

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 Wisconsin sales or use tax in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats.

(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; am. (12), Register, January, 1983, No. 325, eff. 2-1-83.

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 MV-1. For occasional and dealer sales of motor vehicles, motor homes, trailers and semitrailers.

(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.

(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.

minations should be sent to the Wisconsin Department of Revenue, Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902, Madison, Wisconsin 53708.

(e) *Treatment of categories.* Each category of sale listed in pars. (a), (b) and (c) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and pay a tax on sales in all categories. If the \$2,500 standard described in par. (c) is exceeded, all receipts from sales of property or services described in that paragraph and all subsequent receipts from admissions and meals shall be taxable.

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

(4) SALES WHICH ARE NOT OCCASIONAL SALES. The following transactions shall not be exempt occasional sales:

(a) Sales by a person who holds or is required to hold a seller's permit. For example, sales of used equipment by a retail store or vending machine operator are taxable.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures. Refer to s. Tax 11.13 for additional information concerning this subject.

(c) Sales of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers and semitrailers, except as specifically provided in s. 77.54 (7), Stats. Unless exempt, a use tax shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, snowmobile, trailer or semitrailer is registered or the mobile home not exceeding 45 feet in length is registered or titled for use within this state.

(d) Unless exempt under sub. (5) (c) sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of such property.

(e) Sales by persons conducting bingo games.

(f) Unless exempt under sub. (5) (c) sales by persons engaged primarily in the business of making nontaxable sales of personal property, such as manufacturers, wholesalers and grocers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

(5) SALES WHICH ARE OCCASIONAL SALES. The following sales are exempt occasional sales:

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

(b) Sales by a sole proprietor, who is required to be a holder of a seller's permit, of tangible personal property which has not been used in the

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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 holding or 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.

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

Note: Examples. 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fisherman, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (c).

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

Note: The interpretations in s. Tax 11.10 are effective under the general sales and use tax law on and after September 1, 1969 except that sub. (5) (b) became effective on March 1, 1979 and the \$2,500 standard in sub. (3) (d) and the \$1,000 standard in sub. (5) (c) are effective on January 1, 1985. Prior to January 1, 1985 the standard in sub. (3) (d) was \$1,000 per year and the standard in sub. (5) (c) was \$500 per year for persons who had gross receipts from sales of fishing bait; soft drinks; garage, lawn or rummage sales; lawn maintenance and landscaping services; parking; firewood and books.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (6) (e), Register, February, 1979, No. 278, eff. 3-1-79; am. (4) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (b) (intro.) and (e), (4) (c), (6) (a), (b) and (d), r. and recr. (3) (c), cr. (6) (f) to (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (a) 3. and (b) 2., Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (c) 2., (d) and (e), (4) (d) and (f), cr. (5), r. (6), Register, April, 1985, No. 352, eff. 5-1-85.

Tax 11.11 Waste treatment facilities (industrial or governmental). (s. 77.54 (26), Stats.) (1) THE STATUTE. (a) The sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility is contained in s. 77.54 (26), Stats.

(b) The general property tax exemption for a waste treatment facility is contained in s. 70.11 (21) (a), Stats. and the exemption for public utilities and railroads is contained in 76.02 (10), Stats.

(2) CONTRACTORS AND SUBCONTRACTORS. (a) The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates such property into an approved industrial waste treatment facility or who incorporates such property into a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sale. Certification of exempt use shall be made on a Certificate of Exemption, Form S-207.

(b) Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department. Register, April, 1985, No. 352

"exclusively" as used in s. 77.54 (5) (b) and this section means that the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for such tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

(b) Accessories, attachments, parts and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54 (5) (b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle's load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps and shoring beams. This exemption does not include corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. (h).

Note: In a decision dated May 19, 1980 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Dane County Circuit Court reversed the November 23, 1979 decision of the Wisconsin Tax Appeals Commission and held that van equipment and supplies that are exempt under s. 77.54 (5) (b), Stats., include furniture pads, covers, packing supplies, tape, pianoboards, ladders, walkboards, straps, lining paper and corrugated boxes. The Court also stated that "it must be kept in mind that it is undisputed that all of the items are assigned to and carried on the vans." The Court of Appeals District IV, affirmed the Circuit Court's decision. Under this interpretation, the only corrugated boxes and packing materials that qualify for exemption under s. 77.54 (5) (b), Stats., are those that are assigned to and carried on an exempt van and that are not transferred to a customer.

(c) The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt vehicles shall be exempt.

(d) The exemption shall not apply to the following property used by common or contract carriers: automobiles as defined in s. 340.01 (4), Stats., station wagons as defined in s. 340.01 (61), Stats., and self-propelled vehicles for off-highway use such as road machinery, fork lifts and other industrial trucks.

(e) Equipment and supplies acquired by a carrier for the repair, service or maintenance of its exempt vehicle are not exempt, including clean towel service, cleaning supplies, repair tools, welding torches and welding gas, battery chargers, grinding discs and masking tape.

(f) If a vehicle purchased without tax is converted to private use, a use tax is due. The tax is measured by the sales price of the vehicle to the purchaser, except that if the taxable use first occurs more than 6 months after the sale to the purchaser, the measure of the tax may be, at the purchaser's option, either the sales price or the vehicle's fair market value at the time the taxable use first occurs.

(g) Examples of special situations related to this exemption include:

1. Moving. A truck purchased to transport pads and packing materials to and from moving jobs qualifies for this exemption.

2. Timber cutting and log hauling. Cutting down trees, cutting them into logs and hauling them to a mill as a private business operation voids

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the exemption, even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

3. Refuse, garbage or snow hauling. Trucks purchased for hauling refuse, garbage or snow do not qualify for the exemption.

4. Milk hauling. Vehicles of a milk or cheese factory that engages in hauling milk from farms to its plant for processing do not qualify for the exemption.

5. Towing disabled vehicles. Towing of vehicles to the repair facility of a garage-wrecker operator is part of a private repair business which is not exempt.

