

retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department will act on the application.

(2) **PERMITS AND CERTIFICATES REQUIRED.** (a) *Seller's permit.* Every individual, partnership, corporation or other organization making retail sales or rentals of tangible personal property or selling, performing or furnishing taxable services at retail in Wisconsin shall have a seller's permit for each place of operation, unless the seller is exempt from taxation.

Note: A nonprofit organization's gross receipts are exempt from taxation if it meets the requirements under s. 77.54 (7m), Stats. Also see s. Tax 11.35.

(b) *Use tax registration certificate.* Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit or who is not engaged in business in this state but elects to collect use tax for the convenience of its Wisconsin customers shall have a use tax registration certificate.

(c) *Consumers use tax registration certificate.* Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a consumers use tax registration certificate.

(3) **APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES.** A person required to have a seller's permit or one of the use tax certificates described in sub. (2) shall file an "Application for Permit", form A-101, with the department at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required.

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

(4) **REVIEW AND ACTION BY DEPARTMENT.** The department shall review and make a determination on an application for a seller's permit or use tax certificate described in sub. (2) within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that security is required or that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; am. (2) (a), (3), and (4) (intro.), Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.01 Sales and use tax return forms. (ss. 77.58 and 77.75, Stats.)
(1) For filing sales and use tax returns, the following forms shall be used:

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(a) Form MV-1. A department of transportation form for occasional and dealer sales of motor vehicles, mobile homes, trailers and semi-trailers.

(b) Form S-012. Also called form ST-12. The monthly, quarterly or annual return for each person holding a Wisconsin seller's permit, use tax registration certificate or consumer's use tax registration certificate.

(c) Form S-013. The annual return for concessionaires and temporary sellers.

(d) Form S-014. The individual event permit and return for concessionaires and temporary sellers.

(e) Form SU-002. For occasional and dealer sales of boats, snowmobiles and all-terrain vehicles.

(f) Form SU-050. Also called form UT-5. For consumers other than persons holding a Wisconsin seller's permit, use tax registration certificate or consumer's use tax registration certificate.

(g) Form AR-1. A department of transportation form for occasional and dealer sales of aircraft.

(h) Form S-108. Also called form ST-12X. The amended sales and use tax return for filing refund claims or reporting additional taxes for prior periods.

(2) Forms required to be filed with the department shall be filed by mailing them to the address specified on the forms or by delivering them to 4638 University Avenue, Madison, Wisconsin.

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

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (a), r. (1) (d), cr. (1) (m), Register, January, 1983, No. 325, eff. 2-1-83; r. and recr., Register, March, 1991, No. 423, eff. 4-1-91; r. (1) (e), renum. (1) (f) to (i) to be (1) (e) to (h), Register, January, 1992, No. 433, eff. 2-1-92.

Tax 11.03 Elementary and secondary schools and related organizations.
(ss. 77.52 (2) (a) and 77.54 (4), (9) and (9a), Stats.) (1) DEFINITIONS.

(a) In this section:

1. "Elementary school" means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable.

2. "Secondary school" means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in s. 119.30, Stats.

3. "School district" has the same meaning as provided for in s. 115.01 (3), Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par. (a) 1 and 2 and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year. Elementary and secondary schools also include school districts for purposes of exemption under s. 77.54 (4), Stats.

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

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

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

2. School lunches and library and book fines.

3. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees and equipment, when used for other than recreational, athletic, amusement or entertainment purposes.

Example: A school auditorium is rented to a religious group which conducts a religious revival. The gross receipts from the rental are exempt.

4. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees and equipment, when used by a promoter or professional group which will sell admissions to the public for recreational, athletic, amusement or entertainment purposes.

Examples: 1) A school gymnasium is rented to a professional basketball team which will sell tickets to the event. The gross receipts from the rental are exempt.

2) A school auditorium is rented to a popular band for one night. The band will sell tickets to its performance. The gross receipts from the rental are exempt.

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

6. The transfer of tangible personal property to a contractor for performance of a real property construction activity in exchange for a reduction in the contract price, even though the contract provides that the contractor is to supply all materials.

(b) Sales by elementary or secondary schools, the gross receipts from which are taxable, include:

1. Admissions to recreational facilities, such as golf courses, swimming pools, ball fields and gymnasiums which are open to the general public for recreational purposes.

2. Rental of auditoriums or gymnasiums, including any charges for lights, heat, janitor fees and equipment, when used by persons for their own recreation, entertainment or amusement where there is no charge for admission.

Example: A local neighborhood group rents the school gymnasium for its residents to play volleyball. The neighborhood group does not charge its residents to play volleyball. The gross receipts from the rental are taxable. If the group charged an entry fee to play volleyball, the gross receipts from the rental of the gymnasium are not taxable because the rental is for resale.

3. Taxable services under s. 77.52 (2) (a), Stats., such as parking and repair services.

Example: A school sponsors an athletic tournament and charges \$1 for parking. The gross receipts from parking are taxable.

(3) **SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS.** Sales by school-related organizations and others, not including school districts, the gross receipts from which are taxable, include:

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

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

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

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

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

(b) Private schools having certificates of exempt status.

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

Note: The interpretations in s. Tax 11.03 are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972, through October 3, 1973.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (a), (2) (a) 3., (3) (a) and (4) (c), renum. (2) (a) 4. to be 5., cr. (2) (a) 4., r. and recr. (2) (b), Register, September, 1991, No. 429, eff. 10-1-91; r. and recr. (1) (a), am. (1) (b), (3) (intro.) and (a), cr. (2) (a) 6., Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.04 Constructing buildings for exempt entities. (ss. 77.51 (2) and (14), 77.54 (9a) and 77.55 (1), Stats.) (1) **DEFINITION.** In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, or any county, municipality as defined in s. 41.02 (4), Stats., school district or other political subdivision; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated agency of instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) **TAXABLE GROSS RECEIPTS.** Sales of building materials to contractors or subcontractors used in the construction of buildings or structures, Register, April, 1993, No. 448

or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) **PURCHASES PRESUMED TAXABLE.** When a contractor and an exempt entity enter into a construction contract to improve real property, which provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

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

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

Note: The interpretations in s. Tax 11.04 are effective under the general sales and use tax law on and after September 1, 1969.

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

Tax 11.05 Governmental units. (ss. 77.51 (4) (c) 6 and (10), 77.52 (2) (a) 1, 2, 9 and 20 and 77.54 (9a), (10), (15), (17), (20), (30), (32) and (37), Stats.) (1) **GENERAL.** Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States government or any agency thereof are not taxable.

(2) **TAXABLE RECEIPTS.** Taxable receipts of governmental units include gross receipts from the following:

(a) Admissions to recreational facilities.

Example: Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable.

(b) Food and gift stand sales, including sales of sandwiches, beverages, candy, cigarettes, ice cream, confections, tobacco products, postcards, books, magazines and other periodicals described in s. Tax 11.19, and novelties. Newspaper sales are exempt.

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

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

(e) Sales of electricity, gas and steam by municipal utilities, except as provided in sub. (3) (b).

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

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

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

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges or universities operated by governmental units.

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

(k) Sales of soda water beverages and beer, including sales of these items by hospitals, sanatoriums and nursing homes to patients, employes or guests.

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

(m) Sales of books and supplies, including sales by vocational, technical and adult education schools. Sales of tangible personal property by elementary and secondary schools are exempt under s. 77.54 (4), Stats.

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

(o) Auction sales of tangible personal property, but excluding motor vehicles as provided in par. (g).

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

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

(r) The gross receipts from parking and providing parking space for motor vehicles and aircraft, and docking or providing storage space for boats.

(s) The gross receipts from landscaping and lawn maintenance services, including weed cutting in lawn, garden and other developed areas, but not charges for damages described in sub. (3) (c).

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

(a) Fees for licenses and permits, including tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits or I.D. cards issued exclusively for obtaining admission to facilities or events taxed under s. 77.52 (2) (a) 2, Stats.

(b) Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use. Electricity and natural gas sold for residential use and electricity sold for farm use during the months of November through April. "Sold" is defined in s. 77.54 (30) (b), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (l) 7.

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

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

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

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

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable unless a combined charge is made for removal and bags or receptacles and the amount allocated to the bag or receptacle is incidental to the charge for removal.

Example: A city government provides that in order to have trash removed by the city, the trash must be put in special bags which are sold for \$1 each. The \$1 charge is allocated as follows: 18¢ for the bag, 42¢ for removal and 40¢ for cost of the disposal site. The \$1 charge for the bag is not subject to tax because the transfer of the bag is incidental to the sale of the waste removal service.

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

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

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

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

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

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

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officer and clerk of court under ss. 59.42, 59.57 and 69.22, Stats., or by a filing officer under s. 409.407 (2), Stats., and fees charged by a register in probate pursuant to s. 814.66, Stats. Also, charges by an "authority," as defined in s. 19.32 (1), Stats., for copying a record under s. 19.35 (1) (a), Stats., including charges for a search of records.

(q) The sale of all admission fees or admission stickers to state parks and recreational areas in state forests imposed under s. 27.01 (7), (8) and (9), Stats.

(r) Camping fees in Wisconsin state parks imposed under s. 27.01 (10) (d), Stats.

(s) Admissions to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

(t) Gross receipts from telecommunications revenues collected in establishing a "911" emergency telephone system under s. 146.70 (3), Stats.

(4) PURCHASES. (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 144.07 (4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26, Stats., or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

Note: Refer to s. Tax 11.04 regarding the purchase of building materials used in the construction of buildings for governmental units.

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

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

1. The governmental unit gives the retailer a purchase order;
2. The retailer issues the billing or invoice for the purchases in the name of the governmental unit; and
3. The retailer keeps a copy of the governmental unit's purchase order and the retailer's billing or invoice to substantiate that the sale was exempt from sales and use tax.

Example: A governmental unit intends to purchase clothing for a welfare recipient. The governmental unit gives a purchase order to the retailer and the retailer makes the invoice out to the governmental unit. The sale is not subject to sales tax if the welfare recipient pays the retailer with funds given to the recipient by the governmental unit or if the governmental unit pays the retailer directly.

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

(e) Purchases, including lodging, meals or uniforms, by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental unit, receives a purchase order or similar written document from the governmental unit and keeps a copy of both documents.

