

ORDER OF THE DEPARTMENT OF REVENUE
AMENDING, REPEALING AND RECREATING AND CREATING RULES



The Wisconsin Department of Revenue adopts an order to: amend Tax 11.14(2)(c), (3)(b) and (c) and (6)(b)4.a; repeal and recreate Tax 11.14(12); and create Tax 11.13, relating to exemption certificates and direct pay permits with respect to sales and use taxes.

Analysis by the Department of Revenue

Statutory authority: ss. 77.52(17m)(e) and 227.11(2)(a), Stats.

Statutes interpreted: s. 77.52(17m), Stats.

SECTION 1. Tax 11.13 is created to address the use of direct pay permits, effective for taxable years beginning on or after January 1, 1995, as a result of the creation of s. 77.52(17m), Stats., by 1993 Wisconsin Act 437. Standards and requirements are set forth, and the types of property and services a holder is ineligible to purchase without paying tax to a retailer under the direct pay method are specified pursuant to rule-making authority provided in s. 77.52(17m)(e), Stats.

SECTION 2. Tax 11.14(2)(c) is amended to delete an obsolete statutory reference. Tax 11.14(3)(b) and (c) and (6)(b)4.a are amended to update language and style per Legislative Council Rules Clearinghouse standards.

SECTION 3. Tax 11.14(12) is repealed and recreated to address direct pay authorization and to reference Tax 11.13.

SECTION 1. Tax 11.13 is created to read:

Tax 11.13 DIRECT PAY. (s. 77.52(17m), Stats.) (1) DEFINITIONS. In this section:

(a) "Continuous" use of a direct pay permit means that the purchase without tax applies to the purchase being made from the retailer and subsequent purchases from that retailer and is considered a part of each order given to the retailer. The continuous use of the direct pay permit remains in force until the continuous use is voided by the direct pay permit holder.

(b) "Single purchase" use of a direct pay permit means that the purchase without tax applies only to the purchase being made from a retailer for which the direct pay permit is given.

(2) GENERAL. (a) The holder of a direct pay permit may purchase tangible personal property and taxable services, except those in sub. (6)(a) and (b), from a retailer without paying Wisconsin sales or use tax to the retailer.

(b) The direct pay permit holder shall report Wisconsin use tax on the sales price of tangible personal property or taxable services purchased from a retailer without tax using a direct pay permit if the property or service is subject to Wisconsin sales or use tax. The tax shall be reported on the direct pay permit holder's Wisconsin sales tax return for the period in which the taxable storage, use or consumption first occurs in Wisconsin.

Note: Sales price, for purposes of this paragraph, has the meaning specified in s. 77.51(15), Stats.

(3) ISSUANCE. (a) The department shall issue a direct pay permit to those applicants who meet the qualifications set forth in s. 77.52(17m)(b), Stats.

Note: The issuance of direct pay permits is effective for taxable years beginning on or after January 1, 1995.

(b) Persons who wish to obtain a direct pay permit shall apply to the department using the form prescribed by the department. A \$5 fee is required upon application.

Note: Application for direct pay is made using form S-101, application for direct pay permit. Form S-101 is available by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

(c) A direct pay permit shall be effective for purchases made beginning on the first day of the applicant's taxable year, for Wisconsin franchise or income tax purposes, after the permit is issued.

Example: A person's taxable year begins July 1 for Wisconsin franchise or income tax purposes. The person files an application for a direct pay permit with the department on January 1, 1995. The person is issued a direct pay permit which is effective for purchases made on or after July 1, 1995.

(4) REVOCATION OR CANCELLATION. (a) A direct pay permit issued by the department may be used indefinitely until it is revoked by the department or cancelled by the holder.

(b) A permit may be cancelled by the holder by mailing the permit to the department for cancellation. A letter shall be enclosed with the permit, indicating the holder's intention to cancel the permit.

Note: The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902.

(c) The cancellation of a direct pay permit shall become effective immediately following the last day of the holder's taxable year in which the permit is received by the department.

(5) USING DIRECT PAY. (a) Documentation. A direct pay permit holder shall provide one of the following to a retailer when purchasing without paying tax to the retailer using a direct pay permit:

1. A copy of its direct pay permit. The direct pay permit holder shall also provide to the retailer a written statement as to whether the direct pay permit is for a single purchase or is continuous.

2. A written document containing all of the following:

a. The name and address of the direct pay permit holder.

b. A statement that the direct pay permit holder is purchasing without Wisconsin sales or use tax using a direct pay permit.

c. The direct pay permit holder's direct pay permit number.

d. The effective date of the direct pay permit.

e. A statement as to whether the use of the direct pay permit is for a single purchase or is continuous.

f. The signature of the direct pay permit holder.

