

## Chapter Tax 11

### SALES AND USE TAX

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**Tax 11.001 Definitions and use of terms.** In this chapter, unless otherwise specified:

(3) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

(5) "Department" means the Wisconsin department of revenue.

(8) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and
- (d) Keeping proper records. (See Tax 11.92)

(12) "Tax" means the 4% Wisconsin sales or use tax.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "\_\_\_\_\_ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of \_\_\_\_\_ (specific tangible personal property or a specific service) is taxable", means that:

- (a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or
- (b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

**History:** Cr. Register, January, 1978, No. 265, eff. 2-1-78.

**Tax 11.01 Sales and use tax return forms.** (s. 77.58, Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

- (a) Form S-010. For occasional sales of motor vehicles.
- (b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.
- (c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (d) Form S-012A (also called "ST-12A"). The annual information return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (e) Form S-013. For concessionaires. (Annual return).
- (f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).
- (g) Form S-015. For occasional bingo sales.
- (h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.

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(i) Form S-001U. For occasional and non-Wisconsin sales of boats.

(j) Form S-050U (also called "UT-5"). For consumers other than persons holding a Wisconsin seller's permit, retailers having a use registration certificate and nonresident contractors.

(k) Form SU-051. For nonresident contractors having a use tax liability who do not have a Wisconsin seller's permit.

(l) Form A-R-1 (Department of Transportation form). For the occasional sale of aircraft.

(2) Returns required to be filed with the department shall be filed by mailing them to P.O. Box 8902, Madison, Wisconsin 53708 or by delivering them to 4638 University Avenue, Madison, Wisconsin.

**Note:** Forms may be obtained by mail request to the Wisconsin Department of Revenue, P.O. Box 8803, Madison, Wisconsin 53708.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78.

**Tax 11.03 Elementary and secondary schools and related organizations.** (s. 77.54 (4), (9) and (9a), Stats.) (1) **DEFINITIONS.** (a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in s. 119.30, Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in paragraph (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) **SALES BY ELEMENTARY AND SECONDARY SCHOOLS.** (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.

2. School lunches and library and book fines.

3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.

4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, films or other exhibits, lectures and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) **SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS.** Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as a collection agent for the seller, whether or not the school receives a commission for such collection. The retailer (e.g., a photographer) is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) **SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS.** Under s. 77.54, Stats., gross receipts from sales to the following organizations are exempt:

(a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status. Such organizations include parent-teacher associations and student organizations.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972 through October 3, 1973.

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.04 Constructing buildings for exempt entities.** (ss. 77.51 (4) and (18), 77.54 (9a) and 77.55 (1), Stats.) (1) **DEFINITION.** In this rule, "exempt entity" means a person qualifying for an exemption under ss. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a) provides an exemption for sales to this state or any agency thereof, or any county, municipality as defined in s. 41.02 (4), school district or other political subdivision; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals. Section 77.55 (1) provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated agency of instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) **TAXABLE GROSS RECEIPTS.** Sales of building materials to contractors or subcontractors used in the construction of buildings or structures, or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) **PURCHASES PRESUMED TAXABLE.** When a contractor and an exempt entity enter into a construction contract to improve real property, which provides that the contractor is to furnish the building materials, it is

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presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(4) **SUPPLIER IS CONTRACTOR.** A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. The sale of building materials to the consumer is subject to the tax.

(5) **EXEMPT GROSS RECEIPTS.** A supplier's sales of building materials made directly to an exempt entity are not taxable, even though such tangible personal property is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received from the exempt entity.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969. This rule supersedes the policies contained in Technical Information Memorandum S-63, entitled "Constructing Buildings for Exempt Entities", dated November 1, 1972. The policies in this rule apply to periods open to adjustment under the statute of limitations (s. 77.59, Stats.).

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 11.05 Governmental units.** (ss. 77.51 (3) and 77.54 (9a), Stats.)

(1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following: (a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).

(b) Food and gift stand sales (e.g., sales of tangible personal property such as sandwiches, beverages, candy, cigarettes (effective September 1, 1975), ice cream, confections, tobacco products, postcards, books and novelties). Newspapers and periodicals regularly issued at average intervals not exceeding 3 months are exempt.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.

(e) Sales of electricity, gas and steam by municipal utilities. However, water sold through mains is exempt.

(f) Sales of maps, plat books, photocopies or other printed material.

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units shall not collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.

(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month.

(j) Vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer, including sales of such items by hospitals, sanitoriums and nursing homes to patients, employees or guests.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies. Such sales by vocational, technical and adult education schools are taxable, except for the period from July 1, 1972 through October 3, 1973. Such sales by elementary and secondary schools are exempt.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles (see par (g) above).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

(3) NONTAXABLE RECEIPTS. Gross receipts of governmental units from the following are not taxable:

(a) Fees for licenses and permits (e.g., tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits).

(b) Charges for parking motor vehicles and aircraft and docking and storage of boats.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines, including charges for books that are not returned or charges for a duplicate library card.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.