(f) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United States government providing for sales and use tax exemptions are exempt provided Register, April, 1993, No. 448

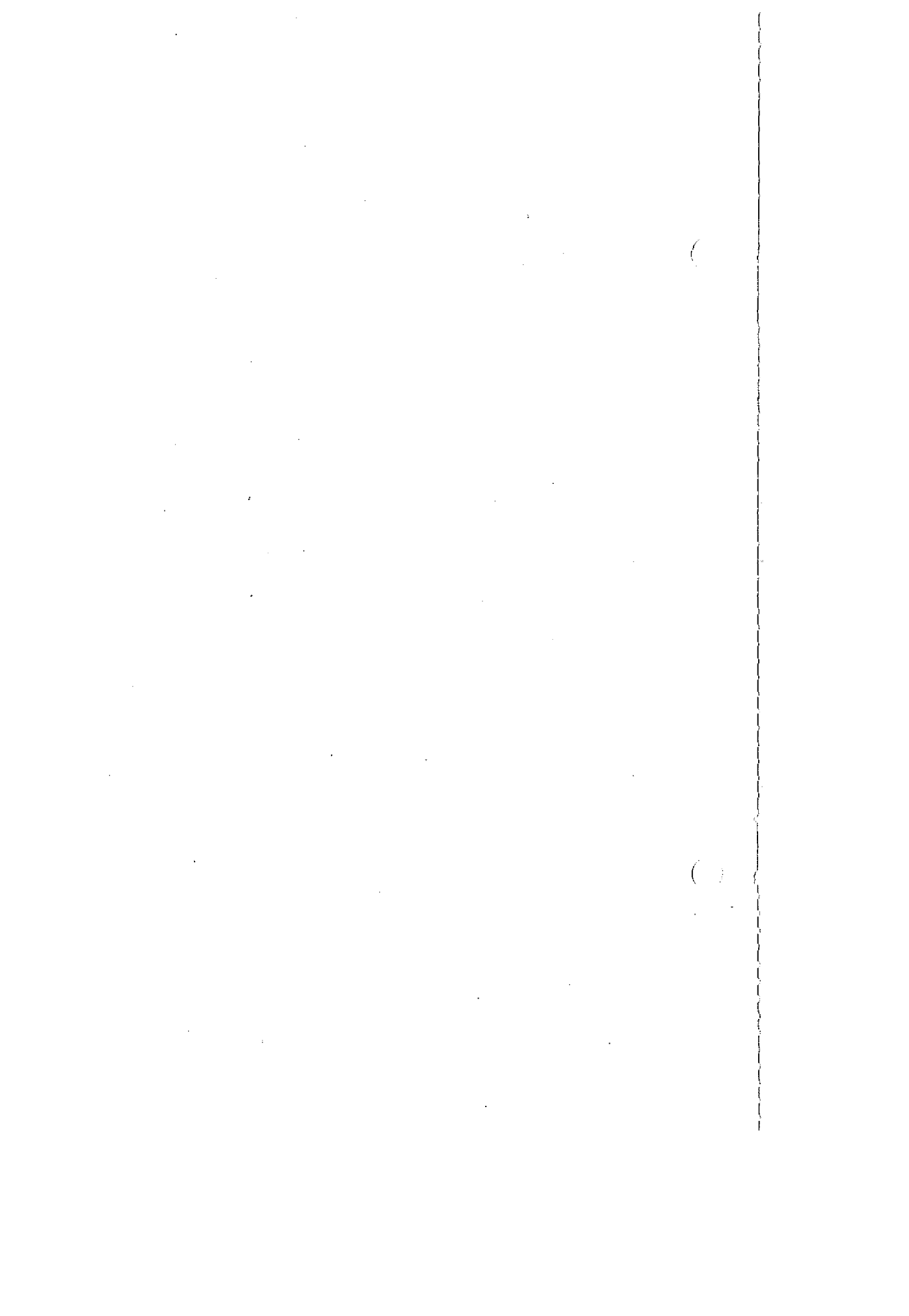
the personnel present their tax exemption card issued by the United States department of state showing their tax exemption number.

Note: The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972, through October 3, 1973; (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973; (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977; (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, and the electricity and natural gas six-month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979; (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980, pursuant to Chapter 221, Laws of 1979; (f) Landscaping and lawn maintenance services became taxable on May 1, 1982, pursuant to Chapter 317, Laws of 1981; (g) A governmental unit's charges for copying public records became exempt effective April 27, 1984, pursuant to 1983 Wis. Act 287, later amended effective April 2, 1986, pursuant to 1985 Wis. Act 149 to clarify that the exemption also applies to confidential records, and again amended effective May 1, 1992, pursuant to 1991 Wis. Act 269, to include records under s. 19.35 (1) (a), Stats.; (h) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption for an agency or instrumentality of a Wisconsin governmental unit became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wis. Act 27; (k) The exemption for admissions to a museum operated by a nonprofit corporation under lease with the state historical society became exempt July 20, 1985, pursuant to 1985 Wis. Act 29; (L) The exclusion of hospital service insurance corporation from the definition of exempt entity became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (m) Revenues from establishing a "911" emergency telephone system became exempt August 1, 1987, pursuant to 1987 Wis. Act 27; and (n) State park camping fees became exempt effective September 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (e) and (i), cr. (2) (r), r. and recr. (3) (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (b) and (m), (3) (a), (f), (m) and (p), cr. (2) (s) and (3) (q), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (p), Register, July, 1987, No. 379, eff. 8-1-87; reprinted to correct error in (2) (p), Register, October, 1987, No. 382; am. (3) (b) and (4) (intro.), Register, June, 1990, No. 414, eff. 7-1-90; am. (2) (a), (d), (i), (k) and (o), (3) (f), (L), (p) and (q), and (4) (intro.), (d) and (e), cr. (3) (r), (s) and (t), r. and recr. (4) (b), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (p), renum. (4) (intro.) to (e) to be (4) (a) to (f), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.08 Medical appliances, prosthetic devices and aids. (s. 77.54 (14s), (22) and (28), Stats.) (1) DEVICES FOR HANDICAPPED PERSONS. Section 77.54 (22) (a), Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a

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(b) Storm sewers, water supply systems and private domestic waste water facilities do not qualify for the sales and use tax exemption.

(c) The collection system throughout the area served by the treatment facility, the effluent pipeline carrying the treated sewage away from the central treatment plant, earthen dikes and chain link fences on the boundary of a treatment plant, and dredge material disposal sites are not exempt. The collection systems includes the lift stations, force mains and associated pumping equipment used to bring the raw sewage to the central treatment plant.

(d) The repair, service, alteration, cleaning, painting and maintenance of a municipal central waste treatment facility, the repair parts and replacements therefor, and chemicals and supplies used or consumed in operating a waste treatment facility are exempt from the sales and use tax.

(4) CONTRACTORS AND SUBCONTRACTORS. (a) *Exempt purchases.* The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates the property into an approved industrial waste treatment facility or who incorporates the 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.

Note: Form S-207 may be obtained by writing or calling: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, telephone (608) 266-2776.

(b) *Taxable purchases.* 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.

(c) *Determining exemptions.* Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department 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 its purchases. Approvals are not required for municipal waste treatment facilities and, therefore, contractors may purchase without tax construction materials which become a component part of the exempt facility.

Note: 1) Contractors and others may determine whether an industrial waste treatment facility has been approved by the department as follows:

a. Public utility facilities, including railroads, airlines and pipelines: Write or call the Department of Revenue, Bureau of Utility and Special Taxes, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608)266-3565.

b. Other commercial or industrial facilities: Write or call the Department of Revenue, Bureau of Property Tax, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608)266-8606.

2) Refer to ss. Tax 6.40 and 12.40 for information on how to request approvals for property tax exemption.

3) The interpretations in s. Tax 11.11 are effective July 31, 1975, when ss. 70.11 (21) and 77.54 (26), Stats., were revised, except that the exemption for chemicals and supplies used or

consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979.

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (2), (4) (b) and (5) (d), r. and recr. (3), Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (b), (3) (a) and (b) and (5) (b), Register, September, 1984, No. 345, eff. 10-1-84; cr. (2) (c), r. (1) (b) and (3), renum. (1) (a) to be (1) and am., renum. (2) (a), (b) and (c) to be (4) (a), (c) and (b) and am., renum. (4) to be (2) and am. (2) (a) and (b), renum. (5) (a), (b), (c) and (d) to be (3) (b), (a), (c) and (d), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.12 Farming, agriculture, horticulture and floriculture. (ss. 77.52 (2) (a) 10 and 77.54 (3), (3m), (27), (30), (33) and (34), Stats.) (1) STATUTES. Section 77.54 (3) and (3m), Stats., provides exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture and floriculture as a business enterprise.

(2) DEFINITIONS. In this section and s. 77.54 (3), (3m) and (30), Stats.:

(a) "Animal bedding" used in farming means disposable loose materials, including straw, shavings, sawdust, leaves, sand and shredded paper, used where an animal may lie, to promote cleanliness and absorb urine or liquid manure. It does not include nonabsorbent items, including rubber floor mats.

(b) "Custom farming services" means the performance of an activity, defined as farming in this section, for a farmer for a fee. The fee may include a cash payment, a share of the harvest or other valuable consideration.

(c) "Dairy farming" means the business of feeding and raising cattle and other milk producing animals, but does not include operations such as pasteurizing, homogenizing or making butter, cheese or ice cream.

(d) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "farming" includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses and llamas for sale; and raising ginseng, mushrooms and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; raising earthworms; operating sporting or recreational facilities, such as riding stables or shooting preserves; operating stockyards, slaughterhouses or feed lots as described in par. (g); lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

(e) "Farm livestock medicine" means any substance or preparation intended for use by external or internal application to farm livestock in the cure or treatment of disease and which is commonly recognized by veterinarians as a substance or preparation intended for that use. This includes antibiotics, drugs, mastitis treatments and vaccines in the form of boluses, capsules, feed additives, fluids, pills, powders, ointments and salves. "Farm livestock medicine" does not include medicines for work stock, riding horses or small domestic animals, including dogs and cats. It also does not include vitamins, dewormers, teat dip, udder wash, disinfectants, shampoos, pet foods, flea powder and flea sprays, laboratory

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equipment used by a veterinarian, bandages, or plaster of paris that is used to set an animal's broken bone.

(f) "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase does not include dogs, riding horses, racing horses or laboratory animals. The food for animals which are not farm work stock is taxable.

Example: Dog and cat food is taxable.

(g) "Feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for the livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

(h) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants or shrubs, including such operations as greenhouses.

(i) "Horticulture" means the business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial nurseries and orchards but not businesses which hold stock for purposes other than propagation or growth. "Horticulture" does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(j) "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals or animals which are a source of wool, such as llamas, including those purchased for breeding.

(k) "Milk house supplies" means items used exclusively in producing and handling milk on dairy farms, including milk filters, soaps, detergents, udder washes and balms, pipeline cleaners, manual cleaners, acid cleaners, disinfectants and sanitizers such as iodine and chlorine, teat dips, teat dilators, paper towels, insect strips, cloth udder towels, udder sponges, brushes and brooms, window cleaners and water softner salt. The exemption for milk house supplies does not include equipment such as dispensers, jug and barrel pumps, sinks, faucets, washup hoses and nozzles, buckets and pails, milk cans, strainers for milk cans or coolers, and electricity.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. The standard "farmer's exemption certificate," form S-206, provides for continuous use under certain conditions. The certificate shall be used only for categories of items listed on it. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4) STATUTORY EXEMPTIONS. (a) Section 77.54 (3) (a), Stats., exempts: "The gross receipts from the sales of and the storage, use or other consump-

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tion of tractors and machines, including accessories, attachments and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property and excluding tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that that personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine." For purposes of this section:

1. Directly. Items used "directly" in farming include a plow and a combine. Items of "indirect" or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, and lawn and garden tractors.

2. Exclusively. "Used exclusively" means used to the exclusion of all other uses except for other uses not exceeding 5% of total use.

3. Accessories, attachments and parts. Included within the exemption are accessories, attachments and parts for tractors and machines used directly in agriculture. "Accessories" and "attachments" include devices designed to be mounted on a machine or to be pushed or pulled by a machine such as farm wagons and pipes attached to irrigation pumps. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor cabs, oil filters and slow-moving-vehicle signs. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids such as antifreeze or lubricants. These are "supplies" rather than "parts" and are not exempt.

4. Machines. a. "Machine" means an assemblage of parts that transmit force, motion and energy from one part to another in a predetermined manner.

b. "Machines which qualify for exemption" include, if not realty improvements, all-terrain vehicles or trucks not licensed for highway use, balers, chain saws for orchard use but not for use in lumbering, pulping or cutting firewood, choppers, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, end loaders, electric clippers and hoof trimmers, electric dehorners, electric fence chargers not fencing or insulators, electric foggers, fork lifts, harrows, harvesting combines, hay wagons, manure spreaders, mowers, planters, plows, powered posthole diggers, pumps and associated piping for irrigation, rock pickers, rotary hoes, space heaters not for residential use, sprayers, stalk shredders and windrowers.

c. "Machines which do not qualify for exemption" include personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property. Also, tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that the personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine does not qualify for exemption. However, there is an exception for those items specifically mentioned in subpar. d.