(b) Continuous use. 1. If a direct pay permit holder indicates in writing to a retailer that the use of the direct pay permit is continuous,

that purchase and all subsequent purchases from the retailer, except those in sub. (6)(a) and (b), shall be made without paying Wisconsin sales or use tax to the retailer using the direct pay permit, unless the continuous use is voided by the direct pay permit holder. The direct pay permit holder may void the continuous use of its direct pay permit by furnishing the retailer a letter indicating that continuous use no longer applies.

2. If the use of a direct pay permit is continuous, it is necessary for the direct pay permit holder to provide the documentation in par. (a) to a retailer only at the time the direct pay permit holder begins making purchases without paying tax to that retailer using the direct pay permit, rather than at the time of each purchase.

3. While the use of a direct pay permit is continuous, all purchases from a retailer, except those in sub. (6)(a) and (b), shall be made using the direct pay permit even though a resale certificate, manufacturer's exemption certificate, certificate of exemption or other exemption requiring different documentation may apply.

Example: On July 1, 1995, Company A begins using its direct pay permit when purchasing tangible personal property from Company B. Company A provides a written statement to Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or taxable services, except those described in sub. (6)(a) and (b), by Company A from Company B on or after July 1, 1995, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, a resale certificate, manufacturer's exemption certificate, or certificate of exemption should not be used when purchasing without paying tax to a retailer.

(c) Single purchase. If a direct pay permit holder uses its direct pay permit for a single purchase, any subsequent purchase by the direct pay permit holder from that retailer is subject to Wisconsin sales or use tax unless the direct pay permit holder provides the information in par. (a) for that purchase or that purchase is otherwise exempt from tax.

(d) Retailer records. The retailer shall keep the information provided by the direct pay permit holder under par. (a) on file as authorization for the direct pay permit holder to make purchases without paying tax to the retailer.

(6) SERVICES AND PROPERTY NOT ELIGIBLE FOR DIRECT PAY. (a) Services. A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sales of services to the direct pay permit holder under the following Wisconsin statutes:

1. Section 77.52(2)(a)1, Stats., relating to furnishing rooms or lodging.
2. Section 77.52(2)(a)2, Stats., relating to admissions to amusement, athletic, entertainment or recreational events, devices or facilities.
3. Section 77.52(2)(a)5, Stats., relating to telecommunications services.
4. Section 77.52(2)(a)9, Stats., relating to parking.
5. Section 77.52(2)(a)12, Stats., relating to cable television system services.
6. Section 77.52(2)(a)20, Stats., relating to landscaping services.

(b) Property. A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sale, lease or rental to the direct pay permit holder of the following tangible personal property:

1. Tangible personal property transferred to a purchaser in connection with the sale of landscaping services subject to tax under s. 77.52(2)(a)20, Stats.
2. Motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles or aircraft.
3. Food, food products and beverages described in s. 77.54(20)(b), Stats.
4. Meals, food, food products and beverages subject to tax under s. 77.54(20)(c), Stats.

(c) Exemptions. Although not eligible to be purchased without paying Wisconsin sales or use tax to a retailer using a direct pay permit, the taxable services and tangible personal property described in pars. (a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farming, manufacturing or other exemption applies. Documentation is required to purchase without tax, as provided in s. Tax 11.14.

(7) RETAILER'S LIABILITY - PERMIT REVOKED OR CANCELLED. A retailer is not liable for sales or use tax on gross receipts from the sale of tangible personal property or taxable services, except those described in sub. (6)(a) and (b), to a person who has provided the retailer with the appropriate information under sub. (5)(a), until the earlier of the following:

(a) The date the retailer is notified by the direct pay permit holder or the department that the holder's direct pay permit has been revoked by the department. A direct pay permit is considered revoked on the date the holder receives the department's notice of revocation.

(b) The last day of the direct pay permit holder's taxable year in which the retailer is notified by the holder or the department that the holder's direct pay permit is being cancelled by the holder as provided in sub. (4)(b).

