

(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.

(6) RETURN OF DEPOSIT. 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 com-

plied 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) 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 employes 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:

Selling price of merchandise	\$100.00
Delivery charge	10.00
Subtotal	\$110.00
Tax at 5% (\$110 × 5%)	5.50
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.

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(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.

**Note:** The interpretations in s. Tax 11.94 are effective under the general sales and use tax law on and after September 1, 1969.

**History:** Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (e), r. (2) (b), renum. (2) (c), (d) and (e) to be (2) (b), (c) and (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (2) (b) and (d), Register, June, 1991, No. 426, eff. 7-1-91; reprinted to restore dropped copy in (1) (b), Register, December, 1995, No. 480.

**Tax 11.95 Retailer's discount.** (ss. 77.61 (4) (c) and 77.76 (3), Stats.) (1) For timely reporting state and county sales or use tax collected on their retail sales, retailers may deduct .5% of the sales and use tax payable on retail sales during the retailer's tax year.

(2) The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted. The discount is not allowed if the payment is delinquent. It is also not allowed on deficiency determinations, amended returns filed after the due date or consumer's use tax imposed pursuant to s. 77.53 (2), Stats.

**Note:** The interpretations in s. Tax 11.95 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The amount of retailer's discount on or after January 1, 1993, until December 31, 1992, was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use tax payable and .5% of the sales and use tax payable in excess of \$20,000 each year; (b) The amount of retailer's discount in sub. (1) became effective January 1, 1993, pursuant to 1991 Wis. Act 269; and (c) The requirement that county tax be remitted to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wis. Act 287.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr., Register, September, 1984, No. 345, eff. 10-1-84; emerg. am. (1), eff. 3-24-86; am. (1) Register, October, 1986, No. 370, eff. 11-1-86; am. (1), Register, March, 1991, No. 423, eff. 4-1-91; am. (1), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 11.97 "Engaged in business" in Wisconsin.** (ss. 77.51 (13) (c) and (k), (13g), (13h) and (14) (j), 77.53 (3), (5), (7), (9) and (9m) and 77.73, Stats.) (1) **GENERAL.** (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14th Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between

the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established, the out-of-state seller is required to register and collect the state's use tax.

Note: Retailers having nexus in Wisconsin for use tax purposes do not necessarily have nexus in Wisconsin for franchise or income tax purposes. Refer to s. Tax 2.82 for nexus standards with respect to franchise and income taxes.

(b) Some United States supreme court decisions concerning nexus include:

1. *Nelson vs. Sears Roebuck & Co.*, 312 U.S. 359 (1941)
2. *Nelson vs. Montgomery Ward & Co.*, 312 U.S. 373 (1941)
3. *General Trading Co. vs. State Tax Commission of the State of Iowa*, 322 U.S. 335 (1944)
4. *Miller Bros. Co. vs. Maryland*, 347 U.S. 340 (1954)
5. *Scripto, Inc. vs. Carson*, 362 U.S. 207 (1960)
6. *National Bellas Hess, Inc. vs. Illinois Department of Revenue*, 386 U.S. 753 (1967)
7. *National Geographic Society vs. California Board of Equalization*, 430 U.S. 551 (1977)

(2) STATUTES. (a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and s. 77.51 (14) (j), Stats., defines a lease as a continuing sale.

(b) Section 77.51 (13g), Stats., defines the term "retailer engaged in business in this state" and s. 77.51 (13h), Stats., provides an exception for foreign publishers.

(c) Under s. 77.53 (5), Stats., the tax required to be collected by a use tax registrant is a debt owed by the registrant to this state, and s. 77.53 (7), Stats., provides the tax is to be stated separately from the list price of the goods sold.

(3) ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS". Unless otherwise limited by federal statute, a retailer engaged in business in Wisconsin who shall register includes the following:

- (a) Any retailer owning any real property in this state.
- (b) Any retailer leasing or renting out any tangible personal property located in this state.
- (c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.
- (d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.
- (e) Any person servicing, repairing or installing equipment or other tangible personal property in Wisconsin.

(f) Any person delivering goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

(4) ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS". Activities which, in themselves, do not create nexus in this state, include:

(a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or common carrier by the retailer into this state, or when possession of the goods is taken at the out-of-state location by the consumer.

(e) A foreign corporation obtaining a certificate of authority from the Wisconsin secretary of state to transact business in Wisconsin.

(5) EXCEPTION FOR FOREIGN PUBLISHERS. (a) Under s. 77.51 (13g) and (13h), Stats., a foreign corporation that is a publisher of printed materials does not have nexus in Wisconsin if its only activities in Wisconsin are:

1. Storage of its raw materials for any length of time in Wisconsin in or on property owned by a person, other than the foreign corporation, if the materials are for printing by that person.
2. Delivery of its raw materials to another person in Wisconsin, if the delivery is for printing by that other person.
3. Purchase from a printer of a printing service or of printed materials in Wisconsin for the foreign corporation and the storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation.
4. Maintaining, occupying and using, directly or by means of another person, a place in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

(b) In this subsection, "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

(6) REGISTRATION. (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Permit", Form A-101. There is no fee for registration.

Note: Form A-101 may be obtained from any Department of Revenue office or by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b) Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate, and the 15-day time period within which the department is required to act on certificate applications.

(7) **OUT-OF-STATE RETAILERS NOT ENGAGED IN BUSINESS IN THIS STATE.** Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may apply for a use tax registration certificate with the department in the manner described in sub. (6). Holders of the use tax registration certificates shall collect the use tax from Wisconsin customers, give receipts therefor and report and pay the use tax to the Wisconsin department of revenue in the same manner as retailers engaged in business in this state.

(8) **ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES.** The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a county which has adopted the tax. The activities in sub. (4) which do not create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

Note: The interpretations in s. Tax 11.97 are effective under the general sales tax law on and after September 1, 1969, except that the provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wis. Act 336.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; cr. (5) (c), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (6), eff. 3-24-86; cr. (6), Register, October, 1986, No. 370, eff. 11-1-86; cr. (4) (e) and (5), r. and recr. (2) (b), am. (1) and (3) (d) and (e), renun. (5) (a) to (c) and (6) to be (6) (a), (7), (6) (b) and (8) and am. (6) (a), (b) and (7), Register, March, 1991, No. 423, eff. 4-1-91.

**Tax 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats. (ss. 71.82 (2) (b), 77.60 (2) and 77.62 (1), Stats.) (1) PROCEDURES.** The secretary may reduce the delinquent interest rate from 18% to 12% per year effective for all determinations, assessments or other actions for additional tax made by the department on or after

August 1, 1981, when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, WI 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the sales and use taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) **FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) **DETERMINATION NOT APPEALABLE.** The secretary's determination under this rule is not appealable.

Note: The interpretations in s. Tax 11.98 are effective under the general sales and use tax law on and after September 1, 1969, except that the secretary could reduce the delinquent interest rate from 18% to 9% for determinations made prior to August 1, 1981.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, June, 1983, No. 330, eff. 7-1-83.