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d. The following items are deemed by statute to retain their character as tangible personal property and qualify for exemption, regardless of the extent to which they are fastened to, connected to or built into real property: auxiliary power generators, bale loaders, barn cleaners and elevators, conveyors, feed elevators and augers, grain dryers and grinders, irrigation implements, milk coolers, milking machines, including piping, pipeline washers and compressors, top and bottom silo unloaders and powered feeders, excluding platforms and troughs constructed from ordinary building materials.

5. Real property improvements. a. "Building" means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals or plants, for storing property or for working, office, parking, sales or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to the real property; that is covered by a roof or encloses space; that is not readily moved or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

b. Certain machines in addition to those in subd. 4 qualify for the exemption if purchased by farmers directly from retailers, even though they are used to make realty improvements. Machines included are automated livestock feeder bunks, but not ordinary building materials; automatic stock waterers powered by electricity or water pressure and built into a permanent plumbing system; automatic water softeners, such as for milkhouses; barn fans and blowers and other ventilating units; unit heaters and other heating units; water heaters serving production areas; and water pumps serving production areas.

c. A person, such as a plumbing contractor, who contracts with a farmer to provide and install a machine permanently into real estate is a consumer of the machine, not a seller. The contractor, not being a farmer, may not furnish a farmer's exemption certificate on the person's purchase of the machine. Being the consumer, the contractor shall pay the sales tax to the supplier or report the use tax on the purchase price directly to the department.

6. Motor vehicles. Specifically excluded from the statutory exemption are "motor vehicles for highway use," including motor trucks, automobiles, station wagons, buses and motorcycles. "For highway use" means licensed for that use. Sales of parts, supplies and repairs for vehicles for highway use, including nurse tanks and trailers, are also taxable.

7. Other non-exempt sales. The exemption does not apply to:

a. Tools used in construction or for making repairs to real estate or farm machinery, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

b. Building materials used to repair or improve real estate such as cement, drain tile, fencing, light fixtures, lumber, nails and stanchions.

c. Non-powered applicators for insecticides, cattle chutes, farrowing crates, feed carts, fire extinguishers, flood gates, non-powered gravity flow feeders, saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations, or "oil-ers," snowmobiles, stationary salt and mineral feeders.

8. Sales and use tax. A person who buys without tax by claiming the farming exemption owes the sales tax at the time the person uses the item purchased 5% or more of total use for a nonexempt purpose.

(b) Section 77.54 (3m), Stats., exempts: *"The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise."* "Exclusively" as used in s. 77.54 (3m), Stats., and in this section means that the items mentioned in s. 77.54 (3m), Stats., are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for such items will not be invalidated by an infrequent and sporadic use other than in farming. For purposes of this section:

1. Seeds for planting. "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and vegetable seeds; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

2. Plants. "Plants" include herbs, shrubs or young trees, slips or saplings planted or ready to plant.

3. Feed. a. "Feed" includes processed vegetable and animal products and essential minerals required for the normal nutritional needs of livestock, poultry and domestic fur-bearing animals and other materials which are required for the normal nutritional needs of animals in some domestic environments, such as vitamins A, B-complex, D and E. Essential minerals include phosphorous, calcium, sodium, chlorine, iodine, iron, copper, sulfur, potassium, magnesium and zinc. Common feed additives containing these substances include cod liver oil, salt in granular or block form, ground limestone, fish oil, fish meal, oyster shells and bone meal.

b. "Feed" includes medicated feed or drug carriers purchased for use as an ingredient of medicated feed, the primary purpose of which is the prevention of diseases in livestock or poultry. "Feed" does not include a mixture labeled and sold for specific treatment or cure of a disease. Feed for farm livestock, poultry and work stock is exempt but feed for pets, such as dogs and cats, is taxable.

4. Fertilizers and soil conditioners. a. "Fertilizer" means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used primarily for its plant food content to improve the soil's agricultural qualities. "Fertilizer" and "soil conditioners" include fertilizer and insecticide combinations, agricultural minerals, carbon dioxide for application to land, urea, sewage sludge, liquid spray mixtures of minerals and plant nutrients, lime, compost, manure, peat moss and soy bean straw.

b. "Fertilizer" and "soil conditioners" do not include fill dirt, top soil, wood chips, wood shavings, litter and hormone growth stimulants.

Note: The difference between fertilizers and hormone growth stimulants is that fertilizers nourish plants whereas hormone growth stimulants act upon the cellular structure.

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5. Sprays, pesticides and fungicides. "Sprays," "pesticides" and "fungicides" include disinfectant sprays, fly sprays and preparations used to destroy insects, mites, nematodes, slugs or other invertebrate animals injurious to plants and animals; chemicals used for crop disease, pest and weed control, including insecticides, rodenticides and pesticides used to sanitize and clean dairy equipment. Products used to sanitize dairy equipment are exempt, if they are registered with the U.S. environmental protection agency, or "EPA," as pesticides, advertised and sold as pesticides, and each bottle, can or other container containing the pesticide has an EPA pesticide registration number on it.

6. Containers for fruits, vegetables, grain and animal wastes. a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains or animal wastes. The phrase does not include feed carts designed to hold various green and dry feeds.

b. A complete corn crib or grain bin may be purchased "knocked-down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install the bin permanently into real estate is a consumer of the bin, not its seller. The contractor, dealer or installer, not being a farmer, may not furnish a farmer's exemption certificate on the bin's purchase. Being the consumer, not a seller, the contractor shall pay the sales tax to the supplier or report the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) on the purchase price directly to the department. A farmer who utilizes the farmer's exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. Farmers may purchase animal waste containers or the component parts thereof without tax, by issuing their supplier a properly completed "single purchase" farmer's exemption certificate.

d. Silos are not included in the exemption. The purchaser of materials used in building a silo shall pay the sales tax to the purchaser's supplier. A silo unloader may be purchased by a farmer as an exempt machine.

e. Milk cans are not covered by the farmer's exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

7. Semen. Semen used for artificial insemination of livestock is exempt.

Note: Section 77.54 (30) (a) 3, Stats., exempts electricity sold for use in farming, including agriculture, dairy farming, floriculture and horticulture during the months of November through April. Section 77.54 (30) (a) 5, Stats., exempts fuel sold for use in farming, including agriculture, dairy farming, floriculture and horticulture.

(5) SERVICES FURNISHED TO FARMERS. (a) The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under s. 77.54 (3) and (3m), Stats., are also exempt from the sales and use tax under s. 77.52 (2) (a) 10, Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses shod, but not when having riding horses shod.

(b) Breeding fees, and charges for artificial insemination of animals and veterinarians' services are not taxable.

(c) The exemptions under s. 77.54 (3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52 (2) (a), Stats., including telephone, laundry, dry cleaning and photographic services.

(6) **SERVICES PROVIDED BY FARMERS.** (a) *Nontaxable services.* The following services performed by farmers are not subject to the sales tax:

1. Custom work. The performance of custom farm services by one farmer for another farmer, such as harvesting hay or grain.

2. Training animals. The training of horses, dogs or other animals.

(b) *Taxable services.* The following services performed by farmers are taxable:

1. Boarding animals. The boarding of dogs, cats, riding horses, ponies or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed resale certificate.

2. Grooming animals. The grooming of recreational animals.

(7) **TAXABLE SALES.** Sales of tangible personal property by farmers which are taxable include:

(a) Gamebirds sold to persons, regardless of whether the birds are used as food for human consumption, if the primary reason for the purchase of the gamebirds is for hunting.

(b) Horses for use in racing, riding or show.

(c) Llamas for use as pack animals, pets or to herd sheep.

(d) Flowers, Christmas trees and other decorative trees, plants or shrubs.

(e) Timber or gravel when the purchaser acquires this property for removal.

Note: 1) The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Semen became exempt effective July 22, 1971, pursuant to Chapter 64, Laws of 1971; (b) Baling wire and twine became exempt effective December 24, 1976, pursuant to Chapter 146, Laws of 1976; (c) The exemption for electricity for residential use and use in farming and for fuel oil, propane, coal, steam or wood for residential use became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (d) The definition of "feed lot" became effective December 1, 1981; (e) Farm livestock medicine, milk house supplies and animal bedding became exempt effective July 1, 1986, pursuant to 1985 Wis. Act 29; (f) The definition of "exclusively used" became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (g) The farm machinery exemption was revised effective October 1, 1989, pursuant to 1989 Wis. Act 31; and (h) The exemption for farm fuel for items other than machines became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

2) Prior to October 1, 1989, and on or after December 1, 1981, "exclusively" meant used solely in farming to the exclusion of all other uses, except for infrequent or sporadic use other than farming.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; am. (2) (intro.), (4) (a) 1., (4) (b) (intro.) and (5) (c), renum. (2) (a) to be (2) (a) 1. and am., cr. (2) (a) 2., Register, November, 1981, No. 311, eff. 12-1-81; am. (2) (a) 1., (4) (b) 5., 6. c. and 9., Register, June, 1983, No. 330, eff. 7-1-83; am. (4) (a) 1., 3. and 5., and (5) (c), cr. (5) (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (4) (a) (intro.) and 7., (4) (b) 6. b., Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (a) 1. and (4) (b) 7., cr. (7), Register, November, 1988, No. 395, eff. 12-1-88; renum. Register, April, 1993, No. 448

(2) (a) to (d) and (4) (b) 7. and 8. to be (2) (c), (g), (f), (b), (h) and (e), cr. (2) (a), and (d) and (i), am. (4) (b) (intro.) and 3. b., Register, June, 1990, No. 414, eff. 7-1-90; cr. (2) (b), (4) (a) 2., 4. c. and d. and 5. a., am. (1), (4) (a) (intro.), (4) (b) 3. a., 4. b. and 6. b. and d., renum. (2) (b) to be (2) (c), renum. (2) (c) 1. and 2. to be (2) (d) and (g) and am. (g), renum. (2) (d) to (g) to be (2) (e), (f), (h) and (i) and am. (f), renum. (2) (h) and (i) to be (2) (j) and (k), renum. (4) (a) 2. to be 3., and am., renum. (4) (a) 3. and 4. a. and b. to be (4) (a) 4. and 5. b. and c., and am. 4. a. and b. and 5. b. and c., renum. (4) (a) 5., 6., and 7. to be (4) (a) 6., 7. and 8. and am. 7. b. and 8., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d), (e), (i) and (3), (4) (a) (intro.), 3., 5. c., 6., 7. c., (b) (intro.), 4. a., 5. and 6. c., renum. (4) (b) 3. to be (4) (b) 7., r. (5) (d), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.14 Exemption certificates, including resale certificates. (ss. 77.52 (13) to (16), 77.53 (10) and (11) and 77.77 (3), Stats.) (1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52 (13) to (16), Stats., and the use tax status of exemption certificates is contained in s. 77.53 (10) and (11), Stats.

(2) GENERAL. (a) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors shall exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with 6 types of exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this section are the following:

1. Resale certificate, form S-205.
2. Certificate of exemption, form S-207.
3. Manufacturer's exemption certificate, form S-207m.
4. Farmer's exemption certificate, form S-206.
5. Certificate of exemption for fuel oil, propane, coal, steam and wood used for fuel for residential or farm use, form S-016.
6. Certificate of exemption for electricity and natural gas sold for residential or farm use, form S-017.

(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. The law requires that the certificate be signed by and bear the name and address of the purchaser and that it indicate the general character of the property or service being purchased and the basis of the claimed exemption.

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

(3) EFFECT OF OBTAINING CERTIFICATE. (a) A seller is relieved of liability for the tax if the seller takes from the purchaser a valid, written resale or exemption certificate which certifies that the purchaser will use the property or service in a manner or for a purpose entitling the seller to accept the certificate in good faith.

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

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

(4) FAILURE TO OBTAIN CERTIFICATE. If a seller does not obtain a certificate, a seller is not relieved from liability for the tax, nor from the burden of proving the sale was for resale or otherwise exempt. It is not a satisfactory substitute for obtaining an exemption certificate from the purchaser, for the seller to accept payment of the seller's billing with the tax or tax reimbursement deleted, or to accept the purchaser's permit number, or a statement that the transaction is not taxable.