(h) The transfer to a customer of corrugated boxes, containers and related packing materials in conjunction with moving or transporting a customer's goods is incidental to the selling, performing or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

Note: The treatment of par. (h) first applies to transfers on or after September 1, 1983 under the provisions of 1983 Wisconsin Act 27.

(i) Motor carriers shall not be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property or taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property for resale without paying tax by issuing to their supplier a properly completed resale certificate or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

(2) RAILWAY ROLLING STOCK. (a) Section 77.54(12), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor."

(b) The exemption for rolling stock includes:

1. The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt rolling stock.

2. Purchases of any equipment which is operated on railroad rails, including an industrial firm's switching locomotives used to switch freight cars on its own property, except vehicles which may also be used on a highway.

3. Fuel used to heat a caboose, or run a compressor which cools a railway car.

4. A utility's coal cars used to haul coal from mines to the utility.

(c) The exemption does not apply to:

1. Rails, ties and other road building and maintenance materials.

2. Bracing materials, rough lumber and dunnage materials.
3. Ice to refrigerate a railway car.

(3) **COMMERCIAL VESSELS.** (a) Section 77.54 (13), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor."

(b) The exemption for commercial vessels applies to:

1. Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing which have a document issued by the U.S. customs service showing a net tonnage of 50 tons or more.
2. Items that become a component part of the exempt commercial vessel.
3. The sale or furnishing of repair, alteration, cleaning, painting and maintenance of exempt commercial vessels.

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, nets, fishing tackle, lumber for dry docking, bracing, blocking and dunnage materials and other materials not incorporated into the vessel.

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, November, 1978, No. 275, eff. 12-1-78; am. (1) (a) and (d), (3) (b) 1., Register, November, 1981, No. 311, eff. 12-1-81; am. (3) (b) 1., Register, January, 1983, No. 325, eff. 2-1-83; am. (1) (b), (d) and (2) (b) 2., r. and rec. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1-1-84.

Tax 11.17 Hospitals, clinics and medical professions. (ss. 77.51(21), (22) and (22m), 77.52 (2) (a) 1 and 9, 77.54 (9a), (14), (14s), (20) (c) 4 (22) and (28), Stats.) (1) **GENERAL.** (a) Although professional personnel in hospitals and clinics and other members of medical professions (i.e., physicians, surgeons, oculists, optometrists and podiatrists) regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such property is an incident of a service rather than a retail sale of such property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for medicines furnished by a licensed physician, surgeon or podiatrist to that person's patient for medical treatment. Section 77.54 (22), Stats., provides an exemption for medical appliances and prosthetic devices. The scope of these exemptions is set forth in rules Tax 11.08, 11.09 and 11.45.

(2) **PURCHASES BY HOSPITALS.** Purchases by hospitals are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a Certificate of Exempt Status ("C.E.S.") by the department. When purchasing goods and services a hospital can furnish its C.E.S. number to its supplier, and the supplier may make sales of every type of tangible personal property or services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) **PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS.** Purchases made by medical clinics and physicians are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list must be furnished to patients at the direction of a physician, surgeon or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of the health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	*Artificial eyes and limbs
Alcoholic beverages	Bone pins and plates
Bandages, gauze and cotton	*Crutches and wheel chairs
Bed pans	Diaphragms
Beds and linens	*Dietary foods
Compresses and dressings	*Disposable syringes containing insulin
Cosmetics	Dye
Deodorants and disinfectants	*Hearing aids and parts
Distilled water	Medical oxygen and equipment to administer oxygen
Enema kits	Medicines
Instruments	*Needles and syringes used by diabetics
Laboratory equipment and supplies	Oral contraceptives
Medical equipment	Pacemakers
Office equipment and supplies	Prescription drugs
Paper products	Prophylactics
Printed material	Rubbing alcohol
Rib belts and supports	Suppositories
Soda water beverages	Sutures
Soap	Vaccines
Splints and cast materials	Vaginal creams and jellies
Uniforms and gowns	Vitamins
X-ray film and machines	

(4) **SALES BY HOSPITALS, HOSPITAL AUXILIARIES, CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS.** (a) The gross receipts from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for rooms, medical services and other items including charges for anesthesia and anesthesia supplies, bandages applied in the hospital, blood and blood plasma, dressings applied in the hospital, intravenous solutions, laboratory tests, oxygen, radiation and x-ray treatment.

2. Hospitals' sales of meals, food, food products and beverages to patients, staff or visitors.

(b) The gross receipts from the sales of the following are taxable:

1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.

3. Sales of tangible personal property or taxable service by a clinic, which sales are not directly related to the rendition of medical services.

4. Sales of meals and other tangible personal property by an organization affiliated with a hospital (e.g., if a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, gross receipts from this business are g taxable).

5. An optometrist's sales of nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses and other types of tangible personal property ordinarily taxable when sold at retail, unless the gross receipts from such sales are less than \$1,000 within a calendar year. Optometrists whose receipts from taxable items equal or exceed \$1,000 annually shall register with the department and obtain a seller's permit. Those whose receipts from taxable items are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable items.

(5) **HOSPITAL DEFINITION.** Section 50.33 (1), Stats., provides the definition of hospital which is to be used for sales tax purposes.

Note: The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption in sub. (3) for needles and syringes used by diabetics became effective November 19, 1975 pursuant to Ch. 102, Laws of 1975, and the exemption in sub. (3) for oxygen equipment became effective September 1, 1983 pursuant to 1983 Wisconsin Act 27.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78; am. (4) (a) 1. and cr. (4) (b) 5., Register, January, 1983, No. 325, eff. 2-1-83; am. (3), Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.18 Dentists and their suppliers. (ss. 77.52 (1) and 77.54 14) and (22) (c), Stats.) (1) **DENTISTS.** Charges by dentists for dental services are not subject to the sales tax. In addition, charges by dentists for artificial teeth, fillings, bridges, crowns or inlays are not subject to the tax.

(2) **EXEMPT SALES TO DENTISTS.** The gross receipts from the following sales to dentists are not taxable: medicines (such as nitrous oxide, oxygen or novocain), gold, silver, other alloys used to fill teeth, cement, crowns, inlays, fillings and other items of tangible personal property sold to dentists which are installed in a patient's mouth and are intended to remain there. The labor charge of a dental supplier to fabricate such items also is not taxable.

