBILE HOMES. Gross receipts and sales price do not include 35% of the amount from the sale of a new mobile home, not including leases and rentals, that is:

(a) A primary housing unit under s. 340.01 (29), Stats.

(b) Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

Note: The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; and (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (4) (a) and (b), (5) (b) and (c), r. and recr. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (c), Register, December, 1983, No. 336, eff. 1-1-84; emerg. am. (5) (a), eff. 3-24-86; am. (5) (a) and (am), Register, October, 1986, No. 370, eff. 11-1-86; cr. (6), Register, April, 1990, No. 412, eff. 5-1-90; cr. (7), am. (2), (3) (a) and (c) and (5) (d), Register, June, 1991, No. 426, eff. 7-1-91; am. (2), (4) (a) and (c), (5) (a), (am) and (b) and (7), Register, December, 1992, No. 444, eff. 1-1-93.

**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

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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.

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Floor care products.	fuses.	Salt, water
Flowers and seeds.	Lozenges.	softener.
Foil, aluminum and similar products.	Lunch boxes.	Sandwiches, hot or cold.
Food coloring.	Lye.	Sanitary goods.
Foot care products.	Magazines.	School supplies.
Frames.	Manicure needs.	Scissors.
Fruit drinks, liquid and powdered, see par. (c) 2.	Mason jars.	Sewing aids.
Fuel and lubricants.	Matches.	Shampoo and rinse.
Furniture polish.	Medicinal preparations.	Shaving supplies.
Games.	Milk of magnesia.	Shelf coverings.
Garbage bags and cans.	Mineral tablets.	Shoe laces and polishes.
Garden needs.	Nail polish and remover.	Soaps.
Gifts, non-food and nonexempt food.	Nails.	Soda water beverages, see par. (c) 2.
Ginseng.	Napkins.	Soft drinks, see par. (c) 2.
Glassware.	Notebooks.	Sponges.
Gloves.	Nursery stock.	Starch.
Glue.	Nuts, candy or yogurt coated.	Stationery.
Granola bars, candy or yogurt coated.	Pails.	Steel wool.
Greeting cards.	Paint and paint supplies.	Stockings.
Grooming aids.	Paper products, including tissues, plates, cups, towels, napkins and writing paper.	Sun glasses.
Gum.	Peanuts, candy or yogurt coated.	Sun tan lotion.
Hair care products.	Pens and pencils.	Tableware.
Hardware.	Periodicals.	Taffy apples.
Health and beauty aids.	Pet food and supplies.	Tape.
Heated foods and beverages, see par. (c) 1.	Plastic utensils.	Thread.
Hosiery.	Polishes.	Tobacco products.
Household equipment and supplies.	Popcorn, raw or popped.	Toilet tissue.
Ice, cube and block.	Pots and pans.	Tonics.
Ice cream bars and similar products.	Powder, face and body.	Tools.
Ice cream in cones.	Powdered fruit drinks, see par. (c) 2.	Tooth brushes.
Insect and pest control products.	Raisins, candy or yogurt coated.	Toothpaste and powders.
Insulated containers.	Razors and blades.	Toothpicks.
Internal remedies.	Records.	Toys.
Intoxicating liquor.	Root beer and extracts.	Utensils.
Iron tablets.	Rotisseries.	Vitamins.
Jewelry.	Rubber bands.	Wash cloths.
Laundry products.		Waste baskets.
Lawn furniture.		Watches.
Light bulbs and		Water, bottled, sparkling, spring and distilled.
		Water conditioners.
		Waxing.
		Wax paper.
		Wearing apparel.
		Wine making supplies.

Wrap, foil, plastic  
and waxed paper.  
Writing supplies.

Yogurt bars, cones  
and sundaes.

Zippers.

