

CHAPTER 77.

TAXATION OF FOREST CROP LAND; SELECTIVE
SALES AND USE TAX LAW.

SUBCHAPTER I.	
TAXATION OF FOREST CROP LANDS.	
77.01	Purposes.
77.015	Lands in villages included.
77.02	Forest crop lands.
77.03	Taxation of forest crop lands.
77.04	Taxation.
77.05	State contribution.
77.06	Forestation.
77.07	Severance tax.
77.08	Supplemental severance tax.
77.09	False reports, penalties.
77.10	Withdrawal of forest crop lands.
77.11	Accounts of conservation commission.
77.12	Review of findings, venue.
77.14	Forest crop lands propaganda, protection, appropriation.
77.16	Woodland tax law.
SUBCHAPTER III.	
SELECTIVE SALES AND USE TAX.	
77.51	Definitions.
77.52	Imposition of selective retail sales tax.
77.53	Imposition of use tax.
77.54	General exemptions.
77.55	Exemptions from sales tax.
77.56	Exemptions from use tax.
77.57	Liability of purchaser.
77.58	Returns and payments.
77.59	Deficiency and refund determinations.
77.60	Interest and penalties.
77.61	Administrative provisions.
77.62	Collection of delinquent sales and use taxes.
77.625	Payment of tax credits.
77.63	Distribution of sales tax.
SUBCHAPTER IV.	
TAX DISTRIBUTION.	
77.64	Distribution of revenue.
77.67	Overpayment of property tax credits.
77.68	Underpayment of credits.
77.69	Omitted property.

SUBCHAPTER I.

TAXATION OF FOREST CROP LANDS.

77.01 Purposes. It is the intent of this chapter to encourage a policy of preserving from destruction or premature cutting the remaining forest growth in this state, and of reproducing and growing for the future adequate crops of forest products on lands not more useful for other purposes, so that such lands shall continue to furnish recurring forest crops for commercial use, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands.

77.015 Lands in villages included. The provisions of sections 77.01 to 77.14 shall apply to villages for the same purposes as specified in section 77.01 and where in such sections the words "town" or "towns" appear they shall be substituted, for the purposes of this section, by the words "village" or "villages," respectively.

77.02 Forest crop lands. (1) **PETITION.** The owner of any tract of land of not less than 40 acres may file with the conservation commission a petition stating that he believes the lands therein described are more useful for growing timber and other forest crops than for any other purpose, that he intends to practice forestry thereon, that all persons holding incumbrances thereon have joined in the petition and requesting that such lands be approved as "Forest Crop Lands" under this chapter. Whenever any such land is incumbered by a mortgage or other indenture securing any issue of bonds or notes, the trustees named in such mortgage or indenture or any amendment thereto may join in such petition, and such action shall for the purpose of this section be deemed the action of all holders of such bonds or notes.

(2) **NOTICE OF HEARING, ADJOURNMENT.** Upon the filing of such petition the commission shall set such matter for public hearing at such time and place as it sees fit, but not later than one year from the date of such filing. Notice of the time and place of such hearing and a description, in specific or general terms, as the commission deems advisable, of the property requested to be approved as "Forest Crop Lands" shall be given to the owner of such land and to the assessor of the town or towns in which it is situated, by mail at least 30 days before the day of hearing. The notice also shall be published as a class 2 notice, under ch. 985, in the county in which such land is located, the first insertion to be at least 30 days before the day of the hearing. Such hearing may be adjourned from time to time and no notice of the time and place of such adjourned hearing need be given, excepting the announcement thereof by the presiding officer at the hearing at which the adjournment is had.

(3) **DECISION, COPIES.** After hearing all the evidence offered at such hearing and after making such independent investigation as it sees fit the commission shall make its findings of fact and make and enter an order accordingly. If it finds that the facts give reasonable assurance that a stand of merchantable timber will be developed on such

lands within a reasonable time, and that such lands are then held permanently for the growing of timber, rather than for agricultural, mineral, recreational or other purposes, and that all persons holding incumbrances against such land have in writing agreed to the petition, the order entered shall grant the request of the petitioner on condition that all unpaid taxes against said lands be paid within 30 days thereafter; otherwise the commission shall deny the request of the petitioner. If the request of the petitioner is granted, a copy of such order shall be forwarded to the state department of taxation, to the supervisor of assessments, to the clerk of each town and to the register of deeds of each county in which any of the lands affected by said order are located. The register of deeds shall record the entry, transfer or withdrawal of all forest crop lands in a suitable manner on the county records and shall be entitled to a fee to be paid by the owner of 10 cents for each such government description recorded, but the minimum fee shall be 50 cents and the maximum fee \$5. Any order of the department relating to the entry of forest crop lands issued on or before March 20 of any year shall take effect in such year, but all orders issued after March 20 of any year shall take effect the year following.

History: 1963 c. 228; 1965 c. 252.

77.03 Taxation of forest crop lands. From and after the filing of the order with the officers mentioned in subsection (3) of section 77.02 the lands described therein shall be "Forest Crop Lands," on which taxes shall thereafter be payable only as hereinafter provided. The passage of this act, petition by the owner, the making and recording of the order hereinbefore mentioned shall constitute a contract between the state and the owner, running with said lands, for a period of fifty years, unless terminated as hereinafter provided, with privilege of renewal by mutual agreement between the owner and the state, whereby the state as an inducement to owners and prospective purchasers of forest crop lands to come under this chapter agrees that until terminated as hereinafter provided, no change in or repeal of this chapter shall apply to any land then accepted as forest crop lands, except as the conservation commission and the owner may expressly agree in writing. If at the end of fifty years said contract is not renewed by mutual consent, the merchantable timber on said land shall be estimated by an estimator jointly agreed upon by the conservation commission and the owner, and in the event said conservation commission and said owner fail to agree, then and in that event, an estimator shall be appointed by the judge of the circuit court of the district in which said lands lie, whose estimate shall be final, and the cost thereof shall be borne jointly by the conservation commission and the owner; and the ten per cent severance tax paid on the stumpage thereon as agreed in the same manner as if said stumpage has been cut. The owners by such contract consent that the public may hunt and fish on said lands, subject to such regulations as the conservation commission may from time to time prescribe.

The state is not bound by any contract change the procedure provided. State v. with a county if the legislature chooses to Mutter, 23 W (2d) 407, 127 NW (2d) 15.

77.04 Taxation. (1) **TAX ROLL.** The clerk on making up the tax roll shall enter as to each forest crop land description in a special column or some other appropriate place in such tax roll headed by the words "Forest Crop Lands" or the initials "F. C. L.," which shall be a sufficient designation that such description is subject to this chapter. Such land shall thenceforth be assessed and be subject to review as provided in ch. 70, and such assessment may be used by the department of taxation in the determination of the tax upon withdrawal of such lands as forest crop lands as provided in s. 77.10. No tax shall be levied on forest crop lands except the specific annual taxes as provided, except that any buildings located on forest crop land shall be assessed as personal property, subject to all laws and regulations for the assessment and taxation of general property.

(2) **TAX PER ACRE; PAYMENT; PENALTY.** Any owner shall be liable for and pay to the town treasurer on or before January 31 of each year on each such description a sum herein called the "acreage share" computed at the rate of 10 cents per acre on all lands. If such acreage share is not paid by January 31 to the town treasurer it shall be subject to interest at the rate of eight-tenths of one per cent per month or fraction thereof from January 1 preceding. Such lands shall be returned as delinquent and sold for delinquent taxes in the manner provided for the sale of lands for taxes but no bid shall be received on such sale except from the county, and the county shall not be liable to the town for any amount except the acreage share subsequently paid by the owner. At the expiration of 3 years from the date of sale of any tax certificate acquired by the county hereunder, the county clerk shall promptly take a tax deed under s. 75.36, except that county board authorization shall not be required. On taking such deed the county clerk shall certify that fact and specify the descriptions to the conservation commission.

(3) **APPORTIONMENT OF FOREST CROP LAND INCOME.** Out of all moneys received by any town from any source on account of forest crop lands in such town, the town

treasurer shall on or before March 15 pay 20 per cent to the county treasurer, retain 40 per cent for the town and apportion the remainder to the various common school districts or parts of such districts in which the said forest crop lands are located, in proportion to the acreage which the said lands within each school district or part thereof bears to the total acreage of the said lands in the town.

History: 1961 c. 295; 1963 c. 345.

77.05 State contribution. (1) **CERTIFICATION.** On or before April 20 the county treasurer of each county containing forest crop lands shall certify to the conservation commission for each owner the legal description in each town on which the owner has paid the acreage share pursuant to s. 77.04 (2), and also on acreage share previously returned delinquent and subsequently paid, except on lands on which an order of cancellation has been issued by the conservation commission pursuant to s. 77.10 (1).

(2) **PAYMENT.** As soon after April 20 of each year as feasible, the conservation commission shall pay to each town treasurer on each description as above certified the sum of 10 cents per acre out of the appropriation made by s. 20.370 (2) (b).

History: 1961 c. 349 s. 7; 1963 c. 345; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

77.06 Forestation. (1) **CUTTING TIMBER REGULATED.** No person shall cut any merchantable wood products on any forest crop lands where the forest crop taxes are delinquent nor until 30 days after the owner has filed with the conservation commission a notice of intention to cut, specifying the descriptions and estimated amount of wood products to be removed, and also the volume to be left as growing stock. The conservation commission may require a bond executed by some surety company licensed in this state or other surety for such amount as may reasonably be required for the payment to the conservation commission of the severance tax hereinafter provided. The conservation commission, after examination of the lands specified, may limit the amount of forest products to be removed in order that adequate growing stock may be left to furnish recurring forest crops. Cutting in excess of such limitation shall render the operator liable to double the severance tax prescribed in s. 77.06 (5). In cases of double severance tax one-half shall be distributed as provided in s. 77.07 (3) and one-half shall be paid to the town treasurer for distribution under the provisions of s. 77.04 (3). Merchantable wood products include all wood products except wood used for fuel by the owner.

