

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

(f) Campground fees in Wisconsin state parks.

(g) Admissions to events conducted by nonprofit organizations when the event does not involve entertainment as provided in s. 77.54 (7m), Stats., the organization is not engaged in a trade or business as defined in s. 77.54 (7m), Stats., and is not otherwise required to hold a seller's permit.

(3) PRIZE MONEY. Bowling alley proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable gross receipts the amount advertised and set aside for prize money.

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

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

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

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973, pursuant to Chapter 156, Laws of 1973; (b) The exemption for admissions to museums operated under a lease with the State Historical Society became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The exemption for admissions to American Legion baseball became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) Recreational facilities and rights sold in connection with the sale of time-share property became taxable May 17, 1988, pursuant to 1987 Wis. Act 399; and (e) The exemption for state park campground fees became effective September 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (d), cr. (1) (g) and (h), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (b), cr. (2) (e), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (b), (e), (f) and (g) and (4) (a) and (b), cr. (2) (f) and (g), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 11.66 Telecommunications and CATV services. (ss. 77.51 (17m) and (21m), 77.52 (2) (a) 5 and 12 and (am) and 77.54 (24), Stats.) (1) DEFINITIONS. In this section:

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(a) "Private line" means a dedicated local or interexchange channel provided for communication between 2 points without use of the local or toll switching network, for the exclusive use of one or several customers.

(b) "Service address" has the same meaning as in s. 77.51 (17m), Stats.

Note: Service address as defined in s. 77.51 (17m), Stats., is "the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location ... 'service address' means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent."

(2) GENERAL. The sale of telecommunications services, not including services paid for by the insertion of coins in a coin-operated telephone, is subject to Wisconsin sales or use tax if both of the following occur:

(a) The service originates in Wisconsin.

(b) The service is charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid. These charges include:

1. Telephone calls or transmissions placed via dial 1 equal access systems in which the service provider identifies the telephone number of the line from which the call originates and the charge for that call is added to the account of the person responsible to pay that charge.

Note: "Dial 1" and "equal access" are different terms which describe the same thing, namely the procedure by which a customer accesses the system or network of a long distance telecommunications service provider. Prior to the breakup of AT&T and the entrance of other common carriers into the competitive market, a customer wanting to make a long distance call dialed 1 + area code + local exchange telephone number. Thus, the term "dial 1" access applies. The Court, in part of the proceedings concerning the breakup of AT&T, ordered that other common carriers be allowed to provide this same "dial 1" access procedure as AT&T. Thus, this procedure is also called "equal access."

Examples: 1) An employe of Corporation A located in Milwaukee, Wisconsin, places a telephone call to Corporation B in Minneapolis, Minnesota. The telephone bill does not identify the originating telephone number of Corporation A; however, the telephone company's backup records identify the call as originating in Corporation A. In this circumstance, the call is charged to a service address in Wisconsin.

2) Corporation C has offices in Milwaukee, Wisconsin, and Chicago, Illinois. Employees at Corporation C's Milwaukee office originate telephone calls to customers and others at various locations outside Wisconsin. The telephone calls are identifiable in the telephone service provider's records as originating in Milwaukee. Because Corporation C's accounting office is in Chicago, Illinois, the telephone bill is mailed by the service provider to Corporation C's Chicago office. The service originated in Wisconsin and was charged to a service address in Wisconsin since the calls were identifiable as originating at Corporation C's Milwaukee office.

3) An employe of Corporation D initiates the transmission of data from Corporation D's office in Wisconsin to Corporation D's office in another state via a telecommunications service provider's facilities. The service provider's records and equipment identify the transmission as originating in Corporation D's office in Wisconsin. The service originated in and was charged to a service address in Wisconsin since the calls were identifiable as originating at Corporation D's Wisconsin office.

2. Telephone calls made from a location in Wisconsin other than the caller's own telephone for which the caller instructs the operator to charge the call to the caller's own telephone located in Wisconsin.

Example: A customer is away from her home telephone but wishes to place a long distance call from another location in Wisconsin. The customer requests that the charge for that call be included with other calls made from the caller's home or business phone in Wisconsin rather than appear on the bill of the person from whose telephone the call was placed.

3. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is also the dial 1 equal access service provider for the customer's telephone in Wisconsin and the charge for the call is made to the customer's account.