(b) *Exempt sales by grocers.* Exempt gross receipts include gross receipts from sales of the following items:

Apple cider, sweet.	Dried fruits.	tenderizers.
Baby food.	Dried milk products.	Melons.
Bakery goods.	Eggs.	Milk and milk products.
Baking chocolate.	Fish and fish products.	Mustard.
Baking powder and soda.	Flavoring extracts.	Newspapers.
Barbecue sauces.	Flour.	Noodles.
Berries.	Frozen desserts.	Nuts, except candy or yogurt coated.
Biscuit mix.	Frozen fruit juices, see par. (c) 3.	Oil, cooking, salad.
Bouillon cubes.	Frozen fruits and vegetables.	Oleomargarine.
Bread and rolls.	Frozen pizza.	Olives.
Breakfast pastries.	Frozen TV dinners.	Pancake mix.
Brownies.	Fruit.	Pasta.
Butter.	Garlic.	Peanuts, in shell or canned, salted or not, see par. (a).
Cake mixes and flour.	Gelatin.	Peanut butter.
Cakes, prepared, mixes and snack type.	Granola bars, see par. (a).	Pectins.
Canned foods.	Gravy extracts and mixes.	Pepper.
Catsup.	Grits.	Pickles.
Cereal and cereal products.	Hash.	Pie and pie fillings.
Cheese.	Honey.	Pie crust and mixes.
Chicken.	Ice cream, pints or larger.	Potato chips.
Chip dip.	Jams.	Potato salad, see par. (c) 5.
Chips, potato, corn and similar items.	Jellies.	Poultry and poultry products.
Chocolate, instant and baking.	Juices, pure fruit, see par. (c) 3.	Preserves.
Citrus fruits.	Ketchup.	Pretzels.
Cocoa.	Lobster.	Puddings.
Coffee and coffee substitutes.	Luncheon meats.	Raisins, see par. (a).
Condiments.	Macaroni.	Ravioli.
Cones, ice cream cups.	Malted milk powder.	Relishes.
Cookies and crackers.	Maraschino cherries.	Rice.
Cooking oils.	Margarine.	Rolls and biscuits.
Cream.	Marshmallows.	Salad dressing.
Desserts and toppings.	Mayonnaise.	Salt and salt substitutes.
Dietary foods, see par. (c) 4.	Meal.	Salted nuts.
Dinners, frozen.	Meat and meat products.	Sardines.
Doughnuts.	Meat extracts and	Seafood.
Dressings.		Seasonings.
		Sherbet.
		Shortening.

Soup.	Tea and ice tea.	Waffle mix.
Spaghetti products.	Turkey.	Yeast.
Spices.	Vanilla and vanilla	Yogurt, other than
Spreads.	extract.	par. (a) items.
Sugar.	Vegetable juices.	
Sweeteners.	Vegetables.	
Syrup.	Vinegar.	

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

1. "Heated food" means those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

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, 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. 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 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.

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 is 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 is not subject to tax.

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

Note: The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975, when an exemption in s. 77.54 (23), Stats., was eliminated, and magazines and periodicals sold over-the-counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27, which amended s. 77.54 (15), Stats.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) (b), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (1), (2) (a), (b) and (c) (intro.), 2., 3., and 4., cr. (2) (c) 5. and (3), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (a) and (b), Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.52 Coin-operated vending machines and amusement devices.** (s. 77.52 (1), (1m), (2) (a) 2, 6, 7 and 10 and (2m), Stats.) (1) **DEFINITION.** In this section, "operator" means:

(a) A person who owns property sold through a coin-operated vending machine or device, has the right of access to the machine or device for stocking or restocking or for removing the gross receipts, or who, in general, has control over the machine or device and its contents; or

(b) A person who is responsible for providing laundry, dry cleaning, photographic, photocopy or other taxable services through vending machines.

(2) **SELLER'S PERMITS.** (a) Operators of coin-operated vending machines or devices dispensing taxable tangible personal property or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each operator.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(b) A notice must be affixed to each coin-operated machine or device showing the operator's name, address and seller's permit number.

(3) **TAXABLE RECEIPTS.** Taxable receipts include gross receipts from:  
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(a) Coin-operated machines dispensing tangible personal property such as:

1. Chewing gum, candy, cigarettes, peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, photocopies, tobacco products, handkerchiefs, combs and hygienic products; and

Next page is numbered 231

1. The first part of the document is a letter from the

author to the editor of the journal.

The letter is dated 1st January 1950 and is addressed to the editor of the journal.