(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

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(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. 275, eff. 12-1-78.

Tax 11.19 Printed material exemptions. (ss. 77.51 (30), 77.52 (2) (a) 11, 77.54 (2m), (9a), (15), (25) and (30), 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), Stats., provides an exemption for the sale of newspapers, periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months and shoppers guides.

(c) Section 77.54 (25) 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.

(d) Section 77.54 (2m), Stats., provides an exemption for "The gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient." This exemption applies to newspapers, shoppers guides and to periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (30), Stats.

(3) NEWSPAPERS, SHOPPERS GUIDES AND PERIODICALS DEFINED. (a) Section 77.51 (30), Stats., defines a "newspaper" under ch. 77 as: ". . . 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) is a newspaper. 'Newspaper' also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A 'newspaper' does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection 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

3. Sales of pure fruit juices as defined in ch. 97 (Stats. 1967) 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.

4. "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, 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. For example, a protein concentrate used by persons engaged in athletic activities is an exempt food. 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 such items are taxable.

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 Wisconsin 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.

Tax 11.52 Coin-operated vending machines and amusement devices. (ss. 77.51 (17) and (24), and 77.52 (1) and (2) (a) 2, 6, 7 and 10, Stats.) (1) DEFINITION. In this rule, "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.

(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:

(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, tobacco products, handkerchiefs, combs and hygienic products; and

2. Fruit, milk, bakery goods, eggs, salads, cookies, crackers and all other foods and beverages for on-premise consumption. The total gross

receipts from sales of food and beverages through vending machines shall be presumed derived from on-premise consumption and therefore taxable, unless the operator has records showing the portion of gross receipts from sales made for off-premise consumption involving exempt food.

(b) The license to use or the rental of coin-operated machines which are personal property or which provide a taxable service, such as hair drying machines, shoe shine machines and bowling ball cleaning machines.

(c) Coin-operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

(4) **NONTAXABLE RECEIPTS.** Receipts from the following are not taxable: (a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin-operated, self-service machines.

(b) Coin-operated storage lockers, pay toilets and scales.

(5) **REPORTING AND RECORD KEEPING.** (a) The gross receipts of vending machine and amusement device operators are subject to the sales tax. Thus gross receipts include, for example, receipts from items selling for one, five and ten cents and more. No deduction shall be permitted for the cost of the property sold, materials used, labor or service cost, or any other expense (including commissions paid to place machines in an establishment).

(b) Sales tax collected from customers may be deducted from gross receipts before computing the tax payable, if the tax is collected under the bracket system and customers are advised of the amount of sales tax they are paying by a sign posted on the machine. If no tax is collected under the bracket system, no deduction shall be allowed.

(c) Each operator shall maintain adequate and complete records including: 1. The location of each machine;

2. The serial number of each machine;

3. Purchases and inventories of all merchandise sold through machines;

4. Receipts from sales of exempt merchandise; and

5. Purchase records of all machines and the cost of all supplies of which the machine operator is deemed to be the user or consumer (for example, a vending machine or juke box, including repairs and parts therefor and records used in the juke box).

(6) **SALE, LEASE OR RENTAL OF MACHINES.** (a) Receipts from the sale, lease, rental or license to use coin-operated machines and attachments, parts and supplies therefor are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

(b) Machines purchased exclusively for rental to others may be purchased by the lessor without tax if the lessor gives a resale certificate

to the lessor's supplier. If the lessor intends making any use of the machines other than rental, a resale certificate shall not be given. In either event, the lessor's rental receipts are taxable.

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, January, 1978, No. 265, eff. 2-1-78; am. (3) (a)1. and r. (4) (c), Register, December, 1983, No. 336, eff. 1-1-84.

Tax 11.53 Temporary events. (ss. 77.52 (7), (8), (9), (10), (11), (12), and (19), 77.58 and 77.61 (2), Stats.).

(1) **DEFINITIONS.** In this section:

(a) 1. "Concessionaire" includes any person conducting games at temporary events such as coin pitch, pop-in, ring toss, short range basketball, guess your weight, fish pond, and tip the bottle. Further examples include persons selling snack foods and other tangible personal property from stands at temporary events such as ice cream, cotton candy, candy apples, sno cones, popcorn, frozen delight, jewelry, photos, hats, signs or kitchenware.

2. "Concessionaire" does not include:

a. A person operating amusement rides, traveling vaudeville performances, menageries, or objects of curiosity shows.

b. A person selling meals or beverages including lunches, sandwiches or beer.

c. A person in subpar. a. or b. who also operates as a concessionaire.

(b) "Concessionaire permit" means a permit for a temporary event conducted by a concessionaire which is valid for only one temporary event for the duration of the event.

(c) "Mobile seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at any temporary event conducted by the permittee within the state but which is valid at only one event at a time. Except for its use at more than one place of operations, all provisions of s. 77.52 (7), (8), (9), (10), (11) and (12), Stats., apply to it.

(d) "Temporary event" means an activity at one place of operation for a brief duration where taxable sales are made. A place of operation includes a fair, carnival, circus, festival or portable roadside stand.

(e) "Temporary seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at only one temporary event for the duration of the event.

(2) **PERMITS FOR TEMPORARY EVENTS.** (a) Each person who conducts business as a retailer at a temporary event shall hold one of the following:

1. Mobile seller's permit.

2. Temporary seller's permit.

3. Concessionaire permit.

(b) Any retailer, including a concessionaire, intending to conduct business at temporary events may apply for and hold a mobile seller's permit. Retailers who are not concessionaires may acquire either a mobile seller's

permit or a temporary seller's permit for temporary events. Concessionaires who do not hold a mobile seller's permit shall acquire a concessionaire permit for a temporary event.

(c) A concessionaire who is not a resident of Wisconsin shall furnish the department with the name and address of his or her agent in this state upon whom may be served any process, notice or demand required or allowed by statutes to be served upon the applicant.

