

DEPARTMENT OF REVENUE

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(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 or sales tax pursuant to s. Tax 11.14 (2) (c) 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 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).

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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: (a) sub. (5) (b) became effective on March 1, 1979, (b) the \$7,000 per calendar year standard in sub. (3) (c) 2 became effective on January 1, 1988, (c) the standard in sub. (3) (c) 2 was \$2,500 per year for the calendar years 1985, 1986 and 1987. Prior to January 1, 1985 the standard in sub. (3) (c) 2 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; am. (4) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (3) (c) 2., (d) and (e), Register, December, 1987, No. 384, eff. 1-1-88; cr. (3) (f), Register, April, 1989, No. 400, eff. 5-1-89.

Tax 11.11 Waste treatment facilities (industrial or governmental). (s. 77.54 (26), Stats.) (1) **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 of revenue for a property tax exemption under s. 70.11 (21), Stats. If there has been no "approval", the contractor or subcontractor may be liable for the sales or use tax on his or her purchases. As described in sub. (3) (d), approvals are not required for municipal waste treatment facilities.

(c) A contractor's purchases of items used or consumed in the performance of the construction contract, and which do not become a component part of the waste treatment facility, are subject to the tax. This includes industrial gases, form lumber, tunnel shields and supplies used by a contractor during construction. Payments by a contractor for equipment purchased or leased to perform a construction job are also taxable.

(3) **APPROVAL OF FACILITIES.** (a) Tangible personal property which becomes a component part of an industrial waste treatment facility qualifies for the sales and use tax exemption if the facility has been approved for property tax exemption by the department of revenue as provided in s. 70.11 (21), Stats. Sections Tax 6.40 and 12.40 describe how an "approval" may be obtained for public utilities and other commercial and industrial concerns, respectively.

1. Silos.
2. Egg cases and crates used by a poultry farm for gathering and storing eggs.
3. Plastic or wooden boxes used by apiaries for the collection and storage of honey.
4. Fruit jars or other containers used for home canning.
5. Gasoline or fertilizer storage tanks used on a farm.

(4) DEPOSITS ON RETURNABLE CONTAINERS. (a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property (e.g., soft drink bottles, beer bottles and milk containers) and refunds of such deposits may be excluded from the computation of taxable gross receipts if they are excluded from gross receipts on the retailer's books of account.

(b) If a retailer's books of account include container deposits in gross receipts and if refunds of such deposits are deducted from gross receipts, the retailer shall use this method of reporting taxable gross receipts on a sales tax return. Under this method, the gross receipts from the deposit are subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

(5) DISPOSABLE ITEMS USED BY RESTAURANTS. (a) Gross receipts from the sales to restaurants, cafeterias, caterers or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, and wrapping materials, and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products and beverages to customers are not subject to the tax.

(6) DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG storage tank or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a reasonable charge is made to the customer for the use of the container and the container is used *exclusively* for such leasing purposes, the gas supplier can issue a resale certificate when such supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer without making a separately itemized charge for its use or charges only a nominal rental, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of such containers or tanks.

(7) CONTAINERS SOLD. If a separate charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge and is subject to the tax.

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(8) **GIFT WRAPPING.** The amount charged for gift wrapping packages is taxable.

Note: The interpretations in s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for meat packaging and shipping materials became effective on May 20, 1978 pursuant to Chapter 368, Laws of 1977.

In *Dernehl-Taylor Co. v. Department of Revenue* (Wisconsin Tax Appeals Commission, May 26, 1978), it was held that the gross receipts for doggie bags qualify for the exemption under s. 77.54 (6) (b), Stats., because they are used to transfer merchandise to customers.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (a) and (8), r. (5) (b), Register, June, 1983, No. 330, eff. 7-1-83; cr. (2) (k), Register, December, 1983, No. 336, eff. 1-1-84; renum. (2) (j) to be (1) (c) 12, and am., Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.16 Common or contract carriers. (ss. 77.54 (5) (b), (12) and (13) and 77.57, Stats.) (1) **MOTOR CARRIERS.** (a) Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for: "Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.18 (2) (a)." Effective on December 1, 1981 and thereafter, "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),

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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 or sales tax pursuant to s. Tax 11.14 (2) (c) 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 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.