(k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(l) Meals, food, food products or beverages (except soda water beverages and beer) sold by hospitals, sanitoriums and nursing homes to patients, employes or guests; dormitory meals furnished in accordance with any contract or agreement by a public or private institution of higher education; and meals sold to the elderly or handicapped by "mobile meals on wheels" on and after October 4, 1973.

(m) Service charges for snow removal, weed cutting, police officers at social gatherings, service of legal papers (e.g., summons, complaints and civil process) and ushers and door guards.

(n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.

(o) Fees charged for admission to a university student union building.

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officers and clerk of court under ss. 59.42, 59.57, 69.24, Stats., or by a filing officer under s. 409.407 (2), Stats., and fees charged by a register in probate pursuant to s. 253.34, Stats.

(4) PURCHASES. Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 144.07 (4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26, Stats., or any other unit of government, or any agency or instrumentality of 2 or more units of government within this state. However, the exemption does not apply to governmental units of other states.

(a) A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

(b) A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;

2. The seller bills the governmental unit directly; and

3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

(c) Purchases by state chartered credit unions are subject to the tax. Purchases by federally chartered credit unions and federal reserve banks are not subject to the tax.

(d) Purchases (such as for lodging, meals or uniforms) by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for such purchases by the governmental unit.

(e) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United States government providing for sales and use tax exemptions.

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

**History:** Cr. Register, December, 1977, No. 284, eff. 1-1-78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9-1-79.

(3) **TAXABLE SALES TO DENTISTS.** Equipment, materials and supplies sold to dentists which are used to conduct their business provided these items are not included in the list of exempt sales in part (2) above.

**Note:** The interpretations in this rule are effective under the general sales and use tax law effective September 1, 1969. In *Dept. of Revenue v. Milwaukee Refining Corp.*, 80 Wis. 2d 44 (1977), the Wisconsin Supreme Court held that gold bars sold to dentists who use the gold in the course of rendering their professional services are not subject to the sales and use tax.

**History:** Cr. Register, November, 1978, No. 276, eff. 12-1-78.

**Tax 11.19 Printed material exemptions.** (ss. 77.52 (2) (a) 11, 77.54 (9a), (15) and (25) and 77.55 (1), Stats.) (1) **GENERAL.** All retail sales of tangible personal property, including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This rule describes exemptions which commonly apply to sales of printed material.

(2) **STATUTES.** (a) Section 77.52 (2) (a) 11 imposes the sales and use tax on certain services. However, an exemption (effective March 15, 1970) is provided for the printing or imprinting of tangible personal property furnished by consumers, which property will be subsequently transported outside the state for use outside the state by the consumer for advertising purposes.

(b) Section 77.54 (15) provides an exemption for newspapers and periodicals (effective September 1, 1969) and shoppers guides (effective July 1, 1978).

(c) Section 77.54 (25) (effective May 21, 1972) provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.

(3) **NEWSPAPERS AND PERIODICALS DEFINED.** (a) The exemption for "newspapers" applies to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1), Stats., qualifies for the sales tax exemption. Advertising supplements are not subject to the tax if they are:

1. Printed by a newspaper and distributed as a component part of one of that newspaper's publications.

2. Printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper.

(b) A "newspaper" does not include handbills, circulars, flyers, or the like, advertising supplements not described in par. (a) which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within par. (a). Advertising is not considered news of a general character and of a general interest.

(c) The exemption for "periodicals" is limited to publications which appear at stated intervals, 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 (for example, books sold by the Book of the Month Club or similar organizations); 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/order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

(4) PRINTED ADVERTISING MATERIALS FOR OUT-OF-STATE USE. (a) Effective May 21, 1972 printed advertising materials such as 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 such materials are purchased and stored for the purpose of subsequently transporting the same outside the state by the purchaser for use thereafter solely outside this state. 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, and stocking and purchasing guides designed to be used by wholesalers and retailers. Matchbooks, calendars 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 such 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 this rule are effective under the general sales and use tax law on and after September 1, 1969 except: (a) where other dates are shown; and (b) the second class mail standard described in sub. (3) was effective August 1, 1974.

**History:** Cr. Register, August, 1979, No. 284, eff. 9-1-79.

**Tax 11.26 Other taxes in taxable gross receipts and sales price.** (s. 77.51 (11) (a) 4, (12) (a) 4 and (26), 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. Such 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. Such tax may be imposed by this state, 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 such 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 shall be included in a retailer's gross receipts and sales price:

(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. Presently there are federal excise taxes on tires, inner tubes, tread rubber, certain trucks, truck parts, firearms, ammunition, lubricating oils, fishing equipment, cigarettes, beer, and intoxicating liquor (including wine).

(d) The federal fuel tax included in the price of special fuels subject to the sales tax (e.g., sales for use in aircraft, boats and other non-highway use).

(e) The cigarette tax imposed by s. 139.31, Stats.

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

(a) The federal communications tax imposed upon intrastate 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