(5) CONTINUOUS CERTIFICATES. (a) Continuous exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(b) Continuous exemption certificates, including continuous resale certificates, approved by the department do not allow a purchaser to issue "this time only" purchase orders cancelling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for a previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6) RESELLER CERTIFICATE, FORM S-205. (a) *Effect of obtaining resale certificate.* 1. The burden of proving that a sale of property or services is not at retail is upon the seller unless the seller accepts a certificate from the purchaser certifying that the property is purchased for resale. If valid and accepted in good faith from a person who is in the business of selling tangible personal property or taxable services and who holds a seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax.

(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¢, consisting of 55¢ for \$10 of sales plus 8¢ for \$1.50 of sales.

(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 is 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), Stats., 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) or (am), to establish to the satisfaction of the department that the sales tax has been added to the sales price, unless a receipt is issued separately itemizing the tax.

(6) EXCHANGING TANGIBLE PERSONAL PROPERTY. Taxable gross receipts include the exchange of tangible personal property for taxable or nontaxable services, realty or intangibles if the person providing the tangible personal property receives gross receipts or sales price valued in money, whether received in money or otherwise.

Example: A restaurant operator exchanges meals having retail price of \$100 for radio or television advertising which has an established price of \$100 for this type of advertising service. The restaurant operator and the radio or television station each have to report gross receipts of \$100 as a result of the transaction.

(7) MOBILE HOMES. Gross receipts and sales price do not include 35% of the amount from the sale of a new mobile home, not including leases and rentals, that is:

(a) A primary housing unit under s. 340.01 (29), Stats.

(b) Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

Note: The interpretations in s. Tax 11.32 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The 5% sales and use tax rate became effective May 1, 1982 (previously the rate was 4%); (b) The 35% reduction of gross receipts from the sale of a new mobile home that is a primary housing unit became effective January 1, 1987, pursuant to 1985 Wis. Act 29; and (c) The 35% reduction of gross receipts from the sale of a new mobile home transported in 2 sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

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) and (am), Register, October, 1986, No. 370, eff. 11-1-86; cr. (6), Register, April, 1990, No. 412, eff. 5-1-90; cr. (7), am. (2), (3) (a) and (c) and (5) (d), Register, June, 1991, No. 426, eff. 7-1-91; am. (2), (4) (a) and (c), (5) (a), (am) and (b) and (7), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.33 Occasional sales. (ss. 77.51 (9), 77.52 (2) (a) 2 and 77.54 (7) and (7m), Stats.) (1) SCOPE. This section describes the general rules for exempt occasional sales.

(2) GENERAL. Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales." However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this section, a taxable sale occurs.

(3) STATUTES. (a) "Occasional sale" is defined in s. 77.51 (9), Stats.

(b) Section 77.54 (7), Stats., exempts most occasional sales from the sales and use taxes.

(4) SALES WHICH ARE OCCASIONAL SALES. Sales which are exempt occasional sales include:

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

(b) Sales by a sole proprietor, who is required to hold 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 which holds or is 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.

Example: A 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) The transfer of a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft to a spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law, of the transferor provided the property has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property.

(d) The transfer of a motor vehicle from the transferor's individual ownership to a corporation owned solely by the transferor provided the Register, April, 1993, No. 448

motor vehicle has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property. Transferor for purposes of this paragraph means a natural person.

(e) Sales by nonprofit organizations meeting the requirements in s. 77.54 (7m), Stats.

Note: Refer to s. Tax 11.35 regarding the occasional sales exemption for nonprofit organizations.

(f) The sale of a business or business assets, not including inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property or taxable services as provided in s. 77.51 (9) (a) and (am), Stats.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(g) The sale 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 from sales 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.

Examples: 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, 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. (g). However, purchases by the seller of tangible personal property which are sold are taxable.

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 a supplier's sales to them are taxable retail sales.

(5) SALES WHICH ARE NOT OCCASIONAL SALES. Sales which are not exempt occasional sales, except as provided in sub. (4), include:

(a) Sales by a person who holds or is required to hold a seller's permit.

Example: Sales of used equipment by a retail store or vending machine operator are not occasional sales and would be subject to sales or use tax.

(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.

Note: Refer to s. Tax 11.34 regarding the occasional sales exemption for the sale of a business or business assets.

(c) The sale of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers, semitrailers and all-terrain vehicles. 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, mobile home not exceeding 45 feet in length, snowmobile, trailer, semitrailer or all-terrain vehicle is registered or titled within Wisconsin.

(d) A sale 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 this property.

(e) Sales of bingo supplies to players or the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(f) A sale by persons engaged primarily in the business of making non-taxable sales of personal property, such as manufacturers and wholesalers. 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.

Note: The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3) (b) became effective March 1, 1979; (b) Non-retailer sales of all-terrain vehicles as described in sub. (4) (c) became taxable and the sale of an all-terrain vehicle as described in sub. (3) (c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for the sale of a business or business assets in sub. (3) (e) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of motor vehicles, boats, etc., to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; am. (2), (4) (c) and (g), Register, April, 1993, No. 448, eff. 6-1-93.

Tax 11.34 Occasional sales exemption for sale of a business or business assets. (ss. 77.51 (9) (a) and (am) and (14g) (h), 77.52 (12) and 77.54 (7), Stats.) (1) SCOPE. This section describes the occasional sales exemption for the sale of a business or business assets as provided in s. 77.51 (9) (a) and (am), Stats.

(2) GENERAL. (a) The sale of business assets, consisting of tangible personal property, by a person who holds or is required to hold a seller's permit at the time of the sale is subject to sales tax, except as provided in sub. (3) (c).

(b) Except as provided in sub. (3) (c), the tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.
2. A single transaction or series of transactions at the time of termination of a business.
3. Piecemeal sales, whether part of a continuing business or upon termination.

(c) The tax does not apply to merchandise inventory sold to another retailer who purchases it for resale and sells it in the regular course of that retailer's business.

Example: The rental of a motel sleeping room by a salesperson from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Sales of lodging by hotels, motels and inns to governmental agencies and nonprofit organizations described in s. 77.54 (9a), Stats., and the federal government or to their employees are exempt from sales and use tax if the following 3 conditions are met, regardless of whether the agency or the employee pays for the lodging:

1. The hotel, motel, or inn issues the invoice or billing document for the lodging in the name of the governmental agency or nonprofit organization.

2. The hotel, motel or inn receives any of the following:

a. A purchase order or similar written document from the governmental agency.

b. The certificate of exempt status, CES, number of the nonprofit organization. The hotel, motel or inn shall enter the CES number on its copy of the invoice or billing document.

3. The hotel, motel or inn keeps a copy of the documents in subds. 1 and 2 to substantiate that the sale was exempt.

(d) Separately stated charges by hotels, motels and inns for the rental of tangible personal property, including televisions and refrigerators, are taxable.

(e) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all these items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department for reasonableness.

(b) In computing the ratio in par. (a), tangible personal property includes property subject to the sales tax. This includes furniture, furnishings, equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment.

Example: If an investment, valued at undepreciated cost, on the effective date of a lease is \$100,000 for tangible personal property and \$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 s. Tax 11.48 are effective under the general sales and use tax law on and after September 1, 1969, except the provisions of sub. (1) (c) 1 are effective on or after August 9, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (a) and (b), (2) (a) and (b) and (3) (b), cr. (1) (c) and (d), (2) (c) and (d), renum. (2) (c) to be (2) (e) and am., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 11.49 Service stations and fuel oil dealers. (ss. 77.52 (2) (a) 9 and 10 and (2m) (b) 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, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor and including motor vehicles and truck bodies owned by nonresidents except as provided in sub. (2).

(c) The towing of motor vehicles.

Examples: 1) The charge to a customer for towing a vehicle to a repair facility is taxable.

2) The charge to a customer for towing a vehicle from a no parking zone is taxable even though a governmental unit arranged for the towing.

3) The charge to a customer for towing a demolished vehicle to a junkyard is taxable.

4) The charge to a Wisconsin governmental unit for towing is exempt from tax.

5) The charge to a repair facility for towing a vehicle to the facility for repair which will be passed on to the customer is not taxable provided the repair facility gives the towing company a properly completed resale certificate. However, the charge for the towing service to the customer by the repair facility is taxable.

(d) Retail sales of tangible personal property, including motor oil, antifreeze, 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.

(f) Providing parking for motor vehicles. Providing temporary storage of a motor vehicle is considered parking if the vehicle is ready and available for immediate use.

(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 s. 77.54 (1), (3), (5), (6) (c), (9a), (12), (13), (30) (a) or other exemptions in subch. III, ch. 77, Stats.

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(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 or for the prevention of cruelty to children or animals. Sales to employes of these entities are not exempt, even though the entity may reimburse the employe for the expenditure.

(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. 71.38, 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 or truck with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of 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 to farmers of fuel used in farming.

(f) 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.

(g) Sales of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste 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.

(h) Sales of repairs, alterations, cleaning, painting and maintenance services to common or contract carrier vehicles exempt under sub. (2) (c), mobile mixing and processing units and the vehicle or trailer on which they are mounted, and motor vehicles not required to be licensed for highway use which are used in waste reduction or recycling activities.

(i) Sales of accessories, attachments, parts, supplies and materials for mobile mixing and processing units and the vehicle or trailer on which they are mounted, including highway fuel for units operated on public highways.

(j) Sales of wood residue used for fuel and sold for use in a business activity. Wood residue includes slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or wood residue.

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase, without tax, "for resale", repair parts and materials used in the work which are physically transferred to their customers. This includes 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; (d) The repair of motor vehicles used in waste reduction or recycling processes is exempt pursuant to 1983 Wis. Act 426, effective July 1, 1984; (e) The repair of mobile mixing and processing units and the vehicle or trailer on which mounted, as well as parts, accessories, attachments, supplies and materials are exempt pursuant to 1985 Wis. Act 29, effective July 20, 1986; (f) Peat and solid waste fuel cubes sold for residential use are exempt pursuant to 1985 Wis. Act 149, effective April 2, 1986; (g) Wood residue sold for fuel use in a business activity is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (h) Repair to nonresident vehicles not otherwise exempt is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (i) The exemption for fuel used in farming, other than in machines, became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (j) All towing services became taxable effective May 1, 1993.

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; correction in (2) (c) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1990, No. 412; am. (1) (b) and (d), (2) (b), (c) and (f) and (3) (a), cr. (2) (g), (h) and (i), Register, March, 1991, No. 423, eff. 4-1-91; am. (1) (b) and (2) (d), renum. (1) (c) (intro.) and (2) (e) to (i) to be (1) (c) and (2) (f) to (j) and am. (1) (c), r. (1) (c) 1. to 3., cr. (1) (f) and (2) (e), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.50 Auctions. (s. 77.51 (9) (e), (13) (b) and (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 responsible for reporting the sales tax on auction receipts even if the owner of the property has a seller's permit.

(3) **TAXABLE AUCTION RECEIPTS.** Taxable receipts from auctions include gross receipts from:

(a) Auction sales held regularly at an established place of business, such as an auction house or auction barn. The household goods exemption does not apply to these sales.

(b) Auctions held regularly on radio, television or CATV. The household goods exemption does not apply to these auctions.

(c) Auctions sponsored on an annual or other regular basis by non-profit organizations or others, except as provided in sub. (4) (d). The household goods exemption does not apply to these auctions.

(d) Auction sales of heavy equipment and going-out-of-business auction sales of retail stores, motels, wholesalers, manufacturers, contractors and service enterprises. The household goods exemption does not apply to these sales.

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(e) Auction sales of antiques and works of art except when sold with other household goods of which they were a part.