(2) **APPRAISAL OF TIMBER, ZONES.** During the month of July in each year the conservation commission, at such time and place as it shall fix, and after such public notice thereof as it deems reasonable, shall hold a public hearing, and not later than September first thereafter shall make and file, open to public inspection, a determination of the reasonable stumpage values of the wood products usually grown in the several towns in which any forest crop lands lie. If the conservation commission finds there is a material variance in such stumpage values in the different localities, it may fix separate zones and determine such values for each zone.

(3) **REVALUATION.** As to any locality or zone in which the conservation commission deems there has been no material variance from the preceding year in stumpage values, it may omit to make any new valuation in any year, in which event the last preceding valuation shall continue in force until changed in a succeeding year.

(4) **CUTTING REPORTED.** Within 30 days after completion of cutting on any land description, but not more than one year after filing of the notice of intention to cut, the owner shall transmit to the conservation commission a written statement of the products so cut, specifying the variety of wood, kind of product, and quantity of each variety and kind as shown by the scale or measurement thereof made on the ground as cut, skidded or loaded, as the case may be. The conservation commission may accept such reports as sufficient evidence of the facts, or may either with or without hearing and notice of time and place thereof to such owner, investigate and determine the fact of the quantity of each variety and kind of product so cut during said periods preceding such reports.

(5) **TAX LEVY ON RIGHT TO CUT TIMBER.** The conservation commission shall assess and levy against such owner a severance tax on the right to cut and remove wood products covered by reports under this section, at the rate of 10 per cent of the value of such wood products based upon the stumpage value then in force. Upon making such assessment, the conservation commission shall mail a duplicate of such certificate by registered mail to the owner who made the report of cutting at his last known post-office address. The tax thereby assessed is due and payable to the conservation commission on the last day of the next calendar month after mailing such certificate.

History: 1961 c. 349 s. 7; 1963 c. 345.

77.07 Severance tax. (1) **LIABILITY FOR TAXES, LIENS.** The owner of the land shall be personally liable for any severance tax because of any wood products cut therefrom,

which tax shall also be a lien on such wood products wherever situated and in whatever form, or if mingled with other products, then on the common mass, until paid, while in the possession of such owner, or of any other person than a purchaser for value without notice in the usual course of business.

(2) **PENALTY, COLLECTIONS.** If any severance tax remain unpaid for thirty days after it becomes due, there shall then be added a penalty of ten per cent, and such tax and penalty shall thereafter draw interest at the rate of one per cent per month until paid. At the expiration of said thirty days the conservation commission shall report to the attorney-general any unpaid severance tax, adding said penalty, and the attorney-general shall thereupon proceed to collect the same with penalty and interest by suit against the owner and by attachment or other legal means to enforce the lien and by action on the bond mentioned in subsection (1) of section 77.06, or by any or all such means.

(3) **DIVISION OF TAX MONEY.** All severance taxes collected in cash shall be divided as follows: The state shall retain an amount equal to the total acreage payments on the lands to which the said severance taxes relate, made by the state under s. 77.05 with interest thereon at the rate of 5 per cent per annum, and all penalties imposed under sub. (2), and the balance shall be paid to the town treasurer to be apportioned as provided in s. 77.04 (3).

77.08 Supplemental severance tax. At any time within one year after any cutting should have been reported, the conservation commission after due notice to the owner and opportunity to be heard, and on evidence duly made a matter of record, may determine whether the quantity of wood products cut from any such land, did in fact substantially exceed the amount on which the severance tax theretofore levied was based, and if so shall assess a supplemental severance tax which, in all respects, shall have the same force and effect as the former severance tax, except only it shall not be a lien on any property the title of which has passed to a purchaser for value without notice.

77.09 False reports, penalties. Any person who fails to report or shall intentionally make any false statement or report to the conservation commission required by section 77.06 shall be guilty of a misdemeanor, and punishable on conviction thereof by imprisonment in the county jail for not exceeding one year or by fine not exceeding one thousand dollars, or both.

77.10 Withdrawal of forest crop lands. (1) **INVESTIGATIONS, REFUNDS, FORFEITURES.** (a) The conservation commission shall once in 5 years, or on the application of the department of taxation or the owner of any forest crop lands or the town board of the town in which said lands lie and may on its own motion at any time cause an investigation to be made and hearing to be had as to whether any forest crop lands shall continue under this chapter. If on such hearing after due notice to and opportunity to be heard by the department of taxation, the town and the owner, the conservation commission shall find that any such lands are not meeting the requirements set forth in s. 77.02, the entry of such lands shall be canceled and copies of the order of withdrawal specifying the descriptions shall be filed with the conservation commission, the department of taxation, the supervisor of assessments, the clerk of the town, and the register of deeds of the county in which such lands lie, and none of the provisions of this chapter shall thereafter apply to them, except s. 77.07 so far as it may be needed to collect any previously levied severance or supplemental severance tax. However, in case said cancellation is accomplished within 5 years from the date that said land became forest crop lands hereunder, the owners shall thereupon repay to the conservation commission the amounts of all moneys thereon paid by the state with interest at 5 per cent per annum less any severance tax paid thereon. If at any time after 5 years the owner shall make use of the land for anything other than forestry the conservation commission shall issue an order of withdrawal and the owner shall be liable for the tax and penalty provided in sub. (2). In either case, if the owner shall not repay said amounts on or before the January 31 next succeeding the return of such lands to the general property tax roll as provided in sub. (4), the conservation commission shall certify to the county treasurer the descriptions and the amounts due, and the county treasurer shall sell such lands as delinquent according to the procedure prescribed in s. 77.04 (2). Whenever any county clerk shall have certified to the taking of tax deed pursuant to s. 77.04 (2) the conservation commission shall issue an order of withdrawal as to the lands covered in such tax deed. Such order may also be issued when examination of tax records reveals prolonged delinquency and noncompliance with the requirements of s. 77.04 (2).

(b) Whenever any owner of forest crop lands conveys such land he shall, within ten days of the date of the deed, file with the conservation commission on forms prepared by the commission a transfer of ownership signed by him and an acceptance of transfer signed by the grantee certifying that he intends to continue the practice of forestry on

such land. The conservation commission shall forthwith issue a notice of transfer to all officers designated to receive copies of orders of entry and withdrawal. Whenever a purchaser of forest crop lands declines to certify his intention to continue the practice of forestry thereon, such action shall constitute cause for cancellation of entry under paragraph (a) hereof.

(2) **ELECTION TO WITHDRAW LANDS.** (a) Any owner of forest crop lands may elect to withdraw all or any of such lands from under this chapter, by filing with the conservation commission a declaration withdrawing from this chapter any description owned by him which he specified, and by payment by such owner to the conservation commission within 30 days the amount of all real estate tax that would ordinarily have been charged against such lands had they not been subject to this chapter with simple interest thereon at 5 per cent per annum, less any severance tax and supplemental severance tax or acreage share paid thereon, with interest computed according to the rule of partial payments at the rate of 5 per cent per annum. The exact amount of such tax shall be determined by the department of taxation after hearing and upon due notice to all parties interested, provided that when the tax rate of the current year has not been determined the rate of the preceding tax year may be used. On receiving such payment the conservation commission shall issue an order of withdrawal and file copies thereof with the department of taxation, the supervisor of assessments, the clerk of the town and the register of deeds of the county in which such land lies. Such land shall then cease to be forest crop lands.

(b) Upon receipt of any such taxes by the state the conservation commission shall first deduct all moneys paid by the state on account of such lands under s. 20.370 (2) (b) with interest thereon computed according to the rule of partial payments at the rate of 5% per annum. The balance the said commission shall within 20 days remit to the town treasurer who shall pay 20% to the county treasurer, retain 40% for the town and apportion the remainder to the various common school districts or parts of such districts in which the said forest crop lands were located, in proportion to the acreage which the said lands within each school district or part thereof bears to the total acreage of the said lands in the town.

(4) **TAXATION AFTER WITHDRAWAL.** When any description ceases to be a part of the forest crop lands, by virtue of any order of withdrawal issued by the conservation commission, taxes thereafter levied thereon shall be payable and collectible as if such description had never been under this chapter.

History: 1961 c. 349 s. 7; 1963 c. 345; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

(2), in providing that county forest crop of sale under 28.12, is a valid enactment. lands can be withdrawn only for purposes 50 Atty. Gen. 157.

77.11 Accounts of conservation commission. The conservation commission shall keep a set of forest crop lands books in which shall always appear as to each description in each town containing any such lands, the amount of taxes paid by the state to the town and received by the state from the owner. All such payments shall be paid out of and receipts credited to the general fund.

77.12 Review of findings, venue. Any finding of fact made under this chapter after due notice and hearing shall be final and conclusive, except and unless set aside or modified by the judgment of the circuit court for either Dane county, or of the county in which the land lies in either of which action may be brought for that purpose, within thirty days after the making of the finding sought to be reviewed.

77.14 Forest crop lands propaganda, protection, appropriation. (1) The conservation commission shall publish and distribute information regarding the method of taxation of forest crop lands provided in this chapter, and is authorized to employ a fire warden in charge of fire prevention in forest crop lands. All actual and necessary expenses incurred by the conservation commission or by the department of taxation in the performance of their duties under this chapter shall be paid from the appropriation made in s. 20.370 (2) (a). upon certification by the commission incurring such expenses.