The letter is signed by the author.

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be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(g) *Architects.* Fees paid to architects to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by architects, engineers, or other business firms. These charges are taxable if the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing, which is tangible personal property, for use by the customer. When the person performing drafting services uses his or her own concepts and ideas in producing detailed drawings for a customer, the sale of the drawings is not a sale of tangible personal property.

(i) *Enurests alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(l) *Taxidermists.* Taxidermists perform service on tangible personal property. Gross receipts from such service are subject to the tax.

(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. Such persons are the consumers of the tangible personal property they purchase, except for the wax transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to such operators.

(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of such service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin or have shipped into Wisconsin by an out-of-state supplier.

Note: The interpretations in s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (n), Register, June, 1983, No. 330, eff. 7-1-83; r. (3) (k) and am. (3) (n), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (h), Register, April 1990, No. 412, eff. 5-1-90.

**Tax 11.68 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), (31) and (41), 77.71 (3) and 77.77 (3), Stats.) (1) GENERAL. (a) Construction contractors may be retailers

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with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(b) Contractors are retailers of:

1. Property which retains its character as personal property after sale and installation.

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.

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

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.

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

4. Tangible personal property sold.

(c) Contractors are consumers of tangible personal property they use when engaged in real property construction activities, such as altering, repairing or improving real property.

(2) REAL PROPERTY CONSTRUCTION CONTRACTORS. (a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in 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.

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.

(c) Real property construction activities include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modular units. The modular units must have a realty function and must become a permanent accession to realty.

(3) PURCHASES BY CONTRACTORS. (a) Under s. 77.51 (2), Stats., contractors who perform real property construction activities are the contractors. Register, December, 1992, No. 444

sumers of building materials which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax.

(b) Property which a construction contractor will resell as personal property may be purchased without tax for resale. 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. 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: Refer to subs. (4) and (6) for the classification of property.

(c) Machinery and equipment, including road building equipment, tunnel shields, construction machines, and cement mixers, tools, including power saws and hand tools, and supplies, 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 the personal property and shall pay the tax on its purchases of 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.

(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: 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.

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(f) Under s. 77.54 (41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11 (36), Stats. Section 70.11 (36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

(4) CLASSIFICATION OF PROPERTY AFTER INSTALLATION. (a) 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:

1. Actual physical annexation to the real property.
2. Application or adaptation to the use or purpose to which the real property is devoted; and
3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

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, including boilers, furnaces, stand-by generators, pumps, substations and transformers. When 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) PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY. 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 this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

- (a) Boilers and furnaces for space heating.
- (b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems and incinerators.
- (c) Cemetery monuments.

(d) Buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors, including computer room floors, partitions and movable walls attached in any way to realty, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door

controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, and heating, cooling and ventilation systems.

(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.

(g) Planted nursery stock. However the sale of nursery stock to a landscape contractor, who uses the nursery stock in providing taxable landscaping services, is not subject to the tax.

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

(i) Silos and grain elevators.

(j) Swimming pools, wholly or partially underground.

(k) Storage tanks constructed on the site.

(l) Traffic signals, and street and parking lot lighting.

(m) Truck platform scale foundations.

(n) Walk-in cold storage units becoming a component part of a building.

(6) PROPERTY PROVIDED UNDER A CONSTRUCTION CONTRACT WHICH REMAINS PERSONAL PROPERTY. (a) Contractors shall obtain a seller's permit and report for taxation gross receipts from the sale and installation of personal property, furnished under a construction contract, which retains its character as personal property after installation, such as:

1. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.

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.

3. Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment, and related easily movable property attached to the structure in schools, laboratories 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 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.

6. Personal property used to carry on a trade or business, 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. Underground storage tanks at gasoline service stations are real property.

7. Shades, curtains, drapes, venetian blinds and associated hardware.

8. Radio, television and cable television station equipment, but not broadcasting towers installed on their owner's land.

9. 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, or that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation, 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. A foundation is underground even though a portion of the foundation extends above the grade.

11. Buildings and standing timber sold for removal.

12. Utility transmission and distribution lines installed above ground on land owned by others as provided in s. Tax 11.86 (1), and oil and gas pipeline pumping station equipment.