(3) **SECURITY.** Application for permits referred to in this section shall be on such forms as prescribed by the department. The applicant shall be subject to security requirements of s. 77.61 (2), Stats., except that for events of 7 consecutive days or less retailers holding concessionaire permits shall deposit security of \$10 per concession for each event beginning prior to January 1, 1982 and \$25 per concession for each event beginning on or after that date and deposits for events which exceed 7 consecutive days shall be \$10 per concession for each event beginning prior to January 1, 1982 and \$50 per concession for each event beginning on and after that date.

Note: The revision to this section is effective on February 1, 1982 and the increases in security deposits are effective on that date.

(4) **RETURNS.** (a) Sales and use tax returns due from persons holding permits referred to in this section shall be subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the return and shall be due as follows:

1. Mobile seller's permittee: Quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under s. 77.58 (1), (2) and (19), Stats., and shall include on such return gross receipts from all temporary events and other taxable transactions of the permittee during the quarter.

2. Temporary seller's permittee: Per event, within 10 days after the close of the event for which the permit was issued.

3. Concessionaire permittee: Annually, on or before January 31 of the next succeeding calendar year, and including on such return the gross receipts from all concessionaire events conducted by the permittee during the calendar year.

(b) Concessionaire and temporary seller permittees may claim the security deposited in cash for the event or events reported on as a credit against the tax due, unless the department notifies the permittee otherwise.

(5) **VIOLATION.** Under s. 77.52 (12), Stats., any person who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

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

History: Cr. Register, 1965, No. 114, eff. 7-1-65; am. Register, May, 1966, No. 125, eff. 6-1-66; am. (1), Register, June, 1975, No. 234, eff. 7-1-75; renum. from Tax 11.01, Register, January, 1978, No. 265, eff. 2-1-78; r. and recr., Register, January, 1982, No. 313, eff. 2-1-82.

Tax 11.54 Temporary amusement, entertainment or recreational events or places (ss. 77.51 (7) (c), 77.52 (7), (19) and 77.61 (2), Stats.). (1) "Admission" for the purpose of this rule means the right or privilege to have Register, September, 1984, No. 345

access to or use of a place, facility or location in Wisconsin where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions are subject to sales tax.

(2) "Places of amusement, entertainment or recreation" for the purpose of this rule include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(3) Pursuant to s. 77.51 (3), Stats., and in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of s. 77.51 (7) (c), Stats., if said entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(5) As retailers, such entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52 (7), Stats., and may be required to post security as provided in s. 77.61 (2), Stats. Such retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax. Further, it does not apply to churches or other nonprofit groups which operate within the occasional sale limitations of s. 77.51 (10) (c), Stats.

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

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76; renum. from Tax 11.02; Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.55 Agents, consignees, lienors and brokers. (s. 77.51 (4g) (f), (7) and (8), Stats.) (1) **UNDISCLOSED PRINCIPAL.** A person who has possession of personal property owned by an unknown or undisclosed principal and has the power to transfer title to that property to a third person, and who exercises that power, is a retailer whose gross receipts are subject to the tax.

(2) **DISCLOSED PRINCIPAL.** (a) Gross receipts from the sale of tangible personal property made by a person with possession of the property, who

is acting for a known or disclosed principal, are taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property. If the principal fails to pay the tax, the agent may be liable for it.

(b) A principal shall be deemed disclosed to a purchaser only when the evidence shows that the identity of the principal is made known to the purchaser at the time of the sale, and when the name and address of the principal appear on the books and records of the agent.

(3) **ENFORCEMENT OF LIENS.** Pawnbrokers, storage persons and others selling tangible personal property to enforce a lien are retailers with respect to such sales, and tax applies to the gross receipts from such sales.

(4) **REPOSSESSIONS.** Repossessions of tangible personal property by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

Note: The interpretations in this rule are effective under the general sales and use tax law effective September 1, 1969.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

Tax 11.56 Printing industry. (ss. 77.51 (4) (h), (25) and (30); 77.52 (1) and (2) (a) 11 and 77.54 (2), (2m) and (6) (a) and (b), Stats.) (1) **DEFINITIONS.** In this section:

(a) The process of manufacturing printed matter by a manufacturer includes initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate-ready film, and producing an image carrier which is installed on a printing press, or equivalent prepress technology employed to produce an image carrier, and the bindery/finishing stage.

(b) "Typesetting" includes converting images into standardized letter forms of a certain style which usually are hyphenated, justified and indented automatically by means of machinery and equipment. Typesetting machinery and equipment includes, fonts, video display terminals, tape and disc making equipment, computers and typesetters which are interconnected to operate essentially as one machine. A system shall be considered to operate essentially as one machine whether or not the tape or disc is automatically fed to the typesetter.

(c) "Manufacturer" includes a printer or other person who performs any one or more of the processes in manufacturing printed matter, provided that the printer or other person qualifies as being engaged in manufacturing under s. 77.51 (27) Stats., whether or not the printed matter is sold.

(2) **PRINTERS' TAXABLE SALES.** Taxable receipts of printers include gross receipts from the following, unless otherwise exempt.

(a) Charges for printing, lithography, photolithography, rotogravure, gravure, letter press, silk screen printing, imprinting, multilithing,

mimeographing, photostating, steel die engraving, and similar operations for consumers, whether or not the paper and other materials are furnished by the consumers. A printer's charge for printing on paper furnished by a customer to produce printed matter not to be sold is subject to the tax.

(b) Charges for services in connection with the sale of printed matter, such as overtime and set-up charges, die cutting, embossing, folding, and binding operations, and charges for painting signs, show cards and posters, whether the materials are furnished by the printer or by the customer.

(c) Charges for envelopes, but not for separately stated charges for postage in the sale of prestamped envelopes.

(3) **TAXABLE SALES BY OTHERS.** (a) Sales of tangible personal property by persons who are not printers, including so-called "trade shops" such as typesetters, image reproduction manufacturers, color separators and binder/finishers are taxable unless the sales qualify for exemption under s. 77.54 (2), (2m) or other statutes.

(b) 1. Section 77.54 (2) exempts the gross receipts from sales of ". . . tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale . . ."

2. Section 77.54 (2m), Stats., exempts the gross receipts from sales of "tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. The exemption . . . does not apply to advertising supplements that are not newspapers."