History: 1965 c. 433 s. 121; 1967 c. 291 s. 14.

77.16 Woodland tax law. (1) The owner of any tract of land of less than 40 acres may file with the conservation director an application setting forth a description of the property which he desires to place under the woodland tax law and on which land he will practice forestry.

(2) Upon filing of such application the conservation director shall examine the land, and if he finds that the facts give reasonable assurance that the woodland is more suitable for the growing of timber and other forest products and that such lands are not more useful for any other purpose the conservation director shall enter an order approving the application. A copy of such order shall be forwarded to the owner of the land, to

the supervisor of property assessments of the district wherein the land is located, to the clerk of the town, to the assessor of the town and to the county clerk of the county wherein the land is located.

(3) The application of the owner of the land and the filing of the order by the conservation director shall constitute a contract, running with the land, for a period of 10 years, unless terminated as hereinafter provided. Any order issued on or before March 20 of any year shall take effect in such year, but all orders issued after March 20 in the calendar year shall take effect the following year. If at the end of 10 years said contract is not renewed by mutual consent the land is declassified and shall be removed from the provisions of this section.

(4) The local assessor in preparing the tax roll shall show the acreage for each owner covered by the provisions of s. 77.16 in a column designated by the words "Woodland Tax Law" or the initials "W.T.L."

(5) The owner shall be liable and shall pay to the town treasurer at the same time he pays the taxes on the remaining acreage of his land a tax computed at the rate of 20 cents per acre on the land approved for entry under this section. Such acreage tax shall be part of the total taxes on the land of the owner and subject to the collection of taxes provided for in ch. 74.

(6) The owner of the land shall promote the growth of trees and shall prohibit grazing and burning on lands entered under the woodland tax law. At the request of the owner the conservation director shall assist in preparing and carrying out planting and forest management plans. The conservation director shall make an annual written report as to the forest practices of each owner of the lands under this section. If the director finds that the owner has not complied with the law, or if the land is no longer used for forestry purposes, he shall issue an order removing the land from the woodland tax law classification. Any declassification order issued on or before March 20 of any year shall take effect in such year. A copy of the declassification order shall be sent to the owner of the land, to the supervisor of property assessments of the district wherein the land is located, to the clerk and to the assessor of the town, and to the county clerk of the county wherein the land is located. Any order issued under this subsection shall be final unless set aside by the conservation commission.

(7) The owner, town board or county board may petition the conservation commission for a public hearing to take testimony and hear evidence on whether lands shall be entered or continued under this section. Upon the filing of such petition the conservation commission shall set such matter for public hearing at such time and place as it sees fit, but not later than 90 days from the date of filing of the petition. The said commission shall give 30 days' written notice of the hearing to the petitioners. Such hearing may be adjourned for 60 days and no notice of the time and place of such adjourned meeting need be given excepting the announcement thereof by the presiding officer at the hearing at which the adjournment is had. The presiding officer at the hearing may be an employe of the conservation commission designated by the commission to conduct the hearing.

(8) After hearing all the evidence and after making such independent investigation as it sees fit the commission shall make its findings of fact and make and enter an order accordingly within 60 days after the final adjournment of the hearing. Copies of the order shall be forwarded to the owner of the land, to the supervisor of property assessments of the district wherein the land is located, to the clerk of the town, to the assessor of the town, to the county clerk and to the petitioner if not included above. The order of the commission shall be final.

(9) The conservation director shall furnish appropriate forms to carry out this section to the owners of lands interested in entry of lands under the woodland tax law.

History: 1963 c. 229.

SUBCHAPTER III.

SELECTIVE SALES AND USE TAX.

77.51 Definitions. Except where the context requires otherwise, the definitions given in this section govern the construction of terms in this subchapter.

(1) "Sales tax" means the tax imposed by s. 77.52.

(2) "Use tax" means the tax imposed by s. 77.53.

(3) "Person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipal utility, municipal power district, co-operative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) "Sale", "sale, lease or rental", "retail sale", "sale at retail", or equivalent terms include any one or all of the following: the transfer of the ownership of, title to, possession of, or enjoyment of taxable tangible personal property for use or consumption but not for resale in any form as taxable tangible personal property and includes:

(a) Any sale at an auction in respect to taxable tangible personal property which is sold to a successful bidder at the auction including a sale upon an agreement or understanding at the time of the sale that the property involved either will not be delivered to the successful bidder or that any amount which he may pay for the property pursuant to the sale will be returned to him. The tax shall be computed in such case upon the amount of the successful bid.

(b) The furnishing and distributing of taxable tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(c) A transaction whereby the possession of taxable tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(d) The delivery in this state of taxable tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery shall include the retail selling price of the property in his gross receipts.

(5) "Taxable tangible personal property" means tangible personal property the gross receipts from the sale of which or the storage, use or consumption of which, is taxable under this subchapter.

(6) "In this state" or "in the state" means within the exterior limits of the state of Wisconsin.

(7) "Retailer" includes:

(a) Every seller who makes any retail sale of taxable tangible personal property, and every person engaged in the business of making retail sales at auction of taxable tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales of taxable tangible personal property for storage, use or consumption or in the business of making sales at auction of taxable tangible personal property owned by the person or others for storage, use or other consumption.

(c) When the department determines that it is necessary for the efficient administration of this subchapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the taxable tangible personal property sold by them, irrespective of whether they are making the sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this subchapter.

(d) Every wholesaler to the extent that he sells taxable tangible personal property to a person other than a seller as defined in sub. (9) provided such seller is not expressly exempt from collecting the sales or use tax.

(e) The proceeds from the sale of property sold at auction which is bid in by the seller and on which title does not pass to a new purchaser, shall be deducted from the gross proceeds of the sale and the tax paid only on the net proceeds.

(8) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(9) "Seller" includes every person engaged in the business of selling, leasing or renting tangible personal property of a kind the gross receipts from the sale, lease or rental of which are required to be included in the measure of the sales tax.

(10) "Occasional sale" includes:

(a) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.

(b) Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity, are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

(c) An auction which is the sale of personal farm property or household goods and not held at regular intervals.

(11) (a) "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of taxable tangible personal property, or taxable services, valued in money, whether received in money or otherwise, without any deduction on account of the following:

1. The cost of the property sold;
2. The cost of the materials used, labor or service cost, interest paid, losses or any other expense;

3. The cost of transportation of the property prior to its sale to the purchaser;
4. Any tax included in or added to the purchase price, except the federal retailers' excise tax which is imposed upon adding machines, calculators, typewriters and furs and items of taxable tangible personal property set forth in s. 77.52 (1) (a) 10, 11, 12 and 14, the federal amusement tax imposed upon the services set forth in s. 77.52 (2) (a) 2 and the federal communications tax imposed upon the services set forth in s. 77.52 (2) (a) 3 and 4. For purposes of the sales tax, if the retailers establish to the satisfaction of the department that the sales tax imposed by this subchapter has been added to the total amount of the sales price and has not been absorbed by them, the total amount of the sales price shall be deemed to be the amount received exclusive of the sales tax imposed.

(b) "Gross receipts" shall not include:

1. Cash or term discounts allowed and taken on sales;
2. Such part of the sales price as is refunded in cash or credit as a result of property returned or adjustments in the sales price after the sale has been completed, provided the seller has included the said refunded receipts in a prior return made by such seller and has paid the tax thereon; and provided the seller has returned to the purchaser in cash or credit any and all tax previously paid by the purchaser on the amount of such refund at the time of the purchase.

3. In all transactions in which an article of taxable tangible personal property is traded toward the purchase of an article of greater value, the gross receipts shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.

4. In the case of accounts which are found to be worthless and charged off for income tax purposes, a retailer is relieved from liability for sales tax. A retailer who has previously paid the sales tax on such accounts may take as a deduction from the measure of the tax the amount found to be worthless and this deduction must be taken from the measure of the tax in the period in which said account is found to be worthless or within a reasonable time thereafter not to exceed one year, pursuant to rules of the department.

5. Transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

(c) "Gross receipts" includes:

1. All receipts, cash, credits and property except as provided in par. (b) 3.
2. Any services that are a part of the sale of taxable tangible personal property.
3. The entire sales price of credit transactions in the reporting period in which the sale is made without reduction in the amount of tax payable by the retailer by reason of his transfer at a discount the open account, note, conditional sales contract, lease contract or other evidence of indebtedness. No reduction in the amount of tax payable by the retailer is allowable in the event property sold on credit is repossessed except where the entire consideration paid by the purchaser is refunded to him or where a credit for a worthless account is allowable under par. (b) 4.
4. The price received for labor or services used in installing or applying the taxable tangible personal property sold unless such amount is separately set forth from the amount received for the taxable tangible personal property.

(d) The department may, in cases where it is satisfied that an undue hardship would otherwise result, permit the reporting of "gross receipts" on some basis other than the accrual basis.

(12) (a) "Sales price" means the total amount for which taxable tangible personal property is sold, leased or rented, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold;
2. The cost of the materials used, labor or service cost, losses or any other expenses;
3. The cost of transportation of the property prior to its purchase;
4. Any tax included in or added to the purchase price, except the federal retailers' excise tax which is imposed upon adding machines, calculators, typewriters and furs and items of taxable tangible personal property set forth in s. 77.52 (1) (a) 10, 11, 12 and 14, the federal amusement tax imposed upon the services set forth in s. 77.52 (2) (a)

2 and the federal communications tax imposed upon the services set forth in s. 77.52 (2)

(a) 3 and 4.