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

(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 that are documented under the laws of the United States 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 recr. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (f) and (3) (b) 1., Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.17 Hospitals, clinics and medical professions. (ss. 77.52 (2) (a) 1 and 9, 77.54 (9a), (14), (14g), (14m), (14r), (14s), (20) (c) 4, (22) and (28), Stats.) (1) GENERAL. (a) Although professional personnel in hospitals and clinics and other members of medical professions including 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.

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

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

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; am. (1) (a), Register, August, 1985, No. 356, eff. 9-1-85.

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 sub. (2) above.

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

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78.

Tax 11.19 Printed material exemptions. (ss. 77.51 (8), 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.

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(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 (8), 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 within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."

(b) Section 77.54 (15), Stats., defines a shoppers guide as: "a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals."

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

tion must qualify for the second class mail rate or as a controlled circulation publication under U.S. postal laws and regulations.

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

(4) **PRINTED ADVERTISING MATERIALS FOR OUT-OF-STATE USE.** (a) Effective May 21, 1972 printed advertising materials such as catalogs and their mailing envelopes may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54 (25), Stats., when such materials are purchased and stored for the purpose of subsequently transporting the same outside the state by the purchaser for use thereafter solely outside this state. The exemption applies to catalogs designed to be used by a retailer's potential customers.

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

(5) **EXEMPT PURCHASERS.** Sales of printed material to governmental units, public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from such organization is retained. Sales to persons holding a certificate of exempt status can be shown to be exempt by recording the certificate number on the bill of sale.

Note: The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) where other dates are shown; (b) the second class mail standard described in sub. (3) became effective on August 1, 1974; (c) the exemption for sales of shoppers guides became effective July 1, 1978; (d) the exemption for ingredients and components of shoppers guides, newspapers and periodicals described in par. (2) (d) became effective July 2, 1983; (e) the definition of newspaper in par. (3) (a) was added to the law effective July 2, 1983; and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983.

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (c) and (4) (b), Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (b) and (3) (c), cr. (2) (d), r. and recr. (3) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84.

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

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from and in addition to the sales tax. Such tax may be imposed by this state, the federal government or a municipality.

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

(2) TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE. The following taxes shall be included in a retailer's gross receipts and sales price:

(a) The fermented malt beverage tax imposed by s. 139.02, Stats.

(b) The taxes imposed upon intoxicating liquors (including wine) by s. 139.03, Stats.

(c) Any federal stamp tax and manufacturer's or importer's excise tax. Presently there are federal excise taxes on tires, inner tubes, tread rubber, certain trucks, truck parts, firearms, ammunition, lubricating oils, fishing equipment, cigarettes, beer, and intoxicating liquor (including wine).

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

(e) The cigarette tax imposed by s. 139.31 or 139.33, Stats.

(f) The Canadian or any other country's export gallonage tax on fuels.

(g) The tobacco products tax imposed under ss. 139.76 and 139.78, Stats.

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

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

(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax (e.g., the tax provided in s. 66.75, Stats., which municipalities are permitted to impose upon hotel and motel operators who furnish lodging to transients).

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; am. (2) (d) and (e) and cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; cr. (2) (g), Register, December, 1983, No. 336, eff. 1-1-84.

Tax 11.27 Warranties. (s. 77.51 (4) (a), Stats.) (1) RECEIPTS FROM WARRANTIES. The total gross receipts from a sale of taxable personal property Register, July, 1987, No. 379

by a retailer, who sells a warranty applicable to such property and includes a charge for the warranty in the sales price are taxable.

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

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

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

(3) **REPAIRS NOT BY RETAILER.** If a retailer does not repair property under a warranty but instead has another person perform such repairs, that person's gross receipts from the retailer for such repairs are exempt, since the repair parts and service are for resale by the retailer to its customer (payment occurred at the time of the original sale of the property and warranty). Such repairs are exempt whether or not the original sale occurred in this state. The person performing such repairs shall obtain a resale certificate from the retailer as evidence of the exempt status of its charges to the retailer.

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

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

Nov. 379, eff. 1-1-87, am. (2)(c), Register, July, 1987.
Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps. (s. 77.51 (4) (a) and (14) (k), Stats.) (1) **DEFINITIONS.** (a) Section 77.51 (14) provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms include:

"(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property of service."

(b) For the privilege of selling, leasing or renting tangible personal property at retail, a sales and use tax is imposed upon all retailers' gross receipts from the sale, lease or rental of tangible personal property. Section 77.51 (4) (a) (intro.) provides:

" 'Gross receipts' means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise . . ."

