

## CHAPTER 77

## TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES; SALES AND USE TAXES; COUNTY SALES AND USE TAXES; MANAGED FOREST LAND; TEMPORARY RECYCLING SURCHARGE

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## SUBCHAPTER I

## TAXATION OF FOREST CROPLANDS

**77.01 Purposes.** It is the intent of this subchapter to encourage a policy of protecting from destructive or premature cutting the forest growth in this state, and of reproducing and growing for the future adequate crops through sound forestry practices 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 with public hunting and fishing as extra public benefits, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands.

**History:** 1971 c. 215; 1985 a. 332 s. 251 (2).

Request by individual legislators and town or county boards for delay in issuing orders pursuant to ch. 77, present no basis for withholding actions by the department. 61 Atty. Gen. 134.

**77.015 Lands in villages included.** Sections 77.01 to 77.14 shall apply to villages for the same purposes as specified in s. 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.

**History:** 1981 c. 390.

**77.02 Forest croplands. (1) PETITION.** The owner of an entire quarter quarter section, fractional lot or government lot as determined by U.S. government survey plat, excluding public roads and railroad rights-of-way that may have been sold, may file with the department of natural resources a petition stating that the owner believes the lands therein described are more useful for growing timber and other forest crops than for any other purpose, that the owner intends to practice forestry thereon, that all persons holding encumbrances thereon have joined in the petition and requesting that such lands be approved as "Forest Croplands" under this subchapter. Whenever any such land is encumbered by a mortgage or other indenture securing any issue of bonds or notes, the trustee 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 receipt of such petition the department of natural resources shall investigate the same and shall file a listing of descriptions with the town chairperson. For petitions received prior to May 1, the department shall within the same calendar year cause a notice that such petition has been filed to be published as a class 3 notice, under ch. 985, in the newspaper having the largest general circulation in the county in which the lands are located, and notice by registered mail shall be given to the

town clerk of any town in which the lands are located. Such notice shall contain the name of the petitioner, a description of the lands and a statement that any resident of or taxpayer in the town may within 15 days from the date of publication of the notice file a request with the department that it conduct a public hearing on the petition. Upon receipt of such a request the department shall conduct a public hearing on the petition. The department may conduct a public hearing on any petition without a request, if it deems it advisable to do so. Notice of the time and place of such hearing and a description, in specific or general terms, as the department deems advisable, of the property requested to be approved as "Forest Croplands" shall be given to persons making the request, the owner of such land and to the assessor of towns in which it is situated, by mail, at least one week before the day of hearing. The notice also shall be published as a class 1 notice, under ch. 985, in a newspaper having general circulation in the county in which such land is located, at least one week before the day of the hearing. Such hearing may be adjourned 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 receiving all the evidence offered at any hearing held on the petition and after making such independent investigation as it sees fit the department 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 descriptions within a reasonable time, and that such descriptions are then held permanently for the growing of timber under sound forestry practices, rather than for agricultural, mineral, shoreland development of navigable waters, recreational, residential or other purposes, and that all persons holding encumbrances against such descriptions 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 descriptions be paid within 30 days thereafter; otherwise the department of natural resources shall deny the request of the petitioner. If the request of the petitioner is granted, a copy of such order shall be filed with the department of revenue, the supervisor of equalization, the clerk of each town and the register of deeds of each county in which any of the lands affected by the order are located. The register of deeds shall record the entry, transfer or withdrawal of all forest croplands in a suitable manner on the county records. The register of deeds may collect recording fees under s. 59.57 from the owner. Any order of the department relating to the entry of forest croplands issued on or before November 20 of any year shall take effect on January 1 of the following calendar year, but all orders issued after November 20 shall take effect January 1 of the calendar year following the calendar year in which orders issued on or before November 20 would have been effective.

**History:** 1971 c. 215; 1975 c. 45; 1977 c. 29 s. 1647 (2); 1977 c. 418; 1983 a. 275 s. 15 (3); 1985 a. 332 s. 251 (2); 1989 a. 56 s. 258; 1991 a. 316.  
In order to be eligible for entry under the forest crop law the lands must be continuous or contiguous and 40 or more acres in size. 58 Atty. Gen. 8

**77.03 Taxation of forest croplands.** After the filing of the order with the officers under s. 77.02 (3) the lands described therein shall be "Forest Croplands", on which taxes shall thereafter be payable only as provided under this subchapter. The enactment of ss. 77.01 to 77.14, petition by the owner and the making of the order under s. 77.02 (3) shall constitute a contract between the state and the owner, running with the lands, for a period of 25 or 50 years at the election of the applicant at the time the petition is filed, unless withdrawn under s. 77.10, 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 croplands to come under ss. 77.01 to 77.14 agrees that, unless withdrawn under s. 77.10, no change in or repeal of ss. 77.01 to 77.14 shall apply to any land then accepted as forest croplands, except as the department of natural resources and the owner may expressly agree in writing and except as provided in s. 77.17. If at the end of the contract period the land is not designated as managed forest land under subch. VI, the merchantable timber on the land shall be estimated by an estimator jointly agreed upon by the department of natural resources and the owner, and if the department and the owner fail to agree on an estimator, the judge of the circuit court of the district in which the lands lie shall appoint a qualified forester, whose estimate shall be final, and the cost thereof shall be borne jointly by the department of natural resources and the owner; and the 10% severance tax paid on the stumpage thereon in the same manner as if said stumpage had been cut. The owners by such contract consent that the public may hunt and fish on the lands, subject to such rules as the department of natural resources prescribes regulating hunting and fishing.

**History:** 1971 c. 215; 1979 c. 89; 1985 a. 29; 1989 a. 31.

This section creates right of access across owner's non-enrolled lands to reach owner's landlocked enrolled lands for purposes of hunting and fishing. 71 Atty. Gen. 163

**77.04 Taxation. (1) TAX ROLL.** The clerk on making up the tax roll shall enter as to each forest cropland description in a special column or some other appropriate place in such tax roll headed by the words "Forest Croplands" or the initials "F.C.L.", which shall be a sufficient designation that such description is subject to this subchapter. Such land shall thereafter be assessed and be subject to review under ch. 70, and such assessment may be used by the department of revenue in the determination of the tax upon withdrawal of such lands as forest croplands as provided in s. 77.10 for entries prior to 1972. The tax upon withdrawal of descriptions entered as forest croplands after December 31, 1971, may be determined by the department of revenue by multiplying the last assessed value of the land prior to the time of the entry by an annual ratio computed for the state under sub. (2) to establish the annual assessed value of the description. No tax shall be levied on forest croplands except the specific annual taxes as provided, except that any building located on forest cropland 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.** The "acreage share" shall be computed at the rate of 10 cents per acre on all lands entered prior to 1972. On all lands entered after December 31, 1971, the "acreage share" shall be computed every 10 years to the nearest cent by the department of revenue at the rate of 20 cents per acre multiplied by a ratio using the equalized value of the combined residential, commercial, manufacturing, agricultural, swamp, or waste and productive forest land classes under s. 70.32 (2) within the state in 1972 as the denominator, and using equalized value for these combined land classes in 1982 and every 10th year thereafter as the numerator. All owners shall pay to the taxation district treasurer the acreage share on each description on or before January 31. If the acreage share is not paid when due to the taxation district treasurer it shall be subject to interest and penalty as provided under ss. 74.11 (11), 74.12 (10) and 74.47. These lands shall be returned as delinquent and a tax certificate under subch. VII of ch. 74 shall be issued on them. After 2 years from the date of the issuance of a tax certificate, the county clerk shall promptly take a tax