(c) Tangible personal property includes type-matter, whether or not combined with artwork, such as typeset output, a paste-up, mechanical, assembly, camera-ready copy, flat or a photoreproduction (including film plates).

(4) **NONTAXABLE SALES.** Tax does not apply to charges, if stated separately on invoices and in the accounting records, for mailing services such as:

(a) Addressing printed matter by hand or mechanically for the purpose of mailing.

(b) Enclosing, sealing and preparing for mailing.

(c) Mailing letters or other printed matter.

(5) **EXEMPT PRINTING MACHINERY AND EQUIPMENT.** Section 77.54 (6) (a), Stats., provides that: "Machinery and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property" are exempt from the sales or use tax. This includes machinery and equipment and repair parts or replacements thereof used exclusively and directly by a manufacturer in the printing process to manufacture tangible personal property. Interpretations of this statute are contained in s. Tax 11.40.

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(6) PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER FOR SALE. (a) Persons engaged in manufacturing printed matter for sale may purchase the following items without tax under the statutes indicated:

1. Section 77.54 (2). Property becoming an ingredient or component part of an item destined for sale (e.g., paper stock or printing ink).

2. Section 77.54 (2). Property such as chemicals, emulsions, acids, raw film, lubricating oils, greases, nonoffset spray, finished art, color separations, plate-ready film, other positives and negatives, flats and similar items which are consumed, destroyed or lose their identity in the manufacture of tangible personal property to be sold. For example, a printer's purchases of positives and negatives which are used to produce catalogs and shoppers guides it sells to other persons.

3. Section 77.54 (6) (b). Containers and packaging and shipping materials for use in packing, packaging or shipping printed matter to their customers.

(b) The exemptions under s. 77.54 (2), Stats., described in par. (a) 1 and 2, apply to property purchased by a person who does not use the property other than to provide it to a manufacturer described in par. (a) for use by the manufacturer in manufacturing tangible personal property to be sold. The exemption under s. 77.54 (2) does not apply if the manufactured tangible personal property is not to be sold. Examples of nontaxable purchases include:

1. A paper manufacturer's purchases of negatives which it transfers to a printer, who uses the negatives to produce printing on the manufacturer's products which are to be sold.

2. An advertising agency's purchases of color separations which are furnished to a commercial printer who uses the color separations to produce advertising material the agency sells to a retailer.

3. A publisher's purchases of paper and ink which are furnished to a commercial printer to produce a publication to be sold.

(7) PURCHASES FOR USE IN MANUFACTURING PRINTED MATTER NOT FOR SALE. (a) An exemption applies for tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not they are transferred without charge to a recipient.

Note: Examples of nontaxable purchases: 1. A shoppers guide publisher, who distributes the publication without charge, purchases paper and furnishes it to a printer who charges for the printing of the shoppers guide.

2. A shoppers guide publisher purchases paper it uses to print a shoppers guide which it distributes without charge to recipients.

(b) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items if such purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under (a).

Note: Example. A retailer purchases color separations which are used in its own printing plant to produce advertising material it distributes to its customers in Wisconsin.

Note: The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of typeset material shall first be considered, September, 1984, No. 345

ered sales of tangible personal property on April 1, 1983 and the exemption in subd. (3) (b) 2 for ingredients of publications was created by 1983 Wisconsin Act 27, effective July 2, 1983.

History: Cr. Register, March, 1983, No. 327, eff. 4-1-83; am. (3) (a), renum. (3) (b) to be (3) (b) 1., cr. (3) (b) 2., r. and recr. (7), Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.57 Public utilities. (ss. 77.54 (3), (6) (a) and (c), (17) and (30), Stats.) (1) **TAXABLE SALES.** The gross receipts from the sale of the following tangible personal property and services provided by utilities are taxable:

(a) Utility services billed to household, industrial or commercial customers, with any adjustments for discounts taken by customers (e.g., early payment discount) in the utility's next reporting period.

(b) Excess use charges and minimum or idle service charges.

(c) The gross amounts received for contacts on poles and excess pole height contributions.

(d) Parking space rentals.

(e) Rentals of transformers located on a customer's property.

(f) Labor and materials to install or repair conversion burners.

(g) The rental of water heaters.

(h) Sales of scrap, gravel or timber sold for removal.

(i) Sales of tools, used equipment and other tangible personal property to employes.

(j) Pilot relights for furnaces ("no heat" calls), or replacing appliance fuses.

(k) Sale of a utility overhead transmission or distribution line in place, if installed under easement or license on land owned by others. (See rule Tax 11.86.)

(l) Charges to builders to put in "temporary services".

(2) **NONTAXABLE SALES.** Gross receipts from the following charges to customers are not subject to the tax:

(a) Connection or reconnection charges for natural gas, electricity and water.

(b) Utility services delivered to Indians living on a Indian reservation, or services delivered on the reservation to an Indian tribal governing board.

(c) Billings for repairs to persons who damaged utility property.

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

(f) Contributions in aid of construction (i.e., payments by a customer to have a line extended to the customer's property).

(g) The installation charge for a pole sold to customer, which is installed on land owned by the customer.