SECTION 2. Tax 11.14(2)(c), (3)(b) and (c) and (6)(b)4.a are amended to read:

Tax 11.14(2)(c) Under ~~ss. 77.54(3)~~ and s. 77.57, Stats., if a purchaser certifies in writing by using an exemption certificate, other than a resale certificate, that the property purchased will be used for activities or under circumstances which ~~makes~~ make the purchase of the property exempt from the sales tax, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

(3)(b) To be valid, a resale or other exemption certificate ~~must~~ shall upon its face disclose a proper basis for exemption. The use of phrases such as "nontaxable", "exempt" or similar terminology do not provide a proper basis for an exemption. A certificate ~~must~~ shall be properly executed, and dated and shall contain all the necessary information. Thus, all retailers should be familiar with the instructions contained in the certificate. A certificate claiming an exemption not provided by law is not valid.

(c) If a certificate is valid, a seller or lessor who accepts the certificate in good faith is relieved of any liability for collection or payment of tax upon transactions covered by the certificate. For good faith to be shown, the certificate ~~shall~~ may contain no statement or entry which the seller or lessor knows, or has reason to believe, is false or misleading. The question of good faith is one of fact and depends upon a consideration of all the conditions surrounding the transaction. If the seller accepts a certificate with knowledge which gives rise to a reasonable inference that the purchaser does not intend to use the item or service as claimed, the good faith of the seller will be questioned. The seller is presumed to be familiar with the law and rules of the department relating to the business or businesses in which the seller is involved.

(6)(b)4.a. A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a seller's permit number; ~~or~~ or.

SECTION 3. Tax 11.14(12) is repealed and recreated to read:

Tax 11.14(12) DIRECT PAY PERMITS. The use of direct pay permits in Wisconsin is authorized under s. 77.52(17m), Stats. A person may apply to the department for a direct pay permit.

Note: For information on who qualifies for a direct pay permit and how to use direct pay, refer to s. Tax 11.13.

Note to Revisor: Change the Note at the end of Tax 11.14 to read:

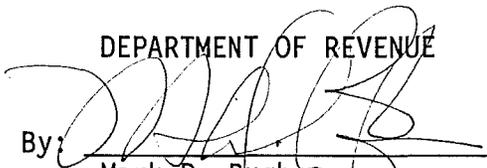
Note: The interpretations in s. Tax 11.14 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for railroad lubricants became effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; and (b) The use of direct pay permits in Wisconsin became effective for taxable years beginning on or after January 1, 1995, pursuant to 1993 Wis. Act 437.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

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

Dated: May 1, 1995

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

CKRUL/9



LRB or Bill No./Adm. Rule No.

TAX 11.13, 11.14

Amendment No. if Applicable

**FISCAL ESTIMATE
DOA-2048 (R10/92)**

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Direct Pay Permits for Sales Tax

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

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

- Increase Costs - May be Possible to Absorb
Within Agency's Budget Yes No

 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

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

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties VTAE Districts
 School Districts Others _____

Fund Sources Affected

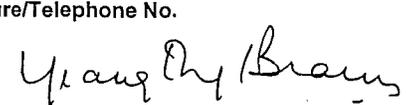
- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule sets forth the standards for direct payment of sales and use tax by purchasers, as provided by 1993 Wisconsin Act 437. It also deletes an obsolete statutory reference and makes changes in language and style to conform with Legislative Council Rules Clearinghouse standards. It has no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue Kathryn L. Carmichael, 266-9706	Authorized Signature/Telephone No. Yeang-Eng Braun 266-2700 	Date 11/8/94
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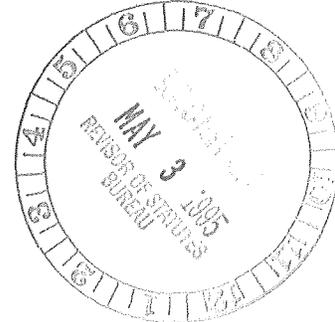
State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708-8933 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

May 2, 1995



Gary L. Poulson
Assistant Revisor
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

Re: Clearinghouse Rule 94-208

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to direct pay permits and exemption certificates with respect to sales and use taxes.

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

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKRUL/81

Enclosure

cc: Douglas J. LaFollette, Secretary of State
Commerce Clearing House, Inc.
Research Institute of America, Inc.



State of Wisconsin ● DEPARTMENT OF REVENUE

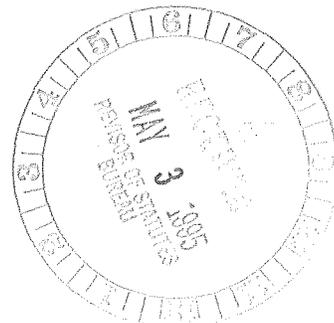
125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708-8933 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

May 2, 1995

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



Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 94-208.

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

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKRUL/80

Enclosure

cc: Revisor of Statutes Bureau