(2) **GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS.** Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the

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gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise.

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

(b) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer's tax liability accrues at that time.

(c) *Gifts shipped out-of-state.* When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) *Sales incentive plans.* Persons transferring taxable personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of such property.

(3) COUPONS AND PREMIUMS. (a) *Coupons for free property issued and redeemable by manufacturer.* When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for personal property without charge, the transfer of property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon.

(b) *"Cents-off" coupons redeemable by manufacturers.* A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. Such coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangi-

posed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies.

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

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

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

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

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

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

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

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

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

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2. Example: For a sale of \$11.50, the 5½% tax is 63¢ (55¢ for \$10 sale plus 8¢ for \$1.50 sale).

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

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

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

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969. The 4% tax rate was in effect from September 1, 1969 through April 30, 1982. Effective May 1, 1982 the tax rate is 5%. The bracket system used during the period the tax rate was 4% is as follows:

Amount of Taxable Sale	4% Tax Collectible
\$.01 to \$.12	\$.00
.13 to .37	.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04

On sales exceeding \$1.00, the tax equals 4% of each full dollar plus the tax shown above for the applicable fractional part of a dollar.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (4) (a) and (b), (5) (b) and (c), r. and recr. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (c), Register, December, 1983, No. 336, eff. 1-1-84; emerg. am. (5) (a), eff. 3-24-86; am. (5) (a) (am), Register, October, 1986, No. 370, eff. 11-1-86.

Tax 11.38 Fabricating and processing. (ss. 77.51 (14) (f) and (h) and 77.52 (2) (a) 10 and 11, Stats.) (1) TAXABLE FABRICATION. Except for sales for resale described in s. 77.52 (13) to (15), Stats., types of fabrication charges which are taxable, regardless of whether the customer or fabricator furnishes the materials, include charges for the following:

(a) Printing and imprinting.

(b) Tailoring a suit.

(c) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job. The end result of the fabrication is a modification of a previously manufactured article.

(d) Making curtains, drapes, slip covers or other household furnishings.

(e) Making a fur coat from pelts, gloves or a jacket from a hide.

(f) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers (often referred to as "milling").

(g) Bookbinding.

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10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.
15. Gloves and other wearing apparel used by employes on the production line to prevent contamination of the manufactured product.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) **EXAMPLES OF PERSONAL PROPERTY NOT WITHIN S. 77.54(2) EXEMPTION.** The following property is not within the exemption provided by s. 77.54 (2), although such property may be exempt under s. 77.54 (6) (a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in s. Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel for the comfort or welfare of the employe or for the protection of the employe's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur-lined boots and jackets.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by s. 77.54(2) even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. Since "fuel" is not defined in s. 77.54(2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

- (a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

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(b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

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, November, 1977, No. 263, eff. 12-1-77; cr. (3) (a) 15. and am. (4) (h), Register, October, 1979, No. 286, eff. 11-1-79; am. (3) (a) 4., Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.45 Sales by pharmacies and drug stores. (s. 77.54 (14), (14g), (14m), (14s), (22) and (28), Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in par. (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.

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\$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ($\$100,000 \div \$500,000$) to the gross lease receipts for each sales tax reporting period.

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, November, 1977, No. 263, eff. 12-1-77.

Tax 11.49 Service stations and fuel oil dealers (ss. 77.52 (2) (a) 10 and 77.54(3), (5), (9a), (11) and (30), Stats.) (1) **TAXABLE SALES.** Sales by service station operators and fuel oil dealers subject to the sales tax include the following:

(a) The sale of furnace or heating fuel to customers, other than for residential or farm use.

(b) The repair, service, cleaning, painting, towing, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor.

(c) The towing of motor vehicles if the towing is related to the repair, service or maintenance of the vehicle. The following services are not considered taxable towing services:

1. Towing vehicles from "no parking" zones.
2. Towing a demolished vehicle to a junk yard.
3. House moving or relocating a mobile home.

(d) Retail sales of tangible personal property (e.g., motor oil, anti-freeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks) by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(2) **EXEMPT SALES.** Sales by service station operators and fuel oil dealers not subject to the sales tax include the following:

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate, Form S-207, to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. If motor fuel or special fuel is purchased without tax under s. 77.54 (11), Stats., because it is subject to the excise tax imposed under ch. 78, Stats., and then the excise taxes are later refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle upon the public highways, the fuel is subject to the tax, unless otherwise exempt under ss. 77.54 (1), (3), (5), (6) (c), (9a), (12), (13), (30) (a) or other exemptions in subch. 3, ch. 77, Stats.