13. Commercial and industrial incinerators which do not become an integral part of the building.

14. Seating in auditoriums and theaters, and theater stage lights and projection equipment.

(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 the personal property, the cost of the property to the construction contractor shall be used as the measure of gross receipts subject to sales tax. If a separate charge is made for any of the items, they are subject to the tax, but not less than on their cost.

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) PROPERTY PURCHASED BY A PERSON WHO PERFORMS BOTH CONSTRUCTION CONTRACTING AND RETAIL SELLING, WHEN DESTINATION OF PROPERTY PURCHASED IS UNKNOWN AT TIME OF PURCHASE. 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

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*involving the use of such property."* However, some construction contractors who also sell construction supplies at retail do not know when they purchase these supplies whether they will be consumed in construction contracts or resold to others. In 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 purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and collect and remit the tax on the sales price to 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 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 these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

**(8) PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY.** (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 these building materials to a contractor are subject to the tax if the building materials become part of real property after construction or 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 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. 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) USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN.** (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax, 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.

(b) If a construction contractor purchases property outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, 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 or property was used prior to being stored in Wisconsin.

(c) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

(10) CONSTRUCTION AND REPAIR SERVICES. (a) A contractor who performs real property construction activities may not add tax to any charge for labor or material, since gross receipts from 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 the materials 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 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 these services.

(c) Section 77.52 (2) (a) 10, Stats., provides in part that ". . . the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration, but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

(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.

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.

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(11) **REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES.** 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 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 the property are not taxable. In the 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.

(12) **COUNTY TAX ON BUILDING MATERIALS.** (a) Section 77.71 (3), Stats., imposes an excise tax upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county which has adopted the county tax. The tax is measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county, unless the contractor has paid the county tax of a county in this state or a similar local sales tax in another state on the purchase of that property.

(b) Building materials which become a component part of real property are used and consumed at the job site.

(c) In providing repair services to real property subject to taxation under s. 77.52 (2) (a) 10, Stats., a contractor may purchase without county tax for resale the building materials used in providing the taxable services, and the county excise tax imposed under s. 77.71 (3), Stats., does not apply to those purchases.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the excise tax under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The excise tax under s. 77.71 (3), Stats., on building materials used in real property construction activities is not imposed if the contractor purchased the building materials before the effective date of the county tax of that county or has paid the sales tax of another county in this state in purchasing the building materials.

Note: The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (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

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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 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1986 Wis. Act 149; (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 1986 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (d), (6) (a) 2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337; emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86; am. (9) (a), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (g) and (12) (a), Register, April, 1990, No. 412, eff. 5-1-90; am. (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 (i), (6) (a) 2., 4., 5., 6., 9. and 10. and (b), (7), (8), (9) (a), (10) (a), (b) and (d) and (11), cr. (3) (d) and (e), Register, June, 1991, No. 426, eff. 7-1-91; renum. (9) (b) to be (c); cr. (2) (c), (3) (f) and (9) (b), am. (6) (a) (intro.), 9., 10., (10) (a), (c), and (12) (c), Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.69 Financial institutions.** (s. 77.51 (14) (k), Stats.) (1) **EXEMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(2) **TAXABLE SALES.** A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.

(h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

(3) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up

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and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) DEFINITION. In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) SPECIAL PROVISIONS. (a) Sales to state chartered credit unions, and to federal and state chartered banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 11.70 Advertising agencies.** (ss. 77.51 (14) (intro.) and (h) and, 77.52 (1) and (2), Stats.) (1) NONTAXABLE SERVICES. Charges by advertising agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

- (a) Writing original manuscripts or news releases.
- (b) Writing copy to be used in media advertising.
- (c) Consultation, market research and compiling statistical or other information.
- (d) Recommendations for advertising themes or merchandising plans.
- (e) Obtaining media space and time.
- (f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.



Note: The related expenses described in sub. (3) are costs of performing the contract and do not affect the amount of taxable gross receipts.