(b) "Sales price" shall not include any of the following:

1. Cash discounts allowed and taken on sales;

2. The amount charged for property returned by customers when that entire amount is refunded either in cash or credit;

3. Transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

4. In all transactions in which an article of taxable tangible personal property is traded toward the purchase of an article of greater value, the sales price shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.

(c) "Sales price" includes all of the following:

1. Any services that are a part of the sale of taxable tangible personal property;

2. The amount charged for labor or services rendered in the installation or in applying the taxable tangible personal property sold unless such amount is separately set forth from the amount charged for the taxable tangible personal property.

(13) "Purchase" includes:

(a) Any transfer of title, possession, ownership, enjoyment, or use by: cash or credit transaction, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever of taxable tangible personal property for a consideration;

(b) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(14) "Storage" includes any keeping or retention in this state for any purpose except sales in the regular course of business or subsequent use solely outside this state of taxable tangible personal property purchased from a retailer.

(15) "Use" includes the exercise of any right or power over taxable tangible personal property incident to the ownership, possession or enjoyment of that property, except that it does not include the sale of that property in the regular course of business.

(16) "Storage" and "use" do not include the keeping, retaining or exercising any right or power over taxable tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into other property to be transported outside the state and thereafter used solely outside the state.

(17) The sales tax applies to the receipts of operators of vending machines located on army, navy or air force installations in this state and dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax. This subsection shall not be deemed to require payment of sales tax measured by receipts of such operators who lease the machines to exchanges of the army, air force, navy or marine corps which acquire title to and sell the merchandise through the machines to authorized purchasers from such exchanges. The term "operator" as used in this subsection, means any person who owns or possesses vending machines and who controls the operations of the machines as by placing the merchandise therein or removing the coins therefrom, and who has access thereto for any purpose connected with the sale of merchandise through the machines, and whose compensation is based, in whole or in part, upon receipts from sales made through such machines.

(18) "Contractors" and "subcontractors" are the consumers of taxable tangible personal property used by them in fulfilling construction contracts and the sales and use tax applies to the sale of taxable tangible personal property to them.

(19) "Department" means the Wisconsin department of taxation, its duly authorized employes and agents.

(20) "Taxpayer" means the person required to pay, collect, account for or who is otherwise directly interested in the taxes imposed by this subchapter.

History: 1961 c. 620; 1963 c. 223 s. 122a; 1963 c. 224, 249, 496.

(12) (b) 4., which in effect exempts from paid by trading another article of lesser value, is constitutional. 54 Atty. Gen. 175.

of the purchase price of an article which is

77.52 Imposition of selective retail sales tax. (1) For the privilege of selling, leasing or renting the tangible personal property herein described at retail a tax is hereby imposed upon all retailers at the rate of 3 per cent of the gross receipts from the sale, lease or rental of such tangible personal property sold, leased or rented at retail in this state on or after February 1, 1962.

(a) The tax imposed herein applies to the sale, lease or rental of the following:

1. Fermented malt beverages as defined in s. 66.054 (1) (j);
2. Intoxicating liquors as defined in s. 139.01 (4).
3. Tobacco, tobacco products other than cigarettes, smokers' supplies including by way of illustration and not of limitation: cigarette tobacco, cigarette paper, cigars, pipes, pipe tobacco, chewing tobacco and snuff, lighters, lighter fluid and flints, tobacco humidifiers, cigarette making machines, cigarette tubes, pipe cleaners;
4. Motor vehicles as defined in s. 340.01 (35), station wagons as defined in s. 340.01 (61), trailers as defined in s. 340.01 (71), semitrailers as defined in s. 340.01 (57), road equipment, road machinery as defined in s. 340.01 (52), mobile cranes and trench hoes, also, accessories, attachments, parts, supplies and materials therefor, except motor fuel, including by way of illustration and not of limitation the following: tissue dispensers, grill guards, license plate frames, seat covers, spark plugs, windshield wiper blades, batteries, tires, lubricating oil, grease, antifreeze, brake fluid, paint, solder, lead, wax and chamois; except that vehicles for the mass transportation of passengers as defined in s. 71.18 (2) (a) and accessories, attachments, parts, supplies and materials therefor shall be exempt from the taxes imposed by this subdivision; but the exclusion of mobile homes from the definitions contained in s. 340.01 (57) and (71) shall not exclude, from the taxes imposed by this subchapter, those items of taxable tangible personal property contained in, attached to, or included as part of mobile homes.
5. Aircraft as defined in s. 114.013 (2);
6. Radios, television receiving sets and receiving equipment, phonographs, sound recorders, musical instruments or any combination of the foregoing (and parts, components, cases, stands, racks and accessories for the same), records and sheet music;
7. Meals, food, food products and beverages for human consumption sold by restaurants, hotels, cafes, bars, caterers, lunch counters, wagons, and other establishments engaged in the business of preparing food or beverages and selling for direct consumption on or off the premises, except that such sales to their employes are exempt, and except that such sales are exempt when sold by hospitals, sanatoriums and nursing homes or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes, provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual;
8. Recreational (except toys and games), sporting, hobby, and athletic goods and equipment, and supplies, accessories, and parts therefor, including by way of illustration and not of limitation: photographic and projection equipment and supplies; bicycles and parts, accessories and supplies; camping equipment; pets and pet supplies (except food); clothing or equipment designed for a particular sport and normally not used or worn when not engaged in that sport; firearms and ammunition and components, equipment, accessories, cases and telescopes; baseballs, footballs, bowling balls, tennis balls and golf balls; fishing and hunting baits and decoys both artificial and live; playing cards, poker chips and dice; pleasure boats, motors, trailers, and equipment, parts, accessories and all supplies therefor except motor fuel;
9. Household furniture, furnishings, floor coverings, major and small appliances, power tools, outdoor garden and lawn equipment and tools; office furniture, furnishings, equipment, machines, appliances and floor coverings; commercial food service machines and equipment; tavern, restaurant, fountain and store furniture, furnishings, equipment, machines, appliances and floor coverings; except that tanks, pumps, compressors and equipment for retail marketing of petroleum products are exempt from tax under this subchapter;
10. All articles commonly or commercially known as jewelry, whether real or imitation; precious stones by whatever name called, whether real or synthetic; articles made of or ornamented, mounted or fitted with precious metals or imitations thereof; watches, clocks, and cases and movements for watches and clocks; opera glasses, lorgnettes, marine glasses, field glasses and binoculars; not including religious articles designed and intended for actual use in divine worship, religious observance or prayer, and which are normally not used except in conjunction with such activities.
11. The following articles, by whatever name called, including in each case fittings or accessories therefor sold on or in connection with the sale thereof: bathing suit bags; beach bags or kits; billfolds; brief cases; brief bags; camping bags; card and pass cases; collar cases; cosmetic bags and kits; dressing cases; duffelbags; furlough bags; garment bags designed for use by travelers; hatboxes designed for use by travelers; haversacks; key cases or containers; knapsacks; knitting or shopping bags (suitable for use as purses or handbags); makeup boxes; manicure set cases; memorandum pad cases (suitable for use as card or pass cases, billfolds, purses, or wallets); musette bags; overnight bags; pocketbooks; purses and handbags; ring binders, capable of closure on all sides; salesmen's sample or display cases, bags, or trunks, satchels; shoe and slipper bags; suit-

cases; tie cases; toilet kits and cases; traveling bags, trunks, vanity bag or cases; valises; wallets; and wardrobe cases.

12. Articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value, but only if such value is more than 3 times the value of the next most valuable component material.

13. Commercial laundry, dry cleaning and pressing machines; conveyors, elevators and moving stairways; industrial trucks, tractors, trailers and stackers; commercial and industrial fans, blowers and unit heaters; also parts, accessories and attachments therefor.

14. Perfume, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, toilet powders, and any other similar substance, articles or preparation, by whatsoever name known or distinguished, except lotions, oils, powders or other articles intended to be used or applied only in the care of babies.

15. Soda water beverages as defined in s. 97.09 (8), when sold for consumption off the premises; bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks; and fruit drinks and ades not defined as fruit juices in s. 97.02 (27).

(2) For the privilege of selling, performing or furnishing the services herein described at retail in this state to consumers or users, a tax is hereby levied and imposed upon all persons selling, performing, or furnishing such services at the rate of 3 per cent of the gross receipts from the sale, performance, or furnishing of such services on or after February 1, 1962.

(a) The tax imposed herein applies to the following types of services:

1. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. As used in this paragraph, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. As used in this paragraph, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual;

2. The sale of admissions to places of amusement, athletic entertainment or recreational events or places and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities. The sale of admissions to motion picture theaters costing 75 cents or less shall not be taxed;

3. The sale of intrastate telegraph services to business, industrial, professional and commercial users;

4. The sale of local flat rate and local basic measured rate telephone services billed on a periodic, recurring basis and toll charges for intrastate telephone calls, except messages from coin operated telephones.

6. Laundry, dry cleaning, pressing and dyeing services, except when performed on or after August 15, 1963, on raw materials or goods in process destined for sale and except when the service is performed by the customer through the use of coin-operated, self-service machines.

7. Photographic services including the processing, printing and enlarging of film as well as the service of photographers for the taking, reproducing and sale of photographs, except all commercial photographic services exclusively used or performed for advertising purposes on or after January 1, 1964.

8. The repair, service and maintenance of all items of taxable tangible personal property.

(3) The taxes imposed by this section may be collected from the consumer or user.

(4) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor.

(5) The department may by rule provide that the amount collected by the retailer from the consumer or user in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

(6) A retailer is relieved from liability for sales tax insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the retailer has previously paid the tax, he may, under rules prescribed by the department, take as a deduction from the measure of the tax the amount found worthless and charged off for income tax purposes.