(b) Sales made directly to governmental units of this state, schools or any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes. Sales to employees of these entities are not exempt, even though the entity may reimburse the employee for the expenditure.

71.33 (c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.18 (2) (a), Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of fuel, parts and repairs for tractors or farm machines used directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales of general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54 (5) (a), Stats.

(f) Sales of coal, fuel oil, propane, steam and wood used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) (1) 7 and 8.

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase without tax ("for resale") repair parts and materials used in such work which are physically transferred to their customers (e.g., auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods).

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979 pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1, 1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.50 Auctions. (ss. 77.51 (9) (e), (13) (b), (14) (intro.) and (a), Stats.) (1) STATUTE. Section 77.51 (13) (b), Stats., provides that every person engaged in the business of making sales at auction of tangible personal property owned by the person making the sale or others is a "retailer". The definition of "retail sale" contained in s. 77.51 (14) (a), Stats., includes any sale at an auction.

(2) RETAILER. If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are Register, July, 1987, No. 379

(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.

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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 sub. (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) (1) 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 11.61 Veterinarians and their suppliers. (ss. 77.51 (13) (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:

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(e) The gross receipts from the sales of tangible personal property, tickets or admissions by any baseball team affiliated with the Wisconsin department of American legion baseball.

(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 subtract 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.

(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, effective September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973 under Chap. 156, Laws of 1973; (b) Admission fees to any museum operated under a lease with the State Historical Society became exempt under s. 77.54 (10) on July 20, 1985 and gross receipts from American Legion baseball became exempt September 1, 1985, both pursuant to 1985 Wisconsin Act 29. The *Historic Sites Foundation, Inc. d/b/a Circus World Museum vs. Dept. of Revenue* Wisconsin Tax Appeals Commission decision of January 21, 1986, held the Circus World Museum receipts are not taxable.

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; am. (2) (b), cr. (2) (e), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.66 Communication and CATV services. (ss. 77.51 (13) (p) and (14) (m), 77.52 (2) (a) 3, 4 and 12, (am) 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 tele-

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phone 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.

(f) Transfers of services, commonly called "access services", to an interexchange carrier, including a reseller, which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange. Resellers may purchase without tax Measured Toll Service (MTS) and Wide Area Transport Service (WATS) services they purchase, repackage and resell to customers.

(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: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982, and (d) Access services provided to an interexchange carrier became taxable pursuant to 1985 Wisconsin Act 29, effective July 20, 1985.

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; cr. (1) (f), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.67 Service enterprises. (ss. 77.51 (4), (12), (13), (14) (intro.), (h) and (l), (15), (20) and (22) (a) and (b), 77.52 (1) and (2m) (a) and (b), 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.

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(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.

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

(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 to 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 researcher 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 for 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 (2), (4), and (c) 4, (14) (intro.), (g) and (i), (15) and (c) 2, 77.52 (2) (a) 10 and (11); 77.71 (3) and 77.77 (3), 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.

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

(b) Contractors are retailers of:

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

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(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 (2), 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 consumed 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:

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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 (2), Stats., provides in part that "A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which he has sound reason to believe he will sell to customers for whom he will not perform real property construction activities 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 audito-

rium. 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 or sales tax pursuant to s. Tax 11.14 (2) (c), 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 (4) (c) 4, Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52 (2) (a) 10, Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless of the extent to which fastened to, connected with or built into real property. Among 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.

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

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

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

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

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

Note: The interpretations in 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; emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86; am. (9) (a), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.69 Financial institutions. (s. 77.51 (14) (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.

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

(3) **PURCHASES.** (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up 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 Register, July, 1987, No. 379

(9) **HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration shall not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with the state. Such heavy equipment dealers may purchase motor vehicles for resale without tax.

(10) **MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. Such property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle are subject to tax. Such property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Examples of taxable supplies include: sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle.

(c) A supplier cannot accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, *except* when the purchaser:

1. Inventories such property;
2. Certifies that the purchaser sells significant amounts of the property over-the-counter to walk-in trade; and
3. The purchaser specifies on the resale certificate each type of item the purchaser sells over-the-counter.