- (h) "Wheeling" energy for another utility.
 - (i) Sales of gas or other fuel (electricity is not a fuel) to farmers if the fuel is used to heat farm buildings, including greenhouses.
 - (j) Labor charged a customer for the installation of a complete furnace or built-in appliance.
 - (k) Water delivered to customers through mains.
- (1) 1. Coal, fuel oil, propane, steam and wood used for fuel, sold for residential use.
 2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.
 3. Electricity sold during the months of November, December, January, February, March and April for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.
 4. For purposes of the exemptions in subds. 2 and 3, s. 77.54 (30), Stats., provides that electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed. In any event, each qualifying customer shall receive only 6 months of service exempt from taxation during the November through April period.
 5. If fuel or electricity is sold to a person partly for an exempt use and partly for a use which is not exempt, no tax shall be collected by the seller on the portion of the gross receipts which is used for an exempt purpose, as specified on an exemption certificate provided by the purchaser to the seller, as described in subd. 6.
 6. Where a building, which contains residential quarters and commercial operations, is heated by one central heating plant, it is necessary to determine the portion of the fuel purchased which qualifies for the "residential use" exemption. The percentage of residential use may be computed by dividing the number of square feet used for residential purposes, excluding common areas, by the total area heated, excluding common areas. If this does not produce a reasonable result, any other reasonable method of estimating may be used. The resulting percentage should be rounded to the nearest 10%.
 7. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence. Use in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting and other ordinary uses by the purchaser in a residence. Residential use includes use in single-family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, and farm houses, if the structure is used as a person's permanent residence. Residential use includes use in apartment houses and farm houses even though they are on a commercial or rural meter, respectively.
 8. "Non-residential use" is use other than "residential use" and includes any use in the conduct of a trade, business or profession, whether such trade, business or profession is carried on by the owner of the premises or some other person. It includes use in motor homes not used as a permanent residence, travel trailers, other recreational vehicles and

transient accommodations. "Transient accommodations" include: hotels, motels, inns, travel homes, tourist houses, summer cottages, apartment hotels or resort lodges or cabins, and any accommodation which is rented for a continuous period of less than one month.

9. A "continuous" certification designation is provided on the exemption certificate, form S-016 or S-017, and, if claimed, the form remains in effect until replaced or revoked. A new certificate shall be filed if there is a change in the percentage of exempt use.

(3) **TAXABLE PURCHASES.** (a) Persons engaged in the business of providing electrical or gas public utility service are consumers of the tangible personal property or taxable services used to provide such services. The tax applies to the sales of such items to them, except where a specific exemption applies, such as the exemptions shown in sub. (4).

(b) Examples of gross receipts from the sale, lease or rental of items to a public utility which are subject to the tax are:

1. Transformers, substation equipment and other tangible personal property purchased by a utility and use to construct, improve or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others. (See Rule Tax 11.86.)

3. Charges for coating pipe or creosoting poles.

4. Charges for X-rays of welding joints.

5. Gas or electricity purchased for resale but used by a utility, but not gas used as a fuel in producing electricity or steam.

6. Charges for aerial photographs and maps.

(4) **NONTAXABLE PURCHASES.** The following sales to public utilities are not subject to the tax:

(a) Fuel converted to electrical energy, gas or steam by utilities (s. 77.54 (6) (c), Stats.).

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufacturing process begins when the coal starts moving by conveyor directly to the boiler bunker, and it ends at the generator bus duct. An overhead crane used for the installation and repair of a turbine, and a fuel storage tank are not directly used in manufacturing.

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except for sub. (1) (e) and (l) which became effective February 1, 1979 and subsection (4) (a) which provides an exemption for all fuel converted to electrical energy, gas or steam by utilities. Prior to October 1, 1981 only coal, oil, gas and nuclear fuels were exempt.

Subsection (2) (l) 9 refers to the following new forms: Form S-016, Certificate of Exemption for Fuel Oil, Propane, Coal, Steam and Wood Used for Fuel for Residential or Farm Use. Form S-017, Certificate of Exemption for Electricity and Natural Gas for Residential or Farm Use. These forms may be obtained at any Department of Revenue Office or by mail by writing to the department, P.O. Box 8902, Madison, WI 53708, or calling (608) 266-2776.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; cr. (2) (l), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (4) (a), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11

Tax 11.61 Veterinarians and their suppliers. (ss. 77.51 (7) (m) and (o) and 77.52 (2) (a) 10, Stats.) (1) VETERINARIANS. (a) Charges made by veterinarians which shall be exempt from the sales tax include charges for the following professional services for animals:

1. Medical services.
2. Hospitalization services.

(b) Charges made by veterinarians which shall be subject to the sales tax include charges for the following activities for animals:

1. Boarding.
2. Grooming.
3. Clipping.

(c) Sales of tangible personal property by veterinarians which shall be taxable include the following:

1. Leashes, collars and other pet equipment.
2. Pets.
3. Pet food.

(2)(a) Sales to veterinarians of medicines for animals and sales of other tangible personal property to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax. Prior to June 24, 1974 sales to veterinarians of medicine for animals were taxable if the medicine was to be used or furnished by a veterinarian in the performance of services, but were exempt if they were purchased for resale independent of the performance of such service.

(b) If the tax on sales to veterinarians is not collected by a supplier (for example, because the supplier is located out-of-state and is not required to be registered with the department), the veterinarian shall be responsible for and shall report and pay a use tax on such purchases directly to the department.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (2)(a), Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.62 Barbers and beauty shop operators. (s. 77.51 (7) (i) and 77.52 (2) (a) 10, Stats.) (1) NONTAXABLE SALES AND SERVICES. (a) Barbers and beauty shop operators are engaged primarily in a service occupation and charges for services on human beings shall be exempt from the sales tax.

(b) Barbers and beauty shop operators shall *not* be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt as such occasional sellers shall pay sales or use tax to their suppliers on all purchases, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property (such as hair pieces) for resale without paying tax by issuing to their supplier a properly completed resale certificate.

(2) **TAXABLE SALES AND SERVICES.** (a) Barbers and beauty shop operators are the consumers of the materials and supplies which are used in performing their services and shall pay sales tax to their suppliers on such purchases.

(b) Over the counter sales by barbers or beauty shop operators of packaged cosmetics, hair tonics, lotions, wigs, falls, toupees or other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property shall be subject to the sales tax. Unless a barber or beauty shop operator falls within the occasional sales standard set forth in sub. (1) (b), the person shall be responsible for collecting and remitting to the department the tax on all such sales or charges.

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

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 11.63 Radio and television stations. (ss. 77.51 (4), 77.52 (2) (a) 11 and 77.54 (23m), Stats.) (1) **NONTAXABLE SERVICES.** Gross receipts from the sale of the following services are not subject to the sales and use tax.

- (a) Air time.
- (b) Advertising.