(f) Auction sales of professional or business inventories or equipment even though they may consist of household goods.

(g) Sheriffs' sales and other auction sales made pursuant to orders of a Wisconsin court.

(h) All other auction sales which are not specifically exempt under the law.

(i) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings and trends observed during the experiment.

4. The fourth part of the document discusses the implications of the results and provides recommendations for future research. It also includes a conclusion that summarizes the key findings of the study.

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

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

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

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

Note: The interpretations in s. Tax 11.56 are effective under the general sales and use tax law on and after September 1, 1969, except that sales of typeset material shall first be considered sales of tangible personal property on April 1, 1983, and the exemption in subd. (3) (b) 2 for ingredients of publications was created by 1983 Wis. Act 27, effective July 2, 1983.

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

Tax 11.57 Public utilities. (s. 77.54 (3), (6) (a) and (c), (17), (26m) and (30), Stats.) (1) TAXABLE SALES. The gross receipts from the sale of the following tangible personal property and services provided by utilities are taxable:

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

Example: An early payment discount is adjusted for in the next reporting period.

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

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

(d) Parking space rentals.

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

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

(g) The rental of water heaters.

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

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

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

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

Note: See s. Tax 11.86 for more information.

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

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

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

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

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

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

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

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

(h) "Wheeling" energy for another utility.

(i) Sales of gas or other fuel, not including electricity, to farmers for use in farming.

(j) Labor charged a customer for the installation of a complete furnace or built-in appliance.

(k) Water delivered to customers through mains.

(l) 1. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste 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 subsection, "residential use" means use in a structure or portion of a structure which is a person's permanent principal 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, nursing homes and farm houses, if the structure is used as a person's permanent principal residence. Residential use includes use in apartment houses, nursing homes and farm houses even though they are on a commercial or rural meter.

8. "Non-residential use" is use other than "residential use" and includes any use in the conduct of a trade, business or profession, whether the trade, business or profession is carried on by the owner of the premises or some other person. It includes use in secondary residences, motor homes not used as a permanent principal 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.

Examples: 1) A person owns a home in Wisconsin where he resides for 7 months each year and a cottage, also in Wisconsin, where he resides for 5 months each year. The home is his principal residence and the cottage is his secondary residence.

2) A person is a resident of Florida and has a home in Florida. The person also retains a home in Wisconsin. The person's Florida home is her principal residence and her Wisconsin home is her secondary residence.

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 the services. The tax applies to the sales of the 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 used 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.

Note: See s. Tax 11.86 for more information.

3. Charges for coating pipe or creosoting poles.

4. Charges for X-ray testing of welding joints in the construction of overhead utility facilities.

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, as provided under 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.

(c) Section 77.54 (30) (a) 4, Stats., exempts sales of *"Any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue."*

(d) Charges for X-ray testing of welding joints in the construction of underground utility pipelines.

(5) **WASTE TREATMENT FACILITIES.** The gross receipts from the sales of and the storage, use or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt or that would be exempt under s. 70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., is exempt from sales and use tax.

Note: The interpretations in s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales of coal, fuel oil, propane, steam and wood became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) The six-month exemption for electricity and gas became effective November 1, 1979, pursuant to Chapter 1, Laws of 1979; (c) The exemption for fuel converted to electrical energy, gas or steam by utilities became effective October 1, 1981, pursuant to Chapter 20, Laws of 1981; (d) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption for wood residue became effective September 1, 1987, pursuant to 1987 Wis. Act 27; (f) The exemption for component parts of an industrial waste treatment facility became effective July 1, 1989, pursuant to 1988 Wis. Act 426, later clarified effective May 17, 1988, pursuant to 1987 Wis. Act 399; (g) The sale of gas or other fuel used to heat farm buildings, including greenhouses, that are not exempt machinery under s. Tax 11.12 became taxable July 1, 1991; and (h) All fuel used in farming became exempt October 1, 1991, pursuant to 1991 Wis. Act 39.

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; cr. (4) (c), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (e) 1., Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (a), (i), (j) and (k), (2) (f), (g), (i) and (L) 7. and 8., (3) (a) and (b) 1., 2. and 4. and (4) (a), cr. (4) (d) and (5), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (i), Register, April, 1993, No. 448, eff. 5-1-93.

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:

1. Medical services.
2. Hospitalization services.

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

1. Boarding.

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2. Grooming.

3. Clipping.

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

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1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list includes names such as Mr. J. H. Smith, Mr. W. B. Jones, and Mr. C. D. Brown, among others.

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and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) **DEFINITION.** In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) **SPECIAL PROVISIONS.** (a) Sales to state chartered credit unions, and to federal and state chartered banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.70 Advertising agencies. (ss. 77.51 (14) (intro.) and (h), 77.52 (1) and (2) and 77.54 (2), (2m), (6) (b) and (25), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes. Finished art includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs and illustrative material not reproduced.

(b) "Preliminary art" means art prepared solely for presenting an idea to a client or prospective client. Preliminary art includes roughs, visualizations, sketches, layouts and comprehensives.

(2) **TAXABLE SALES.** The following sales are subject to Wisconsin sales or use tax, unless an exemption in sub. (3) applies:

(a) Charges for finished art. Finished art is tangible personal property.

(b) Charges for preliminary art all or any part of which results in the production of finished art or other tangible personal property by the advertising agency. This preliminary art is tangible personal property.

Examples: 1) Company A contracts with an advertising agency to produce an advertising campaign for Company A's product. The advertising agency develops 10 ideas or suggestions, in the form of preliminary art, for an advertising flyer. Company A selects one of the ideas, and it is developed into finished art, which is used to produce flyers.

The charges by the advertising agency for the production of preliminary art for all 10 ideas are subject to tax, provided an exemption does not apply to the sale of the finished art, because one idea was selected and was used to produce finished art.

2) Company B contracts with an advertising agency to produce a radio commercial. The agency produces a demonstration tape (demo) which contains several different jingles which could be used in the commercial. Company B selects one of the jingles, and the commercial is produced.

The charge by the agency for the demo is subject to tax. The demo is preliminary art. Since finished art was produced from the preliminary art, the charge is subject to tax, unless an exemption applies to the sale of the finished art.

(c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

Examples: 1) Company C contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company C decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company C. Company C mails the flyers to its Wisconsin customers.

The entire charge to Company C by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is subject to tax.

2) Company D decides to have a radio advertising campaign and contracts with an advertising agency. The advertising agency produces several advertising jingles on a "demo" tape, and Company D selects one jingle. The advertising agency then produces a master tape at its Wisconsin sound production studio. The master tape remains at the studio, and 10 copies or "dubs" are produced. One dub is given to Company D, and the other 9 dubs are mailed by the advertising agency directly to various Wisconsin radio stations. The air time is arranged by Company D.

The entire charge by the advertising agency for the production of the master tape and dubs is subject to tax.

(d) Photographic services or photostats.

(e) Producing, fabricating, processing, printing or imprinting tangible personal property for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing or imprinting of the tangible personal property.

(3) NONTAXABLE SALES. Charges for the following are not subject to Wisconsin sales or use tax:

(a) Preliminary art that does not result in the production of finished art or other tangible personal property.

Example: Company E contracts with an advertising agency for an ongoing advertising campaign. The agency submits several suggestions, in the form of preliminary art, for a spring advertising campaign. These ideas are rejected by Company E. The charge by the advertising agency for preliminary art not chosen for further development is not subject to tax, because the preliminary art was not developed into finished art.

(b) Writing original manuscripts or news releases.

(c) Writing copy to be used in media advertising.

(d) Consultation, market research and compiling statistical or other information.

(e) Recommendations for advertising themes or merchandising plans.

(f) Obtaining media space and time.

(g) Printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which is purchased and stored for the purpose of subsequently

transporting it outside Wisconsin by the client for use thereafter solely outside Wisconsin.

Example: Company F contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company F decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company F. Company F mails the flyers to its customers located outside Wisconsin.

The entire charge to Company F by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is exempt from tax because the printed advertising material is transported outside Wisconsin by Company F for use by Company F outside Wisconsin.

(h) Printing or imprinting tangible personal property which will be subsequently transported outside Wisconsin for use outside Wisconsin by the client for advertising purposes.

Example: Company G contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company G decides on one theme, and the finished art is prepared. Company G provides the finished art, paper and ink to a Wisconsin printer who prints 10,000 copies of the flyer. The flyers are mailed by Company G to addresses outside Wisconsin.

The charge to Company G by the printer for the printing of the flyers is exempt from tax because the flyers are transported outside Wisconsin for use outside Wisconsin by Company G for advertising purposes.

(i) Tangible personal property that will be resold by the client.

Example: Company H has an advertising agency produce specification sheets for Company H's products. The specification sheets are included with the products when sold to Company H's customers. The advertising agency produces the finished art and has the printing done. Company H receives an itemized bill from the advertising agency which shows a charge for the finished art and the printing.

The entire charge by the advertising agency to Company H is exempt from tax because the specification sheets are included with Company H's products which will be sold to customers. Company H may claim a resale exemption for the specification sheets by providing the agency with a properly completed Wisconsin resale certificate, form S-205.

(j) Tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

Example: Company I contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company I decides on one theme and the finished art is prepared. Company I takes the finished art to a Wisconsin printer and has 10,000 flyers printed. The printer uses its own paper and ink to print the flyers. The flyers are mailed by the printer to addresses in Wisconsin.

The charge to Company I by the advertising agency for the preliminary art and finished art is exempt from Wisconsin sales tax because the finished art is consumed in the production of flyers which are sold by the printer to Company I.

(k) 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 does not apply to advertising supplements that are not newspapers.

Example: Company J contracts with an advertising agency to produce a shoppers guide advertisement. The advertising agency produces layouts and roughs for approval by Company J. Company J approves, and the finished art for the shoppers guide advertisement is produced. The preliminary art and finished art charges are billed to Company J for the job. Company J deals directly with the shoppers guide publisher to run the advertisement in a

shoppers guide. The advertising agency bills Company J \$1,000 for preliminary art and \$3,000 for finished art.

The total \$4,000 charge is exempt from Wisconsin sales or use tax because the preliminary art results in finished art and the finished art becomes an ingredient or component part of a shoppers guide, or is consumed or loses its identity in the manufacture of shoppers guides.

(L) Containers, labels, sacks, cans, boxes, drums, bags or other packing and shipping materials for use in packing, packaging or shipping tangible personal property, if the items are used by the purchaser to transfer merchandise to customers. Also exempt are meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether these items are used to transfer merchandise to customers.

Example: An advertising agency produces finished art to be used on Company K's shipping boxes. The boxes are used by Company K to ship its products to its customers. The advertising agency delivers the finished art to a printer who uses the finished art to print and produce the boxes which the advertising agency resells to Company K.

The entire charge for the finished art and boxes is exempt from Wisconsin sales or use tax because the boxes are used by Company K in packing, packaging or shipping merchandise to customers. Company K should provide the agency with a properly completed certificate of exemption, form S-207.

(4) MEASURE OF TAX. (a) Tax applies to an advertising agency's total gross receipts from the sale of tangible personal property or taxable services without any deduction for any cost element which becomes a part of the sales price. These elements include consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though the costs are separately itemized in a billing to the client.

(b) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(5) WHEN AND WHERE SALE OCCURS. (a) The tax applies to an agency's gross receipts from the sale of or the storage, use or consumption of tangible personal property in Wisconsin regardless of whether:

1. The transfer is to the advertiser or to a third party at the direction of or on behalf of the client.

2. The client is located in or outside Wisconsin.

Example: An agency's billing to a client in Minnesota for finished art transferred to a business in Wisconsin is taxable.

(b) The sale of tangible personal property or taxable services occurs when the advertising agency transfers possession of the tangible personal property to the client or the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client.

(6) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee," "retainer," "service charge" or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal

property, it is not taxable. A fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales.