(11) **EXEMPTION FOR MIXING AND PROCESSING UNITS.** Sales, leases and rentals of mobile units used for mixing and processing and the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units are exempt from the sales and use tax.

Dealers Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the 5% use tax payable by motor vehicle dealers using regular license plates in sub. (7) (a) 1 was \$1.00 per month through December 31, 1972, \$1.35 per month until June 30, 1981, \$2.25 per month until December 31, 1985 and thereafter as shown in the rule; (b) the 5% use tax payable in sub. (7) (a) 2 by motor vehicle dealers using dealer plates was 25¢ per month through December 31, 1972, 35¢ per month until June 30, 1981, \$.60 per month until December 31, 1985 and thereafter as shown in the rule; (c) an exemption was added to s. 77.54 (5) (d), Stats., by 1985 Wisconsin Act 29, effective July 20, 1985, for mobile mixing and processing units as shown in sub. (11).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7) (a) and (8), Register, May, 1981, No. 307, eff. 6-1-81; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (7) (a) 1. and 2., Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (7) (a) 1. and 2., eff. 3-24-86; am. (7) (a) 1. and 2., Register, October, 1986, No. 370, eff. 11-1-86; cr. (11), Register, July, 1987, No. 379, eff. 8-1-87.

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Tax 11.84 Aircraft. (ss. 77.52 (2) (a) 9, 77.54 (5) (a) and (7) and 77.61 (1), Stats.) (1) **GENERAL.** (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent or child of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor does not hold and is not required to hold a Wisconsin seller's permit.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin department of transportation, division of aeronautics. The tax applies to aircraft registered or customarily hangared or both in this state, even though such aircraft also may be used out-of-state.

(2) **TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.
2. The sale and delivery in Wisconsin of oil, equipment, parts and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52 (2) (a) 9, Stats., imposes the tax on "Parking or providing parking space for motor vehicles and aircraft for a consideration . . ." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational. For example, an aircraft kept in a hangar and available for normal use is parked, but an aircraft kept in a hangar with its wings off is stored rather than parked.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor (tie down) parking are taxable.

(c) *Other taxable receipts.* The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

(3) **EXEMPT SALES OF AIRCRAFT.** Section 77.54 (5) (a), Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using the aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States.

States or any foreign government, or to aircraft sold to a nonresident of this state who will not use the aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(4) **NONTAXABLE SERVICES.** Gross receipts from the following services or fees shall not be taxable:

(a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for such instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in the business of crop dusting, spraying, fertilizing and seeding for farmers may purchase weed killers, fertilizer and seed without tax for resale, if these items are used in conjunction with but not incidental to providing the service.

(f) Landing fees.

Note: The interpretations in s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except that an exemption for general aviation fuel was inserted in s. 77.54 (11) by Chapter 20, Laws of 1981, effective January 1, 1982. Prior to January 1, 1982 sales of aircraft jet fuel, including the state and federal fuel taxes in the price of such fuel, were subject to the tax.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (b) 1. and 2., Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) 2. and (3), Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (e), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.85 Boats, vessels and barges. (ss. 77.51 (7) (am), 77.52 (2) (a) 9 and 10, 77.53 (17), (17m), and (18), 77.54 (7) and (13) and 77.61 (1), Stats.) (1) **TAXABLE SALES.** Taxable gross receipts involving boats include the following:

(a) Gross receipts from the sale, lease or rental of boats and boat accessories, and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats. The tax applies to boat storage in public storage warehouses.

(e) The use tax does not apply to household goods for personal use purchased outside Wisconsin 90 days or more before being brought into this state by a person becoming domiciled in this state. A boat is not household goods for this exemption.

(2) EXEMPT SALES. (a) A boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may be sold at retail as an exempt occasional sale if the transferor is not engaged in the business of selling tangible personal property or taxable services.

(b) Sales of boats to the spouse, parent or child of the transferor shall be exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor does not hold and is not required to hold a seller's permit.

(c) Commercial vessels and barges of 50-ton burden and over primarily engaged in interstate or foreign commerce or commercial fishing shall be exempt from the tax. Accessories, attachments, parts and fuel for such vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(e) A boat purchased by a governmental unit and by certain nonprofit organizations shall be exempt from the tax, regardless of the boat's size or kind (see s. 77.54 (9) (a) and s. 77.55 (1)).