(4) **EQUIPMENT CHARGES.** (a) The gross receipts from a contract to construct or repair an overhead utility facility which is tangible personal property may not be reduced by the amount of hourly charges for the use of equipment.

(b) The gross receipts from the rental of equipment, including any charge for an operator of the equipment, for the construction or repair of a utility line to a utility are taxable, unless the utility employs all of the crew to construct or repair the utility line, in which case only the charge for the equipment is taxable.

Note: See s. Tax 11.29 (4) for more information.

(5) **NONTAXABLE SERVICES.** (a) Gross receipts from tree and shrub trimming services for a utility for the purpose of keeping the overhead transmission and distribution lines free from interference from nearby trees and shrubs or inaccessible to children are not services which are taxable under s. 77.52 (2) (a) 20, Stats.

(b) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line are not taxable.

(c) Gross receipts from a separate charge for removing an existing utility line are not taxable.

(6) **LANDSCAPING SERVICES.** Gross receipts from landscaping services are taxable when performed in lawn and garden areas. This includes lawn, shrub and tree services, except for services described in sub. (5) (a), performed in developed areas found in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other developed areas.

Example: Restoration work performed when a utility extends its service or repairs or replaces existing lines is subject to sales tax.

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except: (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; and (c) The Wisconsin Tax Appeals Commission decision in *Capital City Tree Experts, Inc.*, dated June 19, 1987, later modified by stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (4) (a) and cr. (5), Register, September, 1984, No. 345, eff. 10-1-84; r. and recr., Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.87 Meals, food, food products and beverages.** (ss. 77.51 (4) (c) 2, (14) (b) and (f) and (15) (c) 1 and 77.54 (20), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

(b) "Hospital" has the meaning in s. 50.33 (2), Stats.

(c) "Nursing home" has the meaning in s. 50.01 (3), Stats.

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(d) "Retirement home" means a nonprofit residential facility, which as its primary function provides personal care above the level of room and board to retired persons, where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(e) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing and ambulation.

(f) "Sanatorium" means an institution for the recuperation and treatment of the victims of physical or mental disorders.

(g) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) **TAXABLE SALES.** (a) *General.* Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs, young men's christian associations, young women's christian associations and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

*Example:* When a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food or beverages are taxable.

(c) *Food components of meals.* Food items which comprise or are components of a meal shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

*Example:* A basket of chicken with coleslaw and french fries sold "to go" is taxable food.

(d) *Caterers.* Meals, food, food products and beverages sold by caterers shall be taxable. For purposes of this paragraph:

1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute taxable gross receipts.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers, including dishes, silverware, linen napkins, tablecloths, punch fountains, coffee silver service and glassware, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering service.

vice. However, items such as tents, public address systems, portable dance floors, portable bars, chairs and tables may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for their use. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placements and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator has a "premise" as defined in s. 77.54 (20) (c) 6, Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for the service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employee in cash or which is added by a customer to a bill which amount is then turned over in full to the employee shall be exempt from the sales tax, if the amount of the tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of the meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employees.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Meals to employees.* Sales of meals to employees by an employer for a consideration shall be taxable. For purposes of this paragraph:

1. A consideration shall be deemed made for meals if any one of the following conditions is met:

- a. The employee pays cash for meals consumed.
- b. An actual, specific charge for meals is deducted from an employee's wages.
- c. An employee receives meals in lieu of cash to bring the employee's compensation up to the legal minimum wage.
- d. An employee has the option to receive cash for meals not consumed.

2. In the absence of any of the conditions in subd. 1 a consideration is not deemed made when:

a. A value is assigned to meals only as a means of reporting the fair market value of an employee's meals for FICA, social security, or union contract purposes.

b. An employee who does not consume available meals has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies, such as airlines or railways, to a customer while operating in Wisconsin for a specific charge shall be taxable. These meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage is not separately stated to the customer, the tax shall apply to purchases of these meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for the items, the place of business shall be considered selling directly to the members and not to the organization except as provided in subds. 2 and 3. The sales shall, therefore, be subject to the tax, even if the organization collects from the members, pays the seller, and retains a portion of the collections for its own purposes. In these situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. When an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for food and beverages out of its own funds and provides the items to members or others without charge, the sale of the items by a retailer to the organization is not subject to the tax. If the exempt organization holds a certificate of exempt status issued by the department, it shall give the retailer the certificate number to claim the exemption.