(2) **TAXABLE SALES.** (a) Gross receipts from charges imposed by a radio or television station for art work, slides, films, tapes or other tangible personal property which such station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. Such gross receipts are taxable even though a station may retain possession of the tangible personal property because "sale" is defined to include the transfer of not only title to and possession of tangible personal property, but also the transfer of enjoyment of tangible personal property. If an advertiser maintains any control over the tangible personal property prepared or produced such as the right to determine when the property will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property.

(b) Gross receipts from a radio or television auction are subject to the sales and use tax.

(c) If a radio or television station advertises on behalf of out-of-state persons to sell merchandise (such as records or books), the station is the retailer of such merchandise and must pay sales tax on such sales if:

1. The advertising message does not clearly identify the out-of-state source of the merchandise; or
2. The merchandise orders are sent directly to the station which accounts for the gross receipts.

(3) **NONTAXABLE PURCHASES.** The gross receipts from the sale, lease or rental of motion picture films or tape, and advertising materials related thereto, to a motion picture theater or radio or television station are exempt from the sales and use tax under s. 77.54 (23m). Sales of sound tapes to radio stations are included in this exemption.

(4) **TAXABLE PURCHASES.** Radio and television stations are consumers of equipment, materials and supplies used to conduct their businesses

and shall pay sales or use tax on purchases of such tangible personal property except as provided in sub. (3).

(5) **BROADCASTING TOWERS.** Commercial broadcasting towers constituting the transmission antenna system of a radio or television station are deemed real estate improvements for sales and use tax purposes if installed on land owned by the station. Contractors engaged in construction of such broadcasting towers are the consumers of building materials used by them in constructing, altering or repairing such towers and must pay tax on the cost of such materials.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

Tax 11.64 Background music. (s. 77.51 (4) (intro) and (j), Stats.) (1) **GENERAL.** Persons in the business of providing background music commonly utilize one or both of the methods set forth below. The sales and use tax consequences depend upon the method used.

(2) **MUSIC PLAYED AT CENTRAL STUDIO.** The gross receipts from the furnishing of background music to business, industry and others from a central studio over telephone circuits or by FM radio are not subject to the sales or use tax. The persons who provide such service are the consumers of the tapes, tape players, transmitters and other tangible personal property used to provide the service, and their purchases of these items, as well as telephone services from the telephone company, are taxable. However, the gross receipts from equipment leased or rented to the customer as part of providing this service are taxable, and an exemption for resale may be claimed on the purchase of such leased or rented equipment, if the equipment is used exclusively for lease or rental.

(3) **MUSIC PLAYED BY CUSTOMER.** The gross receipts from the lease, rental, hire or license to use all tangible personal property comprising a background music system are taxable when the system is located on a customer's (e.g., lessee's or licensee's) premises and is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment and other tangible personal property to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, since rental is the equivalent of a resale.

Note: The interpretations in this rule 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.

Tax 11.65 Admissions. (s. 77.52 (2) (a) 2, Stats.) (1) **TAXABLE SALES.** (a) The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses, carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs and flying clubs. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic,

entertainment or recreational facilities to members are charges for the privilege of obtaining access to such clubs and are taxable receipts of the clubs.

(c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing, card playing, hayrides, hunting, fishing, and horseback or pony riding are taxable.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught. The charge for the privilege of hunting in shooting preserves, pheasant farms and fenced area bird and animal farms is also taxable, even if the charge is based in whole or in part on the number of game birds or animals taken.

(e) A person who provides boat, tackle, bait and guide service provides a combination of recreational items which is subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the gross receipts from conducting bingo games. The tax is remitted to the bingo control board, rather than the department of revenue.

(g) The receipts from the sale or furnishing of access to campgrounds are taxable, whether the fees are collected on a daily, weekly, annual or other basis.

(h) The sale of admissions to pleasure tours and cruises, including a cruise originating in Wisconsin by boat on a body of water on the border of Wisconsin, is taxable regardless of whether a portion of the cruise takes place on out-of-state waters.

(2) NONTAXABLE SALES. The following are nontaxable admissions:

(a) The dues of civic, fraternal, religious, patriotic and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment or recreational facilities to their members.

(b) Admissions to museums of history, art or science, and to auto or trade shows, if professional entertainment is not provided at the show.

(c) Admissions to antique shows unless the admission charge can be used as a credit against the price of merchandise purchased.

(d) Entry fees in contests if the primary motive of the majority of the persons entering the contest is "business" and not "recreation". Generally, entry fees are not taxable for:

1. Professional golfers entering a major tournament.
2. Professional riders entering a rodeo.
3. Professional stock car drivers entering an auto race.
4. Large snowmobile races where the entrants are primarily manufacturers' representatives.

(3) PRIZE MONEY. Bowling alley proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may sub-

tract from its taxable gross receipts the amount advertised and set aside for prize money.

(4) "DONATIONS". (a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment must be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation must be obvious that admittance is not restricted to those making a donation. A set amount for the donation (through newspaper publicity or signs at the entrance), a turnstile or restrictive device that must be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

Actual
 (b) When a charge to a patron bears little or no relationship to the actual value received, such as \$100 per ticket for fund raising dinner dance, the tax may be based on reasonable value of the tangible personal property and taxable services received.

(5) LOCATION OF EVENT. The receipts from sales of tickets of admissions to places of amusement or athletic events which take place in Wisconsin are taxable, even though some of the tickets may be sold out-of-state. For example, all sales of university of Wisconsin football tickets for games played in Wisconsin are taxable. However, if the university of Wisconsin, as agent, sells tickets for the university of Michigan, the receipts are not subject to the Wisconsin sales tax.

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except that bingo receipts became taxable under ch. 156, Laws of 1973, effective December 30, 1973.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (d), cr. (1) (g) and (h), Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.66 Communication and CATV services. (ss. 77.51 (28), 77.52 (2) (a) 3, 4 and 12 and 77.54 (24), Stats.) (1) TAXABLE SERVICES. Gross receipts from the sale or charge for the following services are taxable:

(a) Telegraph services.

(b) Telephone services of whatever nature including, in addition to services connected with voice communication, any services connected with the transmission of sound, vision, information, data or material other than by voice communication, and connection, move and change charges, except directory advertising service and coin-operated telephone service. Interstate and international services are taxable if the service originates from and is charged to a telephone located in this state.