(7) **PURCHASES BY AGENCIES.** (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that:

1. Is resold before use by the advertising agency.

Example: Company L is an advertising agency. Company L purchases various art equipment such as paint brushes, easels, etc., that it uses in its operations. A portion of the art equipment is sold to the general public for use. The art equipment Company L sells to the general public may be purchased by Company L without Wisconsin sales or use tax as property for resale, provided Company L gives its supplier a properly completed Wisconsin resale certificate, form S-205.

2. Becomes physically an ingredient or component part of tangible personal property the advertising agency produces and sells.

Example: Company M is an advertising agency that produces displays for customers. The displays are usually framed or matted photographs or prints. Company M may purchase the frames, matting, and paper for photographs and prints without Wisconsin sales or use tax as property for resale, provided it gives its supplier a properly completed Wisconsin resale certificate, form S-205.

(b) An advertising agency is the consumer of all tangible personal property other than tangible personal property purchased for immediate sale to customers or that becomes physically an ingredient or component part of tangible personal property sold by the agency. As the consumer, the advertising agency is subject to Wisconsin sales or use tax on the tangible personal property purchased.

Example: Company N purchases various office equipment, such as typewriters, computers, tables and cabinets which it uses in its advertising agency office. Company N purchases the equipment from an out-of-state supplier that is not required to collect Wisconsin sales or use tax. Company N is subject to Wisconsin use tax on its purchase of the office equipment.

Note: 1) Forms S-205 and S-207 and their instructions may be obtained free of charge, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, or by calling (608) 266-2776.

2) The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September 1, 1989, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; and (c) The exemption for ingredients or components of shop-pers guides, newspapers, and periodicals became effective July 7, 1983.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.71 Computer industry. (ss. 77.51 (14) (h) and (j) and (20) and 77.52 (1) and (2) (a) 10, Stats.) (1) **DEFINITION OF TERMS.** In this section:

(a) "Application" means the specific job performance by an automatic data processing installation.

(b) "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment as well as punched card tabulating machines. It does not include tape-controlled automatic drilling, milling or other manufacturing machinery or equipment.

(c) "Basic operational programs", commonly referred to as "systems software", means the programs that perform overall control and direction of the computer system and permit it to do the functions basic to the

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operation of a computer, and permit it to execute the instructions contained in utility software and applications software programs. Basic operational programs are considered an integral part of the computer hardware when these internal codes are not accessible to or modifiable by the user.

(d) "Coding" means the list, in computer code, of the successive computer instructions for successive computer operations for solving a specific problem.

(e) "Custom programs" mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon all the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system.

2. Whether the program is loaded into the customer's computer by the vendor and the extent to which the installed program must be tested against the program's specifications.

3. The extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation.

4. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.

5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.

6. Custom programs do not include basic operational programs or prewritten programs.

7. If an existing program is selected for modification, there must be a significant modification of that program by the vendor so that it may be used in the customer's specific hardware and software environment.

(f) "Data processing" means the recording and handling of information by means of mechanical or electronic equipment, commonly referred to as automatic data processing.

(g) "Enhancement" means modifications, upgrades, improvements or changes to existing programs by persons other than the purchaser of the program.

(h) "Input" means the information or data transferred, or to be transferred, from external storage media including punched cards, punched paper tape and magnetic media into the internal storage of the computer.

(i) "Keypunching" means recording information in cards, paper tapes, or magnetic tapes, disc or drum by punching holes or otherwise entering information in the cards, tapes, discs or drums, or recording data on any media to represent letters, digits and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

(j) "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to en-

sure that information has been punched in a card or transcribed on a tape during the keypunching operation has been punched properly.

(k) "Prewritten programs", often referred to as "canned programs", means programs prepared, held or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease.

(l) "Processing a client's data" means the developing of original information from raw data furnished by a client. Automatic data processing operations which develop original information include summarizing, computing, extracting, sorting, sequencing, or the updating of a continuous file of information maintained for a client by a service bureau.

(m) "Program" means the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a specific problem. It includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs. For purposes of this section a program is either a prewritten or custom program.

(n) "Program maintenance", in addition to other maintenance services, includes telephone support services to discuss and solve problems.

(o) "Reformatting of data" means the rearranging of data by mechanical or electronic equipment.

(p) "Service bureau" means a business rendering automatic data processing services.

(q) "Source document" means a document from which basic data are extracted, such as sales invoice.

(2) **TAXABLE RECEIPTS.** The following transactions involving automatic data processing equipment, programs, output and services are taxable:

(a) The retail sale, lease or rental of new or used automatic data processing equipment and charges for the installation, service and maintenance of this equipment. In this subsection, the following applies to leases:

1. Lease includes a contract by which a lessee, for a consideration, obtains the full or partial use of equipment if the lessee's employees are located on the premises where the equipment is located or operate the equipment. A lease does not include obtaining remote access to equipment by telephone or other means when that person's employees are not located on the premises where the equipment is located and they do not operate the equipment or control its operations.

2. Subleasing receipts are taxable without any deduction or credit for sales or use tax paid by the original lessee to the lessor if the original lessee uses the equipment in addition to subleasing it. If the original lessee uses the equipment solely for lease or rental to others, the lessor's charge to the original lessee is exempt as a purchase for resale.

(b) The retail sale, lease, rental or license to use computer programs, except custom programs, including the maintenance and enhancement of those programs, whether transferred in a machine readable form such as

cards, tapes or discs, or transferred in any other manner to the lessee or purchaser such as by telecommunications, or written instructions on coding sheets. The tax applies to the total charge for these programs, including:

1. The consideration received for the temporary transfer of possession of a prewritten or basic operational program for the purpose of direct use or to be recorded by the customer.

2. The consideration received for a program in the form of license fees or royalty payments, present or future, whether for a minimum use or for extended periods.

3. The consideration received for designing, producing, implementing, testing or installing the program.

(c) The sale of training materials, such as books and manuals furnished to trainees for a specific charge. However, training services are not taxable.

(d) The charge for additional copies of records, reports or tabulations, including copies produced by means of photocopying, multi-lithing or by other means. "Additional copies" means all the copies in excess of copies produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program so that a program is run continuously, by using different programs to produce the same output product, or by other means.

(e) The sale of mailing lists as set forth in s. Tax 11.82, including listings in the form of mailing labels produced as result of a computer run. However, the tax does not apply to the charge for addressing material to be mailed with names and addresses furnished by a customer, or maintained by a service bureau for the customer, by the use of automatic data processing equipment.

(3) NONTAXABLE COMPUTER AND DATA PROCESSING SERVICES. The gross receipts from the following computer or data processing services are not taxable:

(a) Processing a client's data.

Note: 1) A contract to process a client's data by the use of a computer program or through an electrical accounting machine programmed by a wired plugboard will usually include receiving the client's source documents, recording data in machine readable form such as in punch cards or on magnetic media, making corrections, rearranging or creating new information as the result of the processing and then providing tabulated listings or recording output on other media. This service is not taxable, even though the total charge is broken down into specific charges for each step.

2) If a client furnishes data and computer programs for processing the data and the processing is under the direction and control of the person providing the service, the processing service is not taxable, even though charges for the service may be based on computer time. The true object of this arrangement is considered to be a service, even though some tangible personal property may be incidentally transferred to the client.

(b) Providing custom programs.

(c) Providing program technical support, error correction services and maintenance and enhancement to custom programs.

(d) Providing time-sharing services which permit persons at different locations to access the same computer through remote access by telephone lines, microwave or other means. Nontaxable time-sharing exists when a person or that person's employes, who have access to the equipment, are not located on the premises where the equipment is located and do not operate the equipment or control its operation.

(e) Miscellaneous services which are not part of the sale of a taxable program including:

1. Designing and implementing computer systems including determining equipment and personnel required and how they will be utilized.

2. Designing storage and data retrieval systems including determining what data communications and high-speed input-output terminals are required.

3. Consulting services including study of all or part of a data processing system.

4. Feasibility studies including studies to determine what benefits would be derived if procedures were automated.

5. Evaluation of bids including studies to determine which proposal for computer equipment would be most beneficial.

(f) Key punching and keystroke verifying services, including:

1. Key punching only, key punching and keystroke verification, or key punching and providing a proof list or verification data or both. Charges for these services are not taxable, whether the cards or tapes are furnished by the customer or by a service bureau.

2. Recording data from source documents directly on magnetic tape, off-line. This operation may include keystroke verifying or proof listing of data or both and is comparable to the punch card operation.

3. Imprinting characters on a document to be used as the input medium in an optical character recognition system, whether paper tape or other media are used in the operation.

4. Reformatting of data.

Note: 1) The interpretations in s. Tax 11.71 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted. However, computer and data processing services were taxable under s. 77.52 (2) (a) 13, Stats., Laws of 1977, from August 1, 1977, through June 30, 1978.

2) In *Janesville Data Center, Inc. v. Department of Revenue* (1978), 84 Wis. 2d 341, the Wisconsin Supreme Court held that the transfer of customer data onto tangible personal property and the verification of customer data is not subject to the sales and use tax as a transfer of tangible personal property or a taxable service.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (e) 6., (2) (a) (intro.), 1. and (b) (intro.), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers. (ss. 77.51 (1m), (3m), (13) (e) and (f) and (14) (L), 77.52 (2) (a) 6 and (2m) (a) and 77.54 (40), Stats.) (1) LAUNDRIES AND DRY CLEANERS. (a) The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are taxable, except as provided in par. (b).

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(b) The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are exempt from tax when:

1. The services are performed on raw materials or goods in process destined for sale.

2. The services are performed by the customer through the use of coin-operated, self-service machines. Coin-operated, self-service machines do not include machines activated by tokens or magnetic cards.

3. The services are performed on cloth diapers by a diaper service. "Cloth diaper" means a cloth diaper used for sanitary purposes. "Diaper service" means a business primarily engaged in the lease or rental, delivery or laundering of cloth diapers.

(2) **LINEN AND CLOTHING SUPPLIERS.** The gross receipts of lessors from leasing or renting clothing, including uniforms, towels, linens or similar items, not including cloth diapers, to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled are subject to the tax. However, the items furnished to customers under these agreements may be purchased by the lessor without paying sales or use tax.

(3) **PURCHASES.** (a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and shall pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. They also shall pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. The tax applies to the gross receipts on the sale of these items to laundries, dry cleaners and linen and clothing suppliers.

(b) The tax applies to gross receipts from sales, leases or rentals of machinery and equipment to persons engaged in performing or furnishing laundry, dry cleaning, pressing and dyeing services, and to persons leasing or renting linens, towels and clothing to industrial, commercial or household users.

Note: The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; and (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wis. Act 335.

History: Cr. Register, December, 1979, No. 288, eff. 1-1-80; am. (3) (a) and r. (3) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) and (3) (a), cr. (1) (b), renum. (1) to be (1) (a) and am., Register, June, 1991, No. 426, eff. 7-1-91.

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production machinery or equipment, a nonmanufacturing activity, they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other nonmanufacturer are taxable.

Note: The interpretations in s. Tax 11.81 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. (3) and (4), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.82 Mailing lists and mailing services. (ss. 77.51 (20), 77.52 (1), 77.53 (1) and 77.54 (2), Stats.) (1) MAILING LISTS. (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property, except for written or typed lists of names and addresses, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use such lists. Examples of taxable mailing lists include, but are not limited to magnetic tapes and mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels and heat transfers.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing such lists. However, any tangible personal property becoming a component part of mailing lists when such mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to such property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for such property. However, addressing does not include such tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax shall not apply to charges for services rendered in preparing material for mailing (including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations) if such charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing such services. Consequently, they must pay the tax when purchasing such property.

Note: The interpretations in s. Tax 11.82 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) (b), Register, December, 1978, No. 276, eff. 1-1-79.