(7) Every person desiring to engage in or conduct business as a seller within this state shall file with the department an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the department requires. The application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers.

(8) At the time of making an application the applicant shall pay to the department a permit fee of \$2 for each permit.

(9) After compliance with subs. (7) and (8) and s. 77.61 (2) by the applicant, the department shall grant and issue to each applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(10) A seller whose permit has been previously suspended or revoked shall pay the department a fee of \$2 for the renewal or issuance of a permit.

(11) Whenever any person fails to comply with any provision of this section relating to the sales tax or any rule of the department relating to the sales tax adopted under this section, the department upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit should not be revoked, may revoke or suspend any one or more of the permits held by the person. The department shall give to the person written notice of the suspension or revocation of any of his permits. The notices herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The department shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this section and the rules of the department relating to the sales tax. The department shall not issue a new permit after a permit has been revoked for the third time within any 2-year period except upon payment by the former holder of the permit of a fee of \$25. When giving notice of the second revocation the department shall also notify the person that if his permit is again revoked within 2 years from the date of the first revocation he shall pay a fee of \$25 for a new permit after such third revocation. In the event of additional revocation the 2-year period shall commence to run from the date of the first revocation of the permit for the issuance of which the fee of \$25 was paid.

(12) A person who engages in business as a seller in this state without a permit or after a permit has been suspended, and each officer of any corporation, partnership member or other person authorized to act on behalf of a seller which so engages in business, is guilty of a misdemeanor.

(13) For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of taxable tangible personal property or services is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property or service is purchased for resale or is otherwise exempt.

(14) The certificate referred to in sub. (13) relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling taxable tangible personal property or services and who holds the permit provided for in sub. (9) and who, at the time of purchasing the taxable tangible personal property or services, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose. The certificate shall be signed by and bear the name and address of the purchaser, and shall indicate the general character of the taxable tangible personal

property or service sold by the purchaser in the regular course of business. The certificate shall be in such form as the department prescribes.

(15) If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be taxable to the purchaser under s. 77.53 as of the time the property is first used by him, and the sales price of the property to him shall be the measure of the tax. Only when there is an unsatisfied use tax liability on this basis shall the seller be liable for sales tax with respect to the sale of the property to the purchaser. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charge rather than the sales price of the property to him.

(16) Any person who gives a resale certificate for taxable property or services which he knows at the time of purchase is not to be resold by him in the regular course of business for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor.

(17) If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

(18) If any retailer liable for any amount of tax under this subchapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the department that it has been paid or a certificate stating that no amount is due.

(a) If the purchaser of a stock of goods fails to withhold from the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than 90 days after receiving the request, the department shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the department of the amount that must be paid as a condition of issuing the certificate. Failure of the department to mail the notice will release the purchaser from any further obligation to withhold the purchase price as above provided. The obligation of the successor may be enforced within 4 years of the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

(19) The department shall by rule provide for the efficient collection of the taxes imposed by this subchapter on sales of property or services by persons not regularly engaged in selling at retail in this state or not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessions at fairs and carnivals, and the like. The department may authorize such persons to sell property or sell, perform or furnish services on a permit or nonpermit basis as the department by rule prescribes and failure of any person to comply with such rules constitutes a misdemeanor.

History: 1961 c. 620, 652; 1963 c. 19, 141, 209, 223, 224, 250, 254, 352, 432, 459, 477, 494, 556, 558; 1965 c. 147, 626, 634.

While it is a rule that if there is any ambiguity in a taxing statute, any doubt shall be resolved in favor of the taxpayer, a court is not to search for doubt in an endeavor to defeat an obvious legislative intention. Receipts from the sale of tickets for the use of rope tows and T-bar lifts at a skiing area maintained for skiing during winter months were taxable, as the furnishing for a fee of the privilege of having access to or the use of a recreational facility within the meaning of (2) (a) 2. *Telemark Co. v. Department of Taxation*, 28 W (2d) 637, 137 NW (2d) 407.

77.53 Imposition of use tax. (1) An excise tax is hereby levied and imposed on the storage, use or other consumption in this state of the taxable tangible personal property and services described in s. 77.52 purchased from any retailer on or after February 1, 1962, for storage, use or other consumption in this state at the rate of 3 per cent of the sales price of the property.

(2) Every person storing, using or otherwise consuming in this state taxable tangible personal property purchased from a retailer is liable for the tax imposed by this section. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer engaged in business in this state or from a retailer who is author-

ized by the department, under such rules as it prescribes, to collect the tax and who is regarded as a retailer engaged in business in this state for purposes of the tax imposed by this section given to the purchaser pursuant to sub. (3) is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(3) Every retailer engaged in business in this state and making sales of taxable tangible personal property for storage, use or other consumption in this state, shall, at the time of making the sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the department. "Retailer engaged in business in this state" as used in this subsection and in sub. (2) means any of the following:

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

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

(4) A retailer is relieved from liability to collect use tax insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the retailer has previously paid the amount of the tax, he may, under rules prescribed by the department, take as a deduction from the measure of the tax the amount found worthless and charged off for income tax purposes. If any such accounts are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

(5) The tax required to be collected by the retailer constitutes a debt owed by the retailer to the state.

(6) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

(7) The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check, invoice or other proof of sale.

(8) Any person violating sub. (3), (6) or (7) is guilty of a misdemeanor.

(9) Every retailer selling taxable tangible personal property for storage, use or other consumption in this state shall register with the department and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and such other information as the department requires.

(10) For the purpose of the proper administration of this section and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that taxable tangible personal property sold by any person for delivery in this state is sold for storage, use or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale, or otherwise exempt from the tax.

(11) The certificate referred to in sub. (10) relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling taxable tangible personal property and who holds the permit provided for by s. 77.52 (9) and who, at the time of purchasing the taxable tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser and the general character of taxable tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the department prescribes.

(12) If a purchaser who gives a certificate makes any storage or use of the taxable property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is

first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sale price of taxable property to him.

(13) If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

(14) It is presumed that taxable tangible personal property shipped or brought to this state by the purchaser after February 1, 1962, was purchased from a retailer on or after February 1, 1962, for storage, use or other consumption in this state.

(15) On and after February 1, 1962, it shall be further presumed that taxable tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use or other consumption in this state and stored, used or otherwise consumed in this state. This presumption may be controverted by a statement in writing, signed by the purchaser or his authorized representative, and retained by the seller that the property was purchased for use at a designated point outside this state. This presumption may also be controverted by other evidence satisfactory to the department that the property was not purchased for storage, use or other consumption in this state.

(16) If the purchase, rental or lease of taxable tangible personal property subject to the tax imposed by this section was subject to a sales tax by another state in which said purchase was made, the amount of such sales tax so paid such other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section. For purposes of this subsection, "sales tax" shall include a use or excise tax imposed on the use of tangible personal property by the state in which the sale occurred.

(17) This section shall not apply to tangible personal property purchased outside this state by a visitor to this state and imported for his use while in this state.

History: 1961 c. 620, 652 s. 14; 1963 c. 19; 1965 c. 299, 634.

77.54 General exemptions. There are exempted from the taxes imposed by this subchapter:

(1) The gross receipts from the sale of and the storage, use or other consumption in this state of tangible personal property and services the gross receipts from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

(2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of taxable tangible personal property in any form destined for sale, and the gross receipts from selling, performing or furnishing services thereon.

(3) The gross receipts from the sales of and the storage, use or other consumption of taxable tangible personal property, except motor trucks, used exclusively in farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise except that the purchaser of taxable tangible personal property exempt hereunder shall be liable for the tax on the sales price of such property at the time any other use is made of such property.

(4) Gross receipts from the sale of tangible personal property, and the storage, use or other consumption in this state of tangible personal property which is the subject of any such sale, by any elementary school, secondary school, college or university exempted as such from payment of income tax under ch. 71, whether public or private, or by any school district, student organization, or parent-teacher association directly affiliated with any such institution where the entire net proceeds therefrom are expended for educational purposes.

(5) The gross receipts from the sale of and the storage, use or other consumption of:

(a) Aircraft sold to persons using such 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 sold to any foreign government for use by such government outside this state and aircraft, motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such aircraft, motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such aircraft, motor vehicles or trucks from this state.

(b) Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers.

(c) Fire trucks sold to incorporated volunteer fire departments.

(6) Sales of taxable tangible personal property made pursuant to bona fide written contracts entered into before February 1, 1962, provided delivery is made within 90 days after February 1, 1962.

(7) The occasional sales of taxable tangible personal property and services and the storage, use or other consumption in this state of taxable tangible personal property, the transfer of which to the purchaser is an occasional sale, except that the exemption herein provided shall, in the case of motor vehicles or aircraft, be limited to motor vehicles or aircraft transferred to the spouse, mother, father or child of the transferor and then only if such motor vehicle or aircraft has been previously registered in this state in the name of the transferor.

(8) Charges for interest, financing or insurance where such charges are separately set forth upon the invoice given by the seller to the purchaser.

(9) The gross receipts from sales of tickets or admissions to:

(a) Public and private elementary and secondary school activities and religious or charitable activities, where the entire net proceeds therefrom are expended for educational, religious or charitable purposes.

(b) Activities of state aided county and district agricultural fairs and grandstand admissions at such fairs, if no part of the net earnings thereof inures to the benefit of any stockholders or members of the association conducting the same, and if the proceeds therefrom are used exclusively for the improvement, maintenance and operation of such agricultural fairs.

(c) Activities of the Wisconsin exposition department if the proceeds therefrom are used exclusively for the improvement, maintenance and operation of the department.