Example: Tom Edwards has a credit card from DEF Corporation, which is his dial 1 equal access telecommunications service provider. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, regardless of whether the telephone number or credit card account number appear on the bill and regardless of where the bill is mailed.

4. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is not the cardholder's dial 1 equal access service provider, but where the cardholder's telephone is in Wisconsin.

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a service address in Wisconsin, regardless of whether the telephone number or account number appear on the bill and regardless of where the bill is mailed.

5. Service which originates in a local exchange in Wisconsin that does not provide dial 1 equal access.

Example: Jill Green has chosen GHI Corporation as her inter-LATA long distance telecommunications service provider for her law office. Jill's office is in an area where the local exchange does not yet provide dial 1 equal access service to long distance carriers other than AT&T. When Jill wants to send data to an out-of-state client she 1) dials the access number called Point of Presence or POP number, of GHI Corporation's system, 2) enters her account number, to identify herself as the party paying for the call, and 3) enters the area code and telephone number of her out-of-state client. All long distance service which originates in Wisconsin and which Jill charges to her account is considered to be charged to a service address in Wisconsin, regardless of whether the account number or her telephone number appear on the bill and regardless of where the bill is mailed.

(3) **TAXABLE TELECOMMUNICATIONS SERVICES.** Telecommunications services which are subject to Wisconsin sales or use tax include:

(a) Local and toll service and Wide-Area Telecommunications Service, or WATS, including intrastate private line service.

Example: Company JKL, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company JKL contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company for private line service between the Milwaukee and Madison offices and between the Milwaukee and Green Bay offices are subject to Wisconsin sales or use tax because the charges are for intrastate private line service. Also see sub. (4) (d).

(b) Channel services.

(c) Telegraph services.

(d) Cable television system services, including installation charges.

(e) Teletypewriter services.

(f) Computer exchange services.

(g) Cellular mobile telecommunications services.

(h) Specialized mobile radio services and any other form of mobile one-way or two-way communications service.

(i) Stationary two-way radio services.

(j) Paging services.

(k) Facsimile, or FAX, transmission services.

(L) Teleconferencing services.

(m) Any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.

(4) **NONTAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are not taxable:

(a) Interstate or international telecommunications service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a service address in another state or country.

(b) Basic or sophisticated emergency telephone system services provided by a telecommunications utility for which charges are levied pursuant to a county ordinance under s. 146.70 (3), Stats.

(c) Access services, Measured Toll Service, or MTS, and Wide-Area Telecommunications Service, or WATS, services resellers purchase, repackage, and resell to customers.

(d) Interstate private line service, including tie lines and foreign exchange service, charged on a flat rate periodic basis.

Example: Company MNO, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company MNO contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company for private line service between the Milwaukee and Chicago offices and between the Milwaukee and Minneapolis offices are not subject to Wisconsin sales or use tax, because the charges are for interstate private line services. Also see sub. (3) (a).

(e) Nonmechanical telephone answering services.

(f) Transfers of services, commonly called "access services" to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange.

(5) **PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing those services. The tax applies to the sale of property to them. However, s. 77.54 (24), Stats., exempts "*apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals.*"

Note: 1) The Dane County Circuit Court's decision of May 22, 1981 in Wisconsin Department of Revenue v. North-West Services Corporation and North-West Telephone Company held that a telephone company may purchase without tax tangible personal property leased or rented to customers in conjunction with an activity open to competition with others who are not public utilities.

2) The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (d) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (e) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; and (f) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (a), (b), (d) and (e), (2), Register, January, 1983, No. 325, eff. 2-1-83; cr. (1) (f), Register, July, 1987, No. 379, eff. 8-1-87; emerg. r. and recr. (1) (a) and (b), eff. 10-1-89; r. and recr. Register, April, 1990, No. Register, September, 1993, No. 453

412, eff. 5-1-90; renum. (3) (d) and (e) to be (4) (f) and (3) (d), Register, March, 1991, No. 423, eff. 4-1-91; r. and recr., Register, September, 1993, No. 453, eff. 10-1-93.

Tax 11.67 Service enterprises. (ss. 77.51 (4), (12), (13), (14) (intro.), (h) and (L), (15), (20) and (22) (a) and (b) and 77.52 (1) and (2m) (a) and (b), Stats.) (1) **GENERAL.** When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which are furnished without separate charge as an incidence to the service.

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

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

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

(3) **SPECIAL SITUATIONS.** (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

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

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

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

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

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

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

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

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

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not

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