Tax 11.83 Motor vehicles. (ss. 77.51 (13) (am) and (14) (j), 77.52 (1) and (15), 77.53 (1), (16), (17) and (18), 77.54 (5) (c) and (d), (7) and (22) (f), 77.56 (2) and (3), 77.61 (1) and 77.71 (4), Stats.) (1) **DEFINITION.** In this section, "motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor and motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck and road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

(2) **RETAILERS' TAXABLE GROSS RECEIPTS.** (a) Gross receipts from the sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value, called a "trade-down."

(b) Gross receipts from charges for delivery, handling, preparation and any warranty.

(c) Gross receipts from equipment and accessories sold with a motor vehicle. However, adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as defined in s. 27.01 (7) (a) 2, Stats., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting directly on behalf of the handicapped person or a nonprofit organization.

(d) Gross receipts from charges for all parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as described in par. (c).

Example: Charges for installation of a radio or air conditioner into a motor vehicle are taxable.

(3) **OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS.** (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered in Wisconsin in the name of the transferor; and the transferor is not a motor vehicle dealer.

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(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of such interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

(4) PURCHASES BY NONRESIDENTS. (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than in their removal from Wisconsin are exempt. Truck bodies include semi-trailers. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body is subject to the tax.

(c) A motor vehicle, trailer, semi-trailer, all-terrain vehicle or mobile home purchased by a nonresident of Wisconsin 90 days or more before bringing the unit into Wisconsin, in connection with a change of residence to Wisconsin by the individual, is not subject to the Wisconsin use tax.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (6).

(5) TEMPORARY USE IN WISCONSIN. Motor vehicles purchased outside Wisconsin which are not required to be registered or titled in Wisconsin brought into Wisconsin by a nondomiciliary for that person's own storage, use or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used or otherwise consumed in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(6) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside this state and registered in this state generally is subject to the Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made, sales or use tax paid the other state or the District of Columbia shall be applied as a credit against and deducted from the Wisconsin use tax. This credit shall not apply to taxes paid to another country, to municipalities in other states or to motor vehicle registration fees.

(7) **TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir or heirs of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser is required to pay the tax to the department of transportation at the time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable, unless the donor is an organization described in s. 77.54 (9a), Stats.

(c) A motor vehicle donated to an organization described in s. 77.54 (9a), Stats., is not subject to Wisconsin use tax.

(8) **VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS.** (a) If salespersons or other employees use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson or other employee a reasonable amount for the use, and the charge is subject to the tax. In lieu of making the charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis:

1. In the case of motor vehicles licensed in the name of the retail dealer, the measure of the tax reported on the dealer's sales and use tax return shall be \$45.00 per vehicle per month until December 31, 1985, \$57.00 per vehicle per month from January 1, 1986 through December 31, 1986, \$69.00 per vehicle per month from January 1, 1987 through December 31, 1987 and \$83.00 per vehicle per month from January 1, 1988 and thereafter.

2. In the case of motor vehicles being operated with retail dealer plates, the measure of the tax reported on the dealer's sales and use tax return shall be \$12.00 per plate per month until December 31, 1985, \$15.00 per plate per month from January 1, 1986 through December 31, 1986, \$18.00 per plate per month from January 1, 1987 through December 31, 1987 and \$22.00 per plate per month from January 1, 1988 and thereafter.

(b) Retail dealers may not report on the basis prescribed in par. (a) for service vehicles such as wreckers or pick-up trucks, autos used by customers when their car is being repaired or any vehicle properly capitalized and depreciated for Wisconsin franchise or income tax purposes. Wholesalers, distributors, brokers or manufacturers may not report on this basis.

(9) **SALES BY DEALERS TO THEIR SALESPERSONS OR OTHER EMPLOYEES.** When a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons or other employees, the transaction is subject to the sales tax.

(10) **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 may 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 Wisconsin. The heavy equipment dealers may purchase motor vehicles for resale without tax.

(11) **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. The 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 is subject to tax. The property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. 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 even though a separate charge may be made to the customer for these supplies.

(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 the 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.

(12) **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.

(13) **EXEMPTION FOR VEHICLES USED IN WASTE REDUCTION OR RECYCLING.** Gross receipts from the sale, lease or rental of vehicles which are not required to be licensed for highway use and which are used exclusively and directly in waste reduction or recycling activities are exempt from sales and use tax.

(14) **REFUNDS UNDER "LEMON LAW."** Sales tax refunds made under s. 218.015 (2) (f), Stats., the "lemon law," are normally made in the same manner as the other sales tax refunds. However, when a defective motor vehicle is returned to the manufacturer for a refund of the purchase price, the purchaser is permitted to collect a sales tax refund directly from the department if the manufacturer fails to refund the tax.

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 that: (a) The 5% use tax payable by motor vehicle dealers using regular plates in sub. (8) (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 this section; (b) The 5% use tax payable in sub. (8) (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 this section; (c) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (d) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (e) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 23; (f) The exemption for adaptive

equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (g) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (h) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; and (i) The exemption for parts and accessories of adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

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, 1988, No. 362, eff. 3-1-88; emerg. am. (7) (a) 1. and 2., eff. 3-24-88; am. (7) (a) 1. and 2., Register, October, 1988, No. 370, eff. 11-1-88; cr. (11), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (a), (c) and (d), (3) (a) and (4) (a) and (c), cr. (5), (13) and (14), renum. (5) to be (6), renum. (6) to (11) to be (7) to (12) and am. (8) (a), (9), (10), and (11) (a), (b) and (c) 1., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (a), (c), (d), (3) (a), (4) (a), (6), (7) (a), (b), (8) (b), (10) and (14), cr. (7) (c), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.84 Aircraft. (ss. 77.52 (2) (a) 9, 77.53 (17r) and (18), 77.54 (5) (a) and (7) and 77.61, 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, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor is not engaged in the business of selling aircraft.

(c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. 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 Wisconsin, even though the aircraft also may be used out-of-state.

(d) The use tax does not apply to aircraft for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the aircraft into Wisconsin in connection with a change of domicile to this state.

(e) The use tax does not apply to aircraft registered in Wisconsin when all of the following requirements are fulfilled:

1. The aircraft is purchased in another state.
2. The aircraft's owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
3. The owner or lessee is one of the following:

a. A corporation, and that corporation and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or tangible personal property, except aircraft and property

such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

b. A partnership, and all the corporate partners fulfill the requirements in subpar. a., none of the general partners or limited partners who have management or control responsibilities is domiciled in Wisconsin and the partnership has no other real property of tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

c. An individual not domiciled in Wisconsin.

d. An estate, trust or cooperative, and that estate, that trust and its grantor or that cooperative does not have real property or tangible personal property, except aircraft and property such as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

4. The department has not determined that the owner, if the owner is a corporation, trust or partnership, was formed to qualify for the exemption from Wisconsin use tax.

(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.

Examples: 1) A ready-to-fly aircraft occupying space in a hangar and available for immediate use is parked.

2) An aircraft occupying space in a hangar with its wings off is not parked, since it would require a substantial expenditure of time or effort to make it operational.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor, or "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. (a) Section 77.54 (5) (a), Stats., provides that the tax does 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 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.

(b) The tax does not apply to charges for repair, service and maintenance of aircraft used by a certified or licensed carrier of persons or property in interstate or foreign commerce under the laws of the United States or any foreign government.

(4) **NONTAXABLE SERVICES.** Gross receipts from the following services or fees are not 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 the 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, 1989, except: (a) the exemption for federal aviation fuel is effective January 1, 1982, pursuant to Chapter 20, Laws of 1981; (b) The exemption for aircraft brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for certain nonresidents' aircraft became effective May 15, 1988, pursuant to 1987 Wis. Act 399; and (d) The exemption for transfers of aircraft to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

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; am. (1) (b) 3., cr. (1) (d), Register, April, 1990, No. 412, eff. 5-1-90; am. (1) (c), cr. (1) (e) and (3) (b), renum. (3) (intro.) to be (3) (a), Register, June 1991, No. 426, eff. 7-1-91; am. (1) (b) 1., (c), (2) (b), (3), (4) (intro.) and (b), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.85 Boats, vessels and barges. (ss. 77.51 (13) (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.

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(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.

(2) EXEMPT SALES. (a) The sale of 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 qualify as an exempt occasional sale if the transferor does not hold or is not required to hold a seller's permit.

(b) Sales of boats to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law 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 is not engaged in the business of selling boats.

(c) 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 volumetric tonnage of 50 tons or more are exempt from the tax. Accessories, attachments and parts attached to the vessel or barge and fuel for the 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. The use tax does not apply to a boat for an individual's personal use purchased by a nonresident outside this state 90 days or more before bringing the boat into Wisconsin in connection with a change of domicile to this state.

(e) A boat purchased by a Wisconsin or federal governmental unit or by certain nonprofit organizations is exempt from the tax, regardless of the boat's size or kind, pursuant to s. 77.54 (9a) or 77.55 (1), Stats.

(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 and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made."

(3) PAYMENT OF TAX. (a) No boat may 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 with the boat registration, mailed to Wisconsin Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, WI 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, unless exempt under sub. (2) (d).

(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.

(d) The "boat" subject to the use tax at the time the boat is registered in this state includes all accessories affixed or attached to the boat when in use. Anchors, boat cushions, marine radios, radar equipment and other similar accessories are included in the measure of the tax.

Note: In a decision dated July 25, 1983, in the case of *Alan G. Dwyer vs. Wisconsin Department of Revenue*, the Wisconsin Tax Appeals Commission held that the tax applies to boat accessories, including the anchor, boat cushions and marine radio, in addition to the bare hull of the boat.

(4) **TAXABLE SUPPLIES.** Sales of consumable supplies or furnishings not attached to the vessel or barge are not exempt from sales or use tax under s. 77.54 (13), Stats.

Example: Sales of bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, paper towels, etc., used on commercial barges or barges of 50 ton burden or over engaged primarily in interstate or foreign commerce or commercial fishing are subject to sales and use tax.

(5) **SALES TO SHIPS.** Sales of tangible personal property or taxable services delivered to operators of foreign flag ships or ships under the U.S. flag in a Wisconsin harbor are subject to tax, unless the retailer receives a properly completed resale or other exemption certificate from the purchaser.

Example: The operator of the ship may purchase without tax fuel and repair parts for a ship which exceeds 50-ton burden under s. 77.54 (13), Stats.

Note: The interpretations in s. Tax 11.85 are effective under the general sales and use tax law on and after September 1, 1983, except: (a) Boats documented under laws of the United States do not qualify for the occasional sale exemption effective February 28, 1979, pursuant to Chapter 1, Laws of 1979; (b) Charges by governmental units for docking and storing boats became taxable effective June 1, 1980, pursuant to Chapter 221, Laws of 1979; (c) The exemption for boats of nonresidents kept in waters contiguous to the nonresident's state of domicile became effective September 1, 1985, pursuant to 1985 Wis. Act 29, later amended effective June 1, 1988, pursuant to 1987 Wis. Act 268; (d) The exemption for boats brought into Wisconsin by new residents became effective August 1, 1987, pursuant to 1987 Wis. Act 27; and (e) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39.

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; am. (2) (b) to (e), cr. (3) (d) and (4), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (a), (c) and (f) and (3) (b), cr. (4), renum. (4) to be (5), r. (1) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (b) and (3) (a), Register, April, 1993, No. 448, eff. 5-1-93.

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) **DEFINITIONS.** In this section:

(a) "Utility facilities" include telephone, telegraph and television lines; electrical, water and gas transmission and distribution lines; and poles, transformers and towers, including pipes, conduits, sleeves, risers for cable television lines, or other property by which lines are supported or in which they are contained or connected.

(b) "Real property" includes underground utility facilities; lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land; and concrete foundations, anchors, crushed rock and backfill whether or not on land owned by the utility.