3. Sales of food and beverages are not subject to tax even though the employee of an exempt organization as described in s. 77.54 (9a) (f), Stats., pays for the sale of the food or beverages provided all of the following are met:

a. The retailer issues the billing or invoice for the food and beverages in the name of the exempt organization.

b. The certificate of exempt status number of the exempt organization is entered on the retailer's copy of the invoice or billing document.

c. The retailer keeps a copy of the documents described in subpars. a. and b.

(3) EXEMPT SALES. The following meals shall be exempt:

(a) *Health care facilities.* Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption does not apply.

Example: If a ladies' auxiliary of a hospital, separate from the hospital, operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at the coffee shop are taxable.

(b) *"Meals on wheels."* Meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels."



(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of pre-packaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental social security, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

(4) **SPECIALTY SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food.

Example: A restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 26, 1978, pursuant to Chapter 250, Laws of 1977; and (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (d), Register, September, 1984, No. 345, eff. 10-1-84; correction in (1) (b) made under s. 13.93 (2m) (b) 7, Stats; am. (1) (intro.) and (f), (2) (a), (b), (c), (d) 1., (g), (i) and (k), (3) (a) and (4) (a), cr. (2) (k) 3., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d) (intro.), 3., (f), (i) (intro.), 1. intro. and 2. intro., (k) 2., (3) (a), (b) and (d), cr. (3) (e), Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.88 Mobile homes.** (ss. 77.51 (2), (4) (b) 6, (13) (am) and (15) (b) 5, 77.52 (2) (a) 1, 77.53 (17) and (18), 77.54 (7), (31) and (36), 77.61 (1) (a) and (c), 218.10 (3), (7) and (9) and 340.01 (29), Stats.) (1) **MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT.** A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) **SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS.** (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and

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which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to the contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) SALES AND RENTALS OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) Under s. 77.54 (31), Stats., the total gross receipts from the sale of a used mobile home, which is a primary housing unit, are exempt from the sales and use tax.

(b) Under s. 77.51 (4) (b) 6 and (15) (b) 5, Stats., 35% of the total gross receipts from the sale of a new mobile home which is a primary housing unit is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of a new mobile home.

(c) Under s. 77.54 (36), Stats., the rental of a mobile home, as defined in s. 66.058 (1) (e), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(d) Under s. 77.54 (7), Stats., mobile homes transferred to the spouse, parent, stepparent, child or stepchild of the transferor are exempt occasional sales if the mobile home has been previously registered or titled in Wisconsin in the name of the transferor and the transferor is not engaged in the business of selling homes.

(e) Under s. 77.53 (18), Stats., the use tax does not apply to a mobile home purchased by a nonresident outside Wisconsin 90 days or more before bringing the mobile home into Wisconsin in connection with a change of domicile to Wisconsin.

(4) PAYMENT OF TAX. (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) If a mobile home purchased outside Wisconsin is subject to the Wisconsin use tax, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) CONSIGNMENT SALES. When a mobile home dealer has possession of a mobile home owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

Note: For information regarding principals, see s. Tax 11.55.

(6) DEFINITION. In this section:

- (a) "Mobile home dealer" has the meaning defined in s. 218.10 (3), Stats.
- (b) "New mobile home" has the meaning defined in s. 218.10 (7), Stats.
- (c) "Primary housing unit" has the meaning defined in s. 340.01 (29), Stats.
- (d) "Retailer" is a person who has a seller's permit issued under s. 77.52 (9), Stats.
- (e) "Used mobile home" has the meaning defined in s. 218.10 (9), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; and (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective August 1, 1987, pursuant to 1987 Wis. Act 27.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. (3) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b), (3) (d), (4) (b) and (5), cr. (3) (e), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.91 Successor's liability.** (s. 77.52 (18), Stats.) (1) DESCRIPTION OF SUCCESSOR. (a) A purchaser or assignee of the business or stock of goods, including furniture, fixtures, equipment and inventory, of any retailer liable for sales or use tax shall be personally liable for the payment of the sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation is created and acquires the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for any sales or use tax liability of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

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(g) If a creditor, including a financial institution, actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered, if it never operates the business and if its sole purpose is to sell the business in its entirety, as a whole or piecemeal, at whatever price it can obtain to recover its investment.