(c) Two-way voice communication services over telephone or radio (commonly referred to as mobile telephone service). Nonmechanical telephone answering services are not taxable.

(d) One-way paging service.

(e) Cable television system service, including installation charges.

(2) PURCHASES BY PERSONS PROVIDING SERVICE. Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing such services. The tax applies to the sale of such property to them. However, s.

77.54 (24), Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals". The Dane county circuit court's decision of May 22, 1981 in *Wisconsin Department of Revenue v. North-West Services Corporation and North-West Telephone Company* held that a telephone company may purchase without tax tangible personal property leased or rented to customers in conjunction with an activity open to competition with others who are not public utilities.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature", except coin-operated and interstate services, and one-way paging service. Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975. Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982.

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

Tax 11.67 Service enterprises. (ss. 77.51 (4) (intro.), (h) and (1), (5), (7), (11), (12), (13), (15) (a) and (b), (24) (a) and (b) and 77.52 (1), Stats.) (1) **GENERAL.** When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which furnishes without separate charge as an incidence to the service.

(2) **RECEIPTS AND PURCHASES OF PERSONS PROVIDING SERVICES.** (a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales, and the tax applies to the total gross receipts therefrom without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax. However, if the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge attributable to the taxable services.

(3) **SPECIAL SITUATIONS.** (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which

shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject of the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) *Artistic expressions.* Sales of works of art, such as paintings and sculptures, are taxable.

(d) *Interior decorator's fee.* 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered (such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply) and there is no sale of tangible personal property involved with the transaction.

(e) *Research and development.* 1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not 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 customers (e.g., architects, engineers or business firms). These charges are taxable because 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 (tangible personal property) for use by the customer.

(i) *Enuresis 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 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, 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.

Tax 11.68 Construction contractors (ss. 77.51(4)(intro), (g), and (i); (11)(intro) and (c) 4; (12)(intro) and (c) 2 and (18); and 77.52(2)(a) 10, Stats.) (1) GENERAL. (a) Construction contractors may be retailers 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.

(b) Contractors are retailers of:

1. Property which retains its character as personal property after sale and installation. (See subs. (4) and (6).)

2. Labor or services furnished in installing tangible property which retains its character as personal property after installation. (See subs. (4) and (6).)

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. (See sub. (10) for a description of such property.)

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 such activities 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 (e.g., a hot water heater or water softener sold and installed in a purchaser's residence).

(3) PURCHASES BY CONTRACTORS. (a) Under s. 77.51 (18), Stats., contractors who perform real property construction activities are the consumers 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. Such 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. (See subs. (4) and (6).)

(c) Machinery and equipment (such as road building equipment, tunnel shields, construction machines, cement mixers and trucks), tools (such as power saws and hand tools), and supplies (such as machine lubricating and fuel oils, form lumber and industrial gases) purchased by a construction contractor for the contractor's use are generally either con-

sumed in the process of construction or are removed when the project is completed. The contractor is the consumer of such personal property and shall pay the tax on its purchases of such property.

(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 (See Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc. (1976), 72 Wis. 2d60):

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.

(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. Examples are boilers, furnaces, stand-by generators, pumps, substations and transformers. When such 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 such 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 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 (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, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection.

- (g) Planted nursery stock.
- (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. Examples of such property are:

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, 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, equipment, tools, appliances, process piping and wiring used exclusively as such 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 (vault doors were not considered personal property until August 1, 1975).

6. Personal property used to carry on a trade or business (e.g., 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). Prior to August 1, 1975 service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but such property was personal property if the personal property and land were owned by different persons. After that date underground tanks are real property regardless of the ownership of the land to which they are attached.

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. Mobile homes located in a mobile home park on land owned by a person other than the mobile home owner.

10. Advertising signs, except their underground concrete foundations. However, prior to August 1, 1975 advertising signs were real property if erected on and securely attached to the owner's land.

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 such personal property, the cost of such property to the construction contractor shall be used as the measure (e.g., gross receipts) subject to sales tax. If a separate charge is made for any such item, it is subject to the tax, but not less than on its cost. For example, a refrigerator or drapes may be included in the contract to construct a new house.

(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 (18), 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 involving the use of such property." However, some construction contractors who also sell construction supplies at retail do not know when they purchase such supplies whether they will be consumed in construction contracts or resold to others. In such instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give a resale certificate to suppliers and thereby purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and pay 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 such 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 remit sales tax on such 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 such building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation. For example, a contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or government building. A contractor also shall pay the tax on its purchases of pumps and other equipment for use at a municipal well or at a water or sewerage lift or pumping station, since such property becomes a part of realty after installation.

(b) A contractor may purchase without tax for resale tangible personal property which retains its character as personal property after installation (as described in sub. (6)), even though the resale of such 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. Such 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 this state 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 paid in the state where the purchase was made.

(b) 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 shall not add tax to any charge for labor or material, since gross receipts from such activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of such materials, thereby becoming 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 such 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 such 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, juke boxes, 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. For 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.

(11) REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES. Section 77.51 (11) (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 such 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* such property are not taxable. In the no-tax 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.

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, 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.

Tax 11.69 Financial institutions. (s. 77.51 (4) (k)) (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.

(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 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. (s. 77.51 (4) (intro.) and (h), 77.52 (1) and (2), Stats.) (1) **NONTAXABLE SERVICES.** Charges by advertising Register, September, 1984, No. 345

(d) Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property.

(e) Any person servicing, repairing or installing its products in this state.

(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.

(5) 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 shall apply for a use tax registration certificate. The registration form, entitled "Application for Permit" (Form A-101), may be obtained from any department office. There is no fee for registration. Retailers engaged in business in Wisconsin for use tax purposes are not necessarily engaged in business in Wisconsin for franchise/income tax purposes.

(b) Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may register and pay taxes directly to this department. Holders of such permits shall collect the use tax from Wisconsin customers, give receipts therefor and pay the use tax in the same manner as retailers engaged in business in this state.

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

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.

Tax 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats. (ss. 71.13 (1) (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, Wisconsin 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.