(9a) The gross receipts from sales to, and the storage, use or other consumption of taxable tangible personal property and services by: this state or any agency thereof, or any county, municipality as defined in s. 66.901 (2), 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, no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

(10) The gross receipts from the lease or rental of property and the storage, use or other consumption of leased or rented property in this state by the lessee shall be exempt from the taxes imposed by this subchapter if the sale of such property to the lessor was subject to the taxes imposed by this subchapter. The taxes imposed by this subchapter on the gross receipts from the lease or rental of property or the storage, use or consumption of leased or rented property, shall not exceed the tax that would have been imposed had the property been sold or purchased at the time of the first such leasing or renting of such property after February 1, 1962, except that if the sale or purchase price of the property at the time of such leasing or renting is not reasonably determinable, the tax shall be measured by the gross lease or rental price received or paid.

History: 1961 c. 620, 652; 1963 c. 123, 224, 245, 447, 513; 1965 c. 147, 382; 1967 c. 49.

77.55 Exemptions from sales tax. (1) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any taxable tangible personal property or services to:

(a) The United States, its unincorporated agencies and instrumentalities;

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of taxable tangible personal property to a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier.

(3) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of taxable tangible personal property purchased for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation,

and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

History: 1961 c. 620.

77.56 Exemptions from use tax. (1) The storage, use or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

(2) The loan by an automobile dealer of a motor vehicle to any school or school district for a driver training educational program conducted by the school or school district is exempt from the use tax. If the dealer makes any other use of the vehicle except retention, demonstration or display while holding it for sale in the regular course of business, the use is taxable to the dealer under s. 77.53 as of the time the property is first so used, and the sales price of the vehicle to the dealer is the measure of the tax.

History: 1961 c. 620.

77.57 Liability of purchaser. If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this subchapter from the computation of the amount of the sales tax, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the gross receipts from such retail sale.

History: 1961 c. 620.

77.58 Returns and payments. (1) The taxes imposed by this subchapter from February 1, 1962, to March 31, 1962, are due and payable to the department on April 20, 1962. The taxes imposed for the month of April 1962, and for each month thereafter through the month of June 1963 are due and payable on the 20th of the month next succeeding the month for which imposed. The taxes imposed for the months of July, August and September of 1963, and for each calendar quarter thereafter through December 1963 are due and payable on the 20th of the month next succeeding the calendar quarter for which imposed. The taxes imposed for the months of January, February and March 1964, and for each calendar quarter thereafter are due and payable on the last day of the month next succeeding the calendar quarter for which imposed except that effective July 1, 1967, if the amount of tax for any calendar quarter ended before or after such date exceeded \$500, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in such notice are due and payable on the last day of the month next succeeding the calendar month for which imposed.

(2) On or before April 20, 1962, a return for the period from February 1, 1962, to March 31, 1962, shall be filed with the department. On or before May 20, 1962, a return shall be filed for the month of April 1962 and a return shall be filed thereafter by the 20th day of each month for taxes imposed for the preceding month up to and including the taxes imposed for the month of June 1963. On or before October 20, 1963, a return shall be filed for the months of July, August and September of 1963, and a return shall be filed thereafter by the 20th day of the month next succeeding each calendar quarter through December 1963 for taxes imposed for the preceding calendar quarter. On or before April 30, 1964, a return shall be filed for January, February and March 1964, and a return shall be filed thereafter by the last day of the month next succeeding each calendar quarter for taxes imposed for the preceding calendar quarter except that if payments are required to be made monthly pursuant to sub. (1), a return shall be filed by the last day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

Note: Chapter 43, laws of 1967, amended "77.58 (2)" but in fact only added words to sub. (2), introductory paragraph. No change was indicated in par. (a) of sub. (2) and there is no indication in the record that there was any intent to repeal par. (a). The revisor has, therefore, continued to print par. (a).

(a) Every person required to file a return hereunder, shall, with his first return, also elect to file a calendar year or fiscal year return. Such calendar or fiscal year return is due and shall be filed on or before 90 days after the close of such calendar or fiscal year. This return shall be referred to as the "annual return" and shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and contain such other information as the department requires. If the annual return shows an overpayment of taxes for the preceding calendar or fiscal year, such return shall be treated as a claim for refund and s. 77.59 (4) shall apply thereto. Any underpayment of tax disclosed by the annual return is due and payable by the due date of the return. Underpayments of tax are subject to interest from the due date of the quarterly return (if determinable)

to which the underpayment relates. Overpayments of tax are subject to interest from the due date of the annual return, subject to the limitations of s. 77.60 (1) (a). All of the provisions of s. 77.60 shall apply to annual as well as quarterly returns except as provided herein. Returns shall be filed on forms prescribed by the department.

(3) For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the state and by every person purchasing taxable tangible personal property, the storage use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

(a) For purposes of the sales tax the return shall show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him the storage, use or consumption of which property became subject to the use tax during the preceding reporting period, in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period. The return shall also show the amount of the taxes for the period covered by the return and such other information as the department deems necessary for the proper administration of the subchapter.

(4) The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the department or such other place as the department by rule designates.

(5) The department, if it deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payments of the amount of taxes for other than quarterly periods. The department may, when satisfied that the revenues will be adequately safeguarded, permit returns and payments of the amount of taxes for other than quarterly periods.

(6) For the purposes of the sales tax gross receipts from rentals or leases of taxable tangible personal property shall be reported and the tax paid in accordance with such rules as the department prescribes.

(7) The department for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid by this subchapter. The extension may be granted at any time provided a request therefor is filed with the department within or prior to the period for which the extension is requested.

History: 1961 c. 620; 1963 c. 224, 519, 562; 1967 c. 43.

77.59 Deficiency and refund determinations. (1) The department may, by office audit, determine the tax required to be paid to the state or the refund due to any person pursuant to this subchapter. The determination may be made upon the basis of the facts contained in the return being audited or upon the basis of any other information within the department's possession. The determination shall be presumed to be correct and the burden of proving it to be incorrect shall be upon the person challenging the correctness thereof. One or more such office audit determinations may be made of the amount due for any one or for more than one period.

(2) The department may, by field audit, determine the tax required to be paid to the state or the refund due to any person pursuant to this subchapter. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information within the department's possession. The department is authorized to examine and inspect the books, records, memoranda, and property of any person in order to verify the tax liability of that person or of another person. The department is authorized to subpoena any person to give testimony under oath before it and to require such person to produce whatever books, records or memoranda are necessary in order to enable the department to verify the tax liability of such person or of another person. The determination shall be presumed to be correct and the burden of proving it to be incorrect shall be upon the person challenging the correctness thereof. A determination by the department pursuant to a field audit becomes final at the expiration of the appeal periods hereinafter provided and the tax liability of the taxpayer for the period audited may not be subsequently adjusted.

(3) No determination of the tax liability of a person may be made unless written notice of such determination is given to the taxpayer within 4 years of the due date of the return or within 4 years of the date the return was filed with the department, whichever is later. The notice required herein shall specify whether the determination is an office

audit determination or a field audit determination and it shall be served personally or by registered mail. If the department is unable to obtain personal service or service by registered mail, publication thereof as a class 3 notice, under ch. 985, shall constitute service of notice in any case where notice is required under this subchapter.

(a) If before the expiration of the time for giving notice of a determination the taxpayer has consented in writing to the giving of notice after such time, the notice may be given at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(4) At any time within 4 years after the due date of a return, a person may, unless a determination by the department by office or field audit has been made, file with the department a claim for refund of taxes paid by such person. Such claim for refund shall be regarded as a request for determination. The determination thus requested shall be made by the department within one year after the claim for refund is received by it and unless such determination is made within the one-year period, the claim for refund shall be allowed in full.

(5) In making a determination, the department may offset refunds for a period, together with interest on the refunds, against deficiencies for another period, and against penalties and interest on the deficiencies.

(6) A determination by the department is final unless, within 30 days after receipt of the notice of such determination, the taxpayer, or other person directly interested, petitions the department for a redetermination. In the case of notice served by publication, the 30-day period commences with the last day of such publication of notice.

(a) If a petition for redetermination is filed within the 30-day period, the department shall reconsider the determination and if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of such hearing. The department may continue the hearing from time to time as necessary. The petition shall be in such form as the department by rule prescribes and shall contain a complete statement of the facts and the propositions of law upon which the petitioner relies in support of his petition.

(b) Within 6 months of the conclusion of the oral hearing, or within 6 months of the receipt by the department of the petition for redetermination if no hearing is requested, the department shall notify the petitioner of its decision. Such decision shall include findings of fact, conclusions of law and schedules or data to support or explain the department's decision. The decision of the department upon a petition for redetermination shall become final 30 days after the service upon the petitioner of notice thereof unless, within that 30-day period, the petitioner appeals the department's decision, as provided in par. (c).

(c) Appeals from the department's decisions shall be governed by the rules and law applicable to income tax appeals except that where the appeal before the Wisconsin board of tax appeals raises no question of fact, the board of tax appeals may transfer the appeal to the circuit court for Dane county. In such cases the department's decision shall be reviewed by the circuit court in the same manner as appeals from decisions of the board of tax appeals. All appeals from decisions of the board of tax appeals with respect to the taxes imposed by this subchapter shall, if appealed, be appealed to the circuit court for Dane county.

(7) If the department believes that the collection of any tax imposed by this subchapter or any amount of tax required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable.

(a) If the amount specified in the determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, unless a petition for redetermination is filed within 10 days. Such petition for redetermination shall not prevent the determination from becoming final unless, within the 10-day period, there is deposited with the department such security as it deems necessary to insure compliance with this subchapter.