(2) **EXTENT OF LIABILITY.** (a) If there is no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) **PROCEDURES FOR PURCHASER.** (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. An oral request for a clearance certificate shall not be accepted. The letter requesting the certificate shall include the real name, business name and seller's permit number, if known, of the prior operator. All sales tax returns for all periods during which the predecessor operated shall be filed with the department before it may issue the certificate.

(c) Under s. 77.52 (18) (a), Stats., the department has 60 days from the date it receives the request for a clearance certificate or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

Note: The interpretations in s. Tax 11.91 are effective under the general sales and use tax law on and after September 1, 1969.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (a), (b) and (g), (2) (a) and (3) (b) and (c) (intro.), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.92 Records and record keeping.** (ss. 77.51 (4) (d), 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9) and 77.75, Stats.) (1) GENERAL. All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in Wisconsin tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices which shall contain a posting reference, cash register tapes, credit memoranda which shall carry a reference to the document evidencing the original transaction or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. These records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property, including any services that are a part of the sale or lease, made within Wisconsin even if the seller or lessor regards the receipts as taxable or nontaxable. Taxable gross receipts shall be reported on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order and the supplier's invoice or billing document. Sales to organizations holding a certificate of exempt status, CES, including religious or charitable organizations, can be shown to be exempt by recording the CES number on the seller's copy of the bill of sale. All other exempt sales shall be supported by an exemption certificate signed by the purchaser and retained by the seller, unless the merchandise sold is specifically exempted by statute regardless of use, such as groceries. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in Wisconsin.

(d) Every person subject to the county sales and use tax shall keep a record of sales the person completes in each county enacting an ordinance under s. 77.70, Stats., imposing a county tax, separately from sales made elsewhere in the state. Every person shall also keep a record of the sales price of items on which the person is subject to county use or excise tax in each enacting county.

(2) **MICROFILM RECORDS.** Microfilm, including microfiche, reproductions of general books of account, such as cash books, journals, voucher registers and ledgers, and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing, ADP, tax accounting system shall have the capability of producing visible and legible records which will provide the following necessary information for verification of the taxpayer's tax liability:

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents, such as sales invoices, purchase invoices, exemption certificates and credit memoranda, shall be readily available.

(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.
2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until the tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

(7) **PENALTIES.** If the department has given notice to a person to keep certain sales and use tax records, and thereafter additional sales or use taxes are assessed on the basis of information not contained in the records, the department shall impose a penalty equal to 25% of the amount of sales or use tax assessed. This is in addition to all other penalties provided by law.

Note: The interpretations in this s. Tax 11.92 are effective under the general sales and use tax law on and after September 1, 1969, except that the 25% penalty in sub. (7) became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; emerg. cr. (1) (d), eff. 3-24-86; cr. (1) (d), Register, October, 1986, No. 370, eff. 11-1-86; am. (1) (intro.), (a), (b) and (c), (2) (intro.), (3) (intro.) and (c) and (4), cr. (7), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.925 Sales and use tax security deposits.** (s. 77.61 (2), Stats.) (1) **GENERAL.** Under s. 77.61 (2), Stats., the department may require a person liable for sales and use taxes to make a security deposit before or after a seller's permit is issued. The amount of the security deposit determined by the department may not exceed \$15,000. If a person fails or refuses to make a security deposit as requested, the department may refuse to issue a permit or revoke the permit.

(2) **FACTORS FOR DEPARTMENT'S CONSIDERATION.** (a) In determining whether or not security will be required and the amount of security to be required, the department may consider all relevant factors including the person's:

1. Evidence of adequate financial responsibility. Evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.
2. Prior record of filing tax returns and paying taxes of any kind with the department.
3. Type of business.

Example: A temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location.