(f) Section 77.53 (17m), Stats., exempts: "A boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser, if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made, if the boat is not located in this state more than 60 consecutive days other than while it is in storage and if this state is not the state of principal use."

(3) PAYMENT OF TAX. (a) No boat shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax at the time the boat is registered with the Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, Wisconsin 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin.

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Boats documented under laws of the United Register, July, 1987, No. 379

States did not qualify for the occasional sale exemption pursuant to Chap. 1, Laws of 1979, effective February 28, 1979; (b) Charges by governmental units for docking and storing boats became taxable pursuant to Chap. 221, Laws of 1979, effective June 1, 1980; (c) Boats of non-residents kept in waters contiguous to the nonresidents' state of domicile as described in sub. (2) (f) became exempt from the use tax pursuant to 1985 Wisconsin Act 29, effective September 1, 1985.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (d), (2) (a) and (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a), Register, September, 1984, No. 345, eff. 10-1-84; cr. (2) (f), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.86 Utility transmission and distribution lines. ss. 77.51 (20), 77.52 (2) (a) 10, 11 and 20, 86.16 and 182.017, Stats.) (1) **PERSONAL PROPERTY.** "Tangible personal property", as defined in s. 77.51 (20), Stats., includes overhead telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the poles, transformers, towers (but not foundations), pipes, conduits, sleeves or other overhead property by which such lines are supported or in which they are contained or connected, if erected or installed under easement or license (including authorizations under ss. 86.16 and 182.017, Stats.) on land owned by a person other than the utility (such lines and facilities located above ground level being herein collectively referred to as "overhead utility facilities"). The term "tangible personal property", as defined in s. 77.51 (20), Stats., does not include underground telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the foundations, pipes, conduits, sleeves or other underground property by which such lines are supported or in which they are contained or connected (such lines and facilities being herein sometimes collectively referred to as "underground utility facilities").

(2) **REAL PROPERTY.** (a) The lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land are part of the realty. However, transformers, circuit breakers and other equipment installed to control the flow of electricity remain personal property after installation.

(b) Concrete foundations (including anchors), crushed rock and backfill whether or not on land owned by the utility, are deemed part of the realty, and materials used in construction or forming the same are taxable when purchased by the contractor.

(3) **TAXABLE AND NONTAXABLE TRANSACTIONS.** (a) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance of overhead utility facilities which are personal property as described in subs. (1) and (2) are subject to the sales and use tax. For example, the gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion thereof, and from a sale "in place" of such a facility, if installed under easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of such property may be purchased without tax for resale. Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to the sales and use tax; however, the materials used in the construction or installation of such underground facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(b) A contractor performing a "lump sum contract" for the construction of an overhead utility facility, which is personal property as de-

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scribed in subs. (1) and (2), may not reduce gross receipts by the amount of related expenses, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and unloading and hauling materials. These payments are costs of performing the contract and do not affect the amount of taxable gross receipts.

(c) When a contractor enters into an agreement to construct or repair an overhead utility facility, which is personal property as described in subs. (1) and (2), the total charge for such construction or repair is taxable even though a portion of the total charge consists of hourly charges for the use of equipment.

(d) When equipment for the construction or repair of a utility line is rented to a utility, the rental charge is taxable. If an operator is included with such equipment and it is customary or mandatory that the utility accept the operator with the equipment, the entire charge for the equipment and operator is taxable. A rental agreement exists only if the utility employs the crew other than the equipment operator and provides on-the-job supervision; otherwise, the entire charge for the repair, service, maintenance or installation of the utility line is subject to the tax if so indicated in par. (c).

(4) **NONTAXABLE SERVICES.** (a) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line is not considered a cost of constructing the line for sales tax purposes. Charges for tree trimming and line clearing in the construction or maintenance of a line in a rural undeveloped area are not taxable. However, charges for right-of-way tree trimming, line clearing or restoration work may be taxable landscaping services as described in sub. (5).

(b) A separate charge for removing an existing utility line is not taxable.

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

Note: Examples: 1. Trimming trees on a utility's right-of-way.

2. Restoration work performed when a utility extends its service or repairs or replaces existing lines.

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1970, except that landscaping services describe in sub. (5) became taxable pursuant to Chapter 317, Laws of 1981, effective May 1, 1982.

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

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

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

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

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