(8) Notwithstanding any other provision of this subchapter, if a person fails to file a report or return required by this subchapter or files a false or fraudulent report or return with the intent in either case to defeat or evade tax required to be paid, the department may determine the proper tax due at any time and without regard to when such failure or filing occurred and without regard to whether a field audit determination was previously made. The department may, at any time, examine and inspect any of the

books, records, memoranda, or property of any person and make whatever inquiry, including the subpoena of persons, necessary to the determination of whether a failure to file or a filing was with the intent to defeat or evade the tax.

(9) If any person fails to file a return, the department shall make an estimate of the amount of the gross receipts of the person, or, as the case may be, of the amount of the total sales price of taxable tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period in respect to which the person failed to make a return and shall be based upon any information which is in the department's possession or may come into its possession. Upon the basis of this estimate the department shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 per cent thereof. One or more such determinations may be made for one or for more than one period. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in sub. (3), as to liability arising out of that business.

History: 1961 c. 620; 1965 c. 252.

77.60 Interest and penalties. (1) All unpaid taxes shall bear interest at the rate of 5 per cent per annum from the due date of the return until the first day of the month following the month in which the tax is paid or deposited with the department and all refunded taxes shall bear interest at 5 per cent per annum from the due date of the return until the first day of the month following the month in which said taxes are refunded. An extension of time within which to file a return shall not operate to extend the due date of the return for purposes of interest computation.

(a) If the department determines that any overpayment of tax has been made intentionally or by reason of carelessness or neglect, or if the tax which was overpaid was not accompanied by a complete return it shall not allow any interest thereon.

(2) Delinquent sales and use tax returns shall be subject to a \$10 late filing penalty. In addition to the interest imposed under sub. (1), delinquent sales and use taxes shall bear interest at the rate of one per cent per month from the date of delinquency until the first day of the month following the month in which the tax is paid or deposited with the department. Persons who have paid a delinquent filing penalty in excess of the penalty herein imposed shall be eligible for a refund of such excess upon a claim pursuant to s. 77.59 (4). The taxes imposed by this subchapter shall become delinquent if not paid:

(a) In the case of a timely filed return, within 30 days after the due date of the return, or within 30 days after the expiration of an extension period if one has been granted.

(b) In the case of no return filed or a return filed late, by the due date of the return.

(c) In the case of deficiency determination, within 30 days after the determination becomes final.

(3) If due to negligence no return is filed, or a return is filed late, or an incorrect return is filed, the entire tax finally determined shall be subject to a penalty of 25 per cent of the tax exclusive of interest or other penalties.

(4) If a person fails to file a return when due or files a false or fraudulent return with the intent in either case to defeat or evade the tax imposed by this subchapter, a penalty of 50 per cent shall be added to the tax required to be paid, exclusive of interest and other penalties.

(5) Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or data required by the department, is guilty of a misdemeanor.

(6) Any person required to make, render, sign, or verify any report or return who makes any false or fraudulent report or return or who fails to furnish a report or return, with the intent in either case to defeat or evade the tax imposed by this subchapter is guilty of a misdemeanor.

History: 1961 c. 620; 1963 c. 557.

77.61 Administrative provisions. (1) (a) No motor vehicle or aircraft shall be registered in this state unless the registrant presents proof that the sales or use taxes imposed by this subchapter have been paid.

(b) In the case of a motor vehicle purchased from a licensed Wisconsin motor vehicle dealer, the registrant shall present proof that the tax has been paid to such dealer.

(c) In the case of motor vehicles purchased from persons who are not licensed Wisconsin motor vehicle dealers, the purchaser shall pay the tax to the department of taxation prior to registering such motor vehicle in this state.

(2) In order to protect the revenue of the state, the department may require any person liable to it for the tax imposed by this subchapter to place with it, before or after a permit is issued, such security, not in excess of \$5,000, as the department determines. If any taxpayer fails or refuses to place such security, the department may refuse or revoke such permit. If any taxpayer is delinquent in the payment of the taxes imposed by this subchapter, the department may, upon 10 days' notice, recover the taxes, interest and penalties from the security placed with the department by such taxpayer. No interest shall be paid or allowed by the state to any person for the deposit of security.

(3) The department shall by rule provide a bracket system to be used by retailers in collecting the amount of tax from their customers.

(4) (a) Every seller and retailer as defined in s. 77.51 (7) and (8) and every person storing, using or otherwise consuming in this state taxable tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the department requires. The failure or refusal of any person to comply with this paragraph shall constitute a misdemeanor.

(b) For reporting the sales and use tax and the accounting connected therewith, retailers shall deduct 2% of the total sales and use tax payable each reporting period as partial sales and use tax administration expenses, provided the payment of such taxes is not delinquent.

(5) (a) It is unlawful for the department or any person having an administrative duty under this subchapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person.

(b) Subject to rules of the department, any sales tax returns, or any schedules, exhibits, writings, or audit reports pertaining to the same, on file with the department of taxation shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized; provided that the use of information so obtained is restricted to the discharge of duties imposed upon said persons by law or by the duties of their office, and any of said persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office or by order of a court as set forth in subd. 6 is deemed in violation of this subsection:

1. The commissioner of taxation, or any officer, agent or employe of the department of taxation;

2. Public officers of this state or its political subdivisions or the authorized agents of such officers when deemed by them necessary in the performance of the duties of their office;

3. Members of any legislative committee or its authorized agents where deemed by them necessary to accomplish the purpose for which the committee was organized;

4. Public officers of the federal government or other state governments or the authorized agents of such officers, where necessary in the administration of the laws of such governments, to the extent that such government accords similar rights of examination or information to officials of this state;

5. a. The person who filed or submitted such return, or to whom the same relates or by his authorized agent or attorney;

b. The person required to file reports on collection or taxes withheld from another;

6. Any person examining such return pursuant to a court order duly obtained upon a showing to the court that the information contained in such return is relevant to a pending court action.

(c) Any person violating this subsection may be fined not less than \$100 nor more than \$500, or imprisoned not less than one month nor more than 6 months, or both.

(6) Any person may request from the department a sales or use tax ruling or opinion. Such request shall contain such factual information as the department requires to enable it to render a ruling or opinion. The department need not honor a frivolous request or a request by a person not directly interested in a contemplated or consummated transaction the taxability under this subchapter of which is in doubt.

(7) The department shall publish annually its decisions in connection with petitions for redeterminations. The department shall also publish its rules, sales and use tax rulings and opinions of counsel. No decision, ruling or opinion need be published if such decision, ruling or opinion involves the same or similar fact and law questions as a decision, ruling, or opinion which has been previously published unless the department's decision, ruling

or opinion is contrary to or is an extension of such previous decision, ruling or opinion. The department shall, however, maintain permanent files of all of its decisions, rules, rulings and opinions and such permanent files shall be properly indexed and maintained on a current basis. At least one copy of such permanent files shall be available to inspection by any person upon payment by such person of a fee of \$2. The published decisions, rules, rulings and opinions of the department shall be made available for sale to the public at the cost of the preparation and publishing thereof.

(8) In any case in which a refund is authorized or prescribed in this subchapter, or in the rules of the department related to the administration hereof, no such refund shall be made if the total amount thereof is less than \$2.

(9) The department may by rule require the filing, submission, preparation or retention of such information returns, exemption and resale certificates and other forms, reports and data as it requires for the proper administration of this subchapter. Any person who fails or refuses to file, submit, prepare or retain such returns, certificates, forms, reports or data, at the time and place and in the manner required, is guilty of a misdemeanor for each such failure or refusal.

(10) The amendments to subch. III of ch. 77 shall take effect on August 15, 1963, except as otherwise provided.

History: 1961 c. 620, 652; 1963 c. 224, 519.

77.62 Collection of delinquent sales and use taxes. (1) The department of taxation may exercise the powers vested in it by virtue of s. 71.13 for the purpose of enforcing collection of delinquent sales and use taxes.

(2) Delinquent sales and use tax accounts in the amount of \$10 or less may be written off the records of the department of taxation at any time after 3 years delinquency following a determination by the commissioner of taxation that they are not collectible.

History: 1961 c. 652; 1963 c. 275.

77.625 Payment of tax credits. (1) The extension of the tax credits authorized by this subchapter on the tax roll shall be deemed payment of that portion of the total tax due on property to which such credits are applicable.

(2) The payment of the difference between the total tax which is due on any property less the amount of the tax credits applicable to such property authorized by this subchapter shall be considered payment in full of the property taxes due thereon in that year.

(3) In those cities, villages and towns where the payment of property taxes is authorized to be made in instalments, such instalment payments shall be based on the net amount of taxes due after the tax credits authorized by this subchapter have been applied.

History: 1963 c. 73.

77.63 Distribution of sales tax. (1) DISTRIBUTION. The sales and use taxes collected pursuant to this subchapter shall be deposited in the state general fund, except that on March 1 of each year, the amount appropriated under s. 20.835 (6) (a), shall be distributed by the department of administration to towns, villages and cities in allocable shares pursuant to sub. (2); and taxpayers subject to tax under ss. 76.13, 76.38 and 76.48 in allocable shares certified by the department of taxation pursuant to sub. (1a) (b).

(1a) (a) The department of taxation shall determine the amount of the property tax credit allowable to each taxpayer which is subject to levy of taxes and license fees under ss. 76.13, 76.38 and 76.48. The aggregate of such credit shall be that proportion of the total property tax credit computed in the following manner. The numerator of the fraction shall be the average of the sum of the next 3 preceding year tax payments made pursuant to ss. 76.13, 76.38 and 76.48. The denominator of the fraction shall be the average of the sum of the next 3 preceding year total general property taxes levied (including state, county, local and school taxes) plus special assessments, plus occupational taxes, plus forest crop taxes, plus woodland taxes, plus the taxes paid pursuant to ss. 76.13, 76.38 and 76.48 reduced by the levy on all property entitled to the credit under s. 77.64 of all tax districts.