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(c) "Tangible personal property" includes overhead utility facilities and circuit breakers and other equipment, but not their foundations, installed to control the flow of electricity. It also includes other overhead property by which lines are supported or in which they are contained or connected if erected or installed under an easement or license, including authorizations under ss. 86.16 and 182.017, Stats., on land owned by a person other than the utility.

(2) **GENERAL.** (a) Gross receipts from the installation, lease, rental, repair, service or maintenance of tangible personal property are subject to sales tax.

(b) Materials used in construction or forming of real property are taxable when purchased by the contractor.

Examples: 1) The gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion of an overhead utility facility, and from a sale "in place" of the facility, if installed under an easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of the property may be purchased without tax for resale.

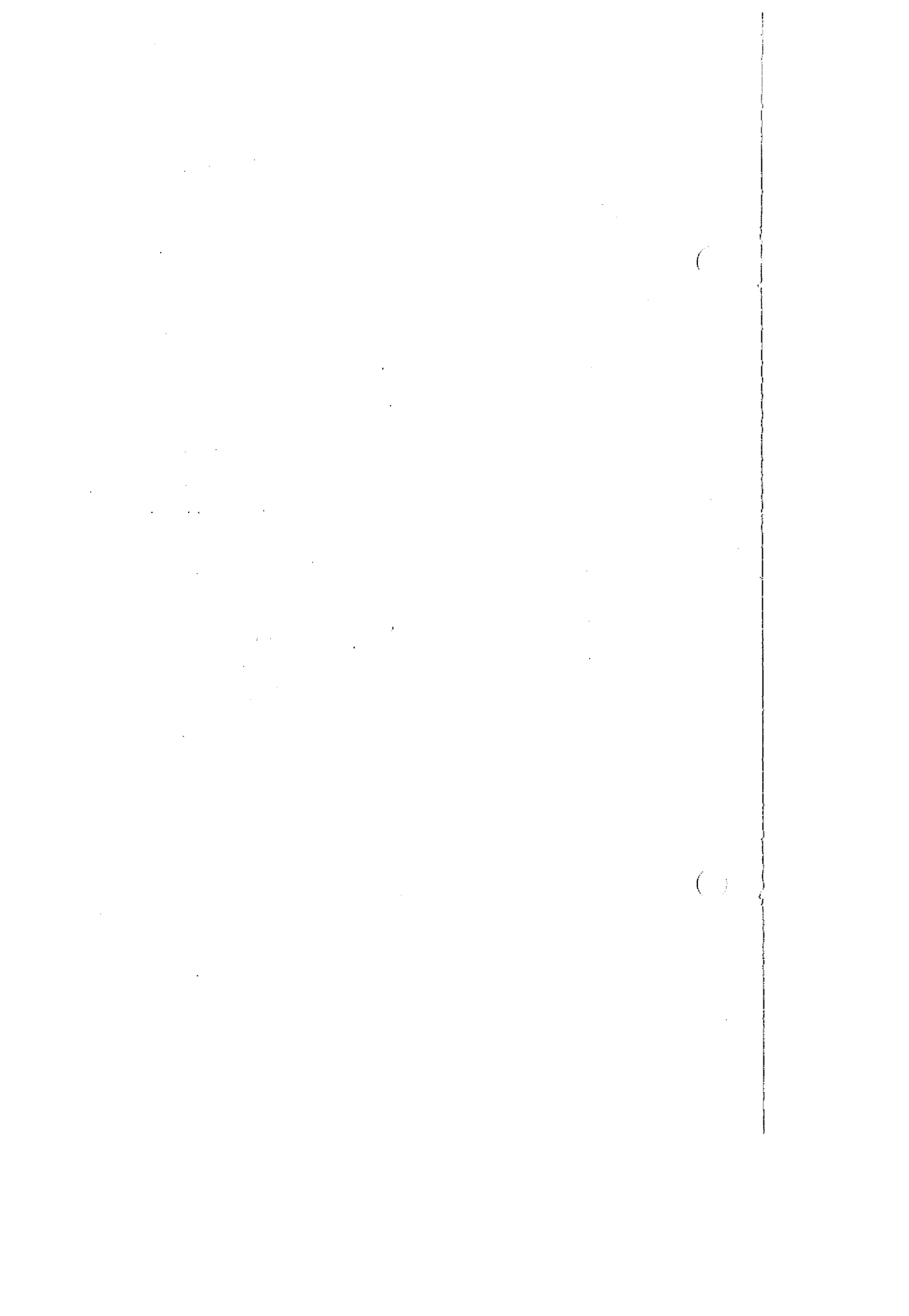
2) The gross receipts of a utility from the repair, service or maintenance of an overhead utility facility, or a portion of an overhead facility of another utility are taxable. Materials used in the repair, service or installation may be purchased without tax for resale.

3) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to sales or use tax. However, the materials used in the construction or installation of the underground utility facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

4) X-ray testing of weld joints in the pipe as part of the construction of an underground utility pipeline is part of the construction process and the gross receipts are not subject to sales or use tax. However, materials used in the X-ray testing of the underground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) **RELATED EXPENSES.** The gross receipts from the performance of a lump sum contract for the construction of an overhead utility facility, which is tangible personal property, may not be reduced by expenses in performing the contract, 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.

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(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of pre-packaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental social security, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

(4) SPECIALTY SITUATIONS. (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food.

Example: A restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chapter 250, Laws of 1977; and (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (d), Register, September, 1984, No. 345, eff. 10-1-84; correction in (1) (b) made under s. 13.93 (2m) (b) 7, Stats; am. (1) (intro.) and (f), (2) (a), (b), (c), (d) 1., (g), (j) and (k), (3) (a) and (4) (a), cr. (2) (k) 3., Register, June, 1991, No. 426, eff. 7-1-91; am. (2) (d) (intro.), 3., (f), (i) (intro.), 1. intro. and 2. intro., (k) 2., (3) (a), (b) and (d), cr. (3) (e), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 11.88 Mobile homes. (ss. 77.51 (2), (4) (b) 6, (13) (am) and (15) (b) 5, 77.52 (2) (a) 1, 77.53 (17) and (18), 77.54 (7), (31) and (36), 77.61 (1) (a) and (c), 218.10 (3), (7) and (9) and 340.01 (29), Stats.) (1) MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT. A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS. (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and

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which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to the contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) SALES AND RENTALS OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY. (a) Under s. 77.54 (31), Stats., the total gross receipts from the sale of a used mobile home, which is a primary housing unit, are exempt from the sales and use tax.

(b) Under s. 77.51 (4) (b) 6 and (15) (b) 5, Stats., 35% of the total gross receipts from the sale of certain new mobile homes is exempt from the tax. No credit is allowed for trade-in allowances on the purchase of these new mobile homes. The 35% exemption applies to a new mobile home that is:

1. A primary housing unit under s. 340.01 (29), Stats., or

2. Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

(c) Under s. 77.54 (36), Stats., the rental of a mobile home, as defined in s. 66.058 (1) (e), Stats., used for lodging for a continuous period of one month or more is exempt from the sales and use tax, whether the mobile home is classified as real or personal property.

(d) Under s. 77.54 (7), Stats., mobile homes transferred to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor are exempt occasional sales if the mobile home has been previously registered or titled in Wisconsin in the name of the transferor and the transferor is not engaged in the business of selling homes.

(e) Under s. 77.53 (18), Stats., the use tax does not apply to a mobile home purchased by a nonresident outside Wisconsin 90 days or more before bringing the mobile home into Wisconsin in connection with a change of domicile to Wisconsin.

(4) PAYMENT OF TAX. (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) If a mobile home purchased outside Wisconsin is subject to the Wisconsin use tax, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) CONSIGNMENT SALES. When a mobile home dealer has possession of a mobile home owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer

makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

Note: For information regarding principals, see s. Tax 11.55.

(6) DEFINITION. In this section:

(a) "Mobile home dealer" has the meaning defined in s. 218.10 (3), Stats.

(b) "New mobile home" has the meaning defined in s. 218.10 (7), Stats.

(c) "Primary housing unit" has the meaning defined in s. 340.01 (29), Stats.

(d) "Retailer" is a person who has a seller's permit issued under s. 77.52 (9), Stats.

(e) "Used mobile home" has the meaning defined in s. 218.10 (9), Stats.

Note: The interpretations in s. Tax 11.88 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Nonretailer sales of mobile homes became taxable effective August 1, 1977, pursuant to Chapter 29, Laws of 1977; (b) Nonretailer sales of mobile homes exceeding 45 feet in length became exempt effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (c) Rental of a mobile home that is personal property for lodging for a continuous period of one month or more became exempt effective July 1, 1984, pursuant to 1983 Wis. Act 341, clarified effective April 1, 1986, pursuant to 1985 Wis. Act 149; (d) Gross receipts from a used mobile home became exempt effective January 1, 1987, pursuant to 1985 Wis. Act 29; (e) Thirty-five percent of the gross receipts from the sale of new mobile homes became exempt January 1, 1987, pursuant to 1985 Wis. Act 29; (f) The exemption from use tax of mobile homes purchased 90 or more days before moving to Wisconsin became effective August 1, 1987, pursuant to 1987 Wis. Act 27; (g) The exemption for transfers to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; and (h) The exemption for certain new mobile homes transported in two unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. (3) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (b), (3) (d), (4) (b) and (5), cr. (3) (e), Register, June, 1991, No. 426, eff. 7-1-91; am. (3) (b) and (d), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 11.91 Successor's liability. (s. 77.52 (18), Stats.) (1) DESCRIPTION OF SUCCESSOR. (a) A purchaser or assignee of the business or stock of goods, including furniture, fixtures, equipment and inventory, of any retailer liable for sales or use tax shall be personally liable for the payment of the sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation is created and acquires the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for any sales or use tax liability of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

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(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a creditor, including a financial institution, actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered, if it never operates the business and if its sole purpose is to sell the business in its entirety, as a whole or piecemeal, at whatever price it can obtain to recover its investment.

(2) EXTENT OF LIABILITY. (a) If there is no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) PROCEDURES FOR PURCHASER. (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. An oral request for a clearance certificate shall not be accepted. The letter requesting the certificate shall include the real name, business name and seller's permit number, if known, of the prior operator. All sales tax returns for all periods during which the predecessor operated shall be filed with the department before it may issue the certificate.

(c) Under s. 77.52 (18) (a), Stats., the department has 60 days from the date it receives the request for a clearance certificate or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

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1. A clearance certificate; or
2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

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

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

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

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

Note: The interpretations in s. Tax 11.95 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The amount of retailer's discount on or after January 1, 1983, until December 31, 1992, was 2% of the first \$10,000 of sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of sales and use tax payable and .5% of the sales and use tax payable in excess of \$20,000 each year; (b) The amount of retailer's discount in sub. (1) became effective January 1, 1993, pursuant to 1991 Wis. Act 269; and (c) The requirement that county tax be remitted to the registering state agency was repealed effective May 1, 1988, pursuant to 1987 Wis. Act 287.

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

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

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

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

1. *Nelson vs. Sears Roebuck & Co.*, 312 U.S. 359 (1941)
2. *Nelson vs. Montgomery Ward & Co.*, 312 U.S. 373 (1941)
3. *General Trading Co. vs. State Tax Commission of the State of Iowa*, 322 U.S. 335 (1944)
4. *Miller Bros. Co. vs. Maryland*, 347 U.S. 340 (1954)
5. *Scripto, Inc. vs. Carson*, 362 U.S. 207 (1960)

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6. *National Bellas Hess, Inc. vs. Illinois Department of Revenue*, 386 U.S. 753 (1967)

7. *National Geographic Society vs. California Board of Equalization*, 430 U.S. 551 (1977)

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

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

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

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

(a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property located in this state.

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.

(e) Any person servicing, repairing or installing equipment or other tangible personal property in Wisconsin.

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

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

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

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

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

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

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or