#### 4. Type of entity.

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

(b) Although the individual factors listed in par. (a) may be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department. Protection of the sales and use tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines that a security deposit in excess of \$50.00 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) **TYPES OF SECURITY.** Acceptable types of security include, but are not limited to:

(a) *Non interest-bearing.* 1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

(b) *Interest-bearing.* 1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on those certificates shall be paid to the depositor.

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A security assignment, form S-127, shall be completed if this type of security is selected.

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

3. Bearer bonds issued by the U.S. government, any unit of Wisconsin municipal government or by Wisconsin schools. The depositor should clip 2 full years' coupons before depositing this type of security.

(4) **DETERMINATION OF AMOUNT.** (a) If a security deposit is required, the amount generally shall be equal to the depositor's average quarterly Wisconsin sales and use tax liability increased to the next highest even \$100 amount. The average quarterly sales and use tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous sales and use tax liability at the location specified on the permit.

2. The predecessor's sales and use tax liability at the location specified on the permit,

3. The estimated tax liability shown on the application for permit.

4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.



(b) If at the time of the security review the retailer has an outstanding sales and use tax delinquency, the delinquent amount shall be added to the average quarterly sales and use tax liability.

(5) RETURN OF DEPOSIT. (a) Section 77.61 (2), Stats., provides: "... Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter."

(b) The 24 month compliance requirement described in par. (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24-month period described in par. (a), the department shall review the taxpayer's compliance record. If the taxpayer has complied with subch. III, ch. 77, Stats., the department shall within 60 days after the expiration of the 24-month period certify the deposit for refund.

(d) Compliance with subch. III, ch. 77, Stats., means that:

1. Sales and use tax returns were timely filed.
2. All payments were made when due.
3. No delinquencies of sales or use tax, interest or other charges existed.
4. No penalties due to negligence or fraud were assessed for filing periods within the 24-month compliance period.
5. No assessment of additional tax, interest or other charges for filing periods within the 24-month compliance period is unpaid at the end of the 24-month compliance period.

(e) If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

Note: The interpretations in s. Tax 11.925 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The return of deposit provisions in sub. (5) became effective March 13, 1980, pursuant to Chapter 125, Laws of 1979; and (b) The \$15,000 limit for security deposits became effective October 1, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. (1), (2) (a) 1., 3., and 4., (3) (b) 2., and (5) (c), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), (2) (b), (3) (b) 1., (5) (c), (d) 4. and 5., r. (3) (a) 3., Register, December, 1992, No. 444, eff. 1-1-93.

**Tax 11.93 Annual filing of sales tax returns.** (s. 77.58 (5), Stats.) (1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

(2) Returns and payments of retailers reporting on an annual basis shall be due and payable on the last day of the month following the close of their calendar or fiscal year.

Note: The interpretations in s. Tax 11.93 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to that date, a \$100 standard applied; and (b)

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The "annual information return" was eliminated for 1981 and subsequent years, pursuant to Chapter 221, Laws of 1979.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; cr. (4), Register, January, 1983, No. 325, eff. 2-1-83; r. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 11.94 Wisconsin sales and taxable transportation charges.** (ss. 77.51 (14) (intro.) and (d) and (14r) and 77.52 (1), Stats.) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (14r), Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is *not* a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employees or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (14) (d), Stats., applies to a situation where tangible personal property is delivered to a purchaser in Wisconsin by an owner or former owner of the property holding or required to hold a Wisconsin seller's permit or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a manufacturer ships or turns over the property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller, who had received the original order from the Wisconsin purchaser, the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

**(2) TAXABLE TRANSPORTATION CHARGES.** (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

Example: When the seller charges the purchaser for delivery of the taxable tangible personal property in a Wisconsin county that has not adopted the  $\frac{1}{2}$  % county tax, the correct computation of tax is as follows:

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Selling price of merchandise	\$100.00
Delivery charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 5% ( $\$110 \times 5\%$ )	<u>5.50</u>
Total	\$115.50

(b) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no allocation is made, the total delivery charge shall be taxable.

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(d) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller.

Example: If the "delivered price" of a carload of lumber is \$6,000, including transportation, and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

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