(b) That portion of the appropriation provided by s. 20.835 (6) (a) to grant property tax relief as set forth in par. (a) to taxpayers that paid taxes and license fees levied pursuant to ss. 76.13, 76.38 and 76.48 shall be paid to such taxpayers on March 1, 1963 and on March 1 annually thereafter. The department of taxation shall certify a refund roll to the department of administration which department shall remit directly to the taxpayers.

(2) ALLOCATION. Participation in the allocation under sub. (1) shall be limited to

municipalities having an average computed full value rate in excess of 14 mills. The excess of the average computed full value rate over 14 mills of each participating municipality shall be multiplied by the municipality's full value of all taxable property except personal property entitled to tax credit under s. 77.64 for the preceding year, as equalized for state tax purposes. The allocable share of each participating municipality in the distribution under sub. (1) shall be in the same proportion as the amount determined hereunder for each municipality bears to the total amount, thus determined, of all participating municipalities.

(3) **TAX CREDIT.** On or before December 1 of the year preceding each March 1 distribution under sub. (1), the department of taxation shall notify the clerk of each town, village and city of the amount to be distributed to it under sub. (1) on the following March 1. The anticipated receipt of such distribution shall not be taken into consideration in determining the tax rate of the municipality but shall be applied as tax credits, as follows:

(a) The amount of the local assessed value of all assessed property of the municipality shall be reduced by the portion thereof which constitutes assessed value of personal property entitled to tax credit under s. 77.64.

(b) Every property taxpayer of the municipality having assessed property, other than personal property entitled to tax credit under s. 77.64, shall receive a tax credit in an amount determined by applying the percentage of the amount of the value of property, other than personal property entitled to tax credit under s. 77.64, assessed to him in the amount determined under par. (a) to the amount of the distribution to be made to the municipality under sub. (1), as stated in the December 1 notification from the department of taxation.

(c) The amount of the tax credit of particular property taxpayers, as determined under par. (b), shall be set forth on the tax bills of such taxpayers issued immediately following the December 1 notification referred to in this subsection and shall serve to reduce the property taxes otherwise payable.

(4) **DEFINITIONS.** (a) "Computed full value rate" means the sum total of all general property taxes (including state, county, local and school taxes), the total amount of all special assessments made, assessed or levied for the year irrespective of the manner or time of collection, occupational taxes, forest crop taxes and woodlands taxes levied and extended by a town, village or city, as reported to the department of taxation in its abstract of assessments and taxes, divided by the full value of all taxable property in such municipality as equalized for state purposes pursuant to s. 70.57, and the quotient expressed in mills per dollar of valuation.

(b) "Average computed full value rate of a municipality" means the average of the computed full value rate of the 3 years preceding the assessment year to which the tax credit is to apply.

(c) "Municipality" means any town, village or city in this state. Where a municipality is located in more than one county the portion thereof in each county shall be considered a separate municipality.

History: 1961 c. 620, 652; 1963 c. 173, 566; 1965 c. 433 s. 121; 1967 c. 43, 291 s. 14.

SUBCHAPTER IV.

TAX DISTRIBUTION.

77.64 Distribution of revenue. (1) On or before February 15, 1963, and annually thereafter, the department of administration shall remit to the treasurers of each taxation district from the appropriation made under s. 20.835 (6) (b) an amount as certified to the department of administration by the department of taxation pursuant to par. (c).

(a) On or before January 15, 1963, and annually thereafter, the clerk of each taxation district shall furnish the department of taxation with a statement of the amount of the total tax levy in the district on assessments of merchants' stock in trade, manufacturers' materials and finished products, and livestock on the preceding May 1.

(b) If the local level of assessment on personal property is greater than the local level of assessment on real property in a tax district as determined by the department under ss. 70.57 and 73.06 (5), the amount referred to in par. (c) shall be 50% of the tax that would have been levied had the personal property been assessed at a level no higher than the real property, except that, commencing with the February 1, 1966, certification, the percentage referred to herein shall be increased by 5 for the certification of each year until 60% is reached with the February 1, 1967, certification; thereafter such percentage shall be 60. If the local level of assessment on personal property is no greater than the local level of assessment on real property the amount referred to in par. (c) shall be 50% of the tax levied on merchants' stock in trade, manufacturers'

materials and finished products, and livestock, except that, commencing with the February 1, 1966, certification, the percentage referred to herein shall be increased by 5 for the certification of each year until 60% is reached with the February 1, 1967, certification; thereafter such percentage shall be 60.

(c) On or before February 1, 1963, and annually thereafter, the department of taxation shall certify to the department of administration the amount to be remitted to the treasurers of each taxation district. The amount certified shall be the amount referred to in par. (b). If the local clerk fails to meet the January 15 deadline set in par. (a) and as a result the department of taxation cannot meet the February 1 roll certification requirement by this subsection it may prepare additional certification rolls within the period of time provided for the correction of errors under s. 77.68 (1).

(2) The clerk of each taxation district shall apportion to each taxpayer against whom a levy was made in the preceding year on merchants' stock in trade, manufacturers' materials and finished products, and livestock 50% of such levy as determined under sub. (1) (b), except that commencing with the apportionment based on May 1, 1965, assessments, the percentage referred to herein shall be increased by 5 for the apportionment of each year until 60% is reached with the apportionment based on the May 1, 1966, assessment; and thereafter such percentage shall be 60. The department shall furnish the apportionment factor to the clerks of the tax districts on or before December 1.

(3) The amount of the tax credit of particular property taxpayers, as determined under sub. (2), shall be set forth on the tax bills of such taxpayers issued immediately following the December 1 notification referred to in sub. (2) and shall serve to reduce the property taxes otherwise payable.

(4) Any taxpayer who intentionally renders a false or fraudulent report to the local assessor on the number or grade of livestock in his possession on May 1, or who intentionally overstates the value of the merchants' stock in trade, or manufacturers' materials and finished products in his possession on May 1, may be fined not to exceed \$5,000 or imprisoned not to exceed one year, or both, with the cost of prosecution. Any local assessor or other officer of the tax district aiding or abetting a taxpayer in the filing of a false or fraudulent report may be fined not to exceed \$500 or imprisoned not to exceed 6 months, or both, with the cost of prosecution.

History: 1961 c. 620, 652; 1963 c. 12, 83; 1965 c. 163, 433 s. 121; 1967 c. 291 s. 14.

Discussion of certain items as constituting "merchants' stock in trade, manufacturers' materials and finished products, and livestock" for purposes of tax credit provisions. 52 Atty. Gen. 387.

77.67 Overpayment of property tax credits. (1) **PERSONAL PROPERTY TAX CREDIT.**

When a taxation district has received an overpayment of tax credit under s. 77.64, either before or after the enactment of this section, the excess shall be a direct claim by the state against the taxation district and if not paid on demand it shall be certified as a special charge in the next following secretary of state's apportionment of state taxes and charges.

(2) **EXCESS CREDIT TO TAXPAYER.** When a taxpayer has received an excess credit under either s. 77.63 or 77.64 or both the taxation district shall collect the excess from the taxpayer who received it. The excess shall be a direct claim by the taxation district and if not paid on demand may be collected in an action for debt by the taxation district or it may deduct such excess from the credits to which such taxpayer would otherwise be entitled in the next tax roll. Where the excess credit was under s. 77.63 the clerk shall add such excess to the tax credit certified by the department on the next December 1 and distribute the total according to s. 77.63 (3) (b).

History: 1963 c. 83.

77.68 Underpayment of credits. (1) **PERSONAL PROPERTY TAX CREDIT.** When a taxation district has received an underpayment of tax credit as a result of a palpable error or misclassification of personal property of taxpayers entitled to credit under s. 77.64, either before or after enactment of this section, the department of taxation shall prepare additional certification rolls to correct such errors of misclassification for all claims filed by June 15 following the distribution in which it was entitled to a credit under s. 77.64 (1) (c). The additional certifications shall be charged to s. 20.835 (6) (b). If June 15 falls on a Saturday or Sunday, the next secular or business day shall be the final date. Any correction claim which is delivered to the department by U. S. mail shall be considered timely filed if the envelope in which it is mailed is properly addressed with postage duly prepaid which envelope is postmarked before midnight of the final date, provided such claim is actually received in the office of the department within 5 days of the final date.

(2) UNDERPAYMENT OF CREDIT TO TAXPAYER. (a) When a taxpayer is undercredited with a tax credit due from s. 77.64 the treasurer shall pay such taxpayer for such shortage in credit if the tax has been paid in full. If the tax has not been paid in full the clerk shall issue an order check to the treasurer then in possession of the tax roll who shall apply such amount as payment on the taxes due.

(b) If the credit under s. 77.63 was understated the treasurer shall pay such taxpayer the amount of the understatement if the tax has been paid in full. If the tax has not been paid in full the clerk shall issue an order check to the treasurer then in possession of the tax roll who shall apply such amount as payment on the taxes due. The next December 1 certification under s. 77.63 (3) shall be reduced by the clerk for such payments or credits and the balance then remaining shall be distributed in accordance with s. 77.63 (3) (b).

History: 1963 c. 83; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

77.69 Omitted property. Property entitled to credit under s. 77.63 or 77.64 but omitted from the assessment roll shall be taxed according to s. 70.44 at the rate prevailing in the year of omission but shall receive the same state credit as other like property receives in the year in which it is placed on the tax roll. This section shall first be effective as to credits that would have been granted had the property not been omitted from the May 1, 1962 assessment roll.

History: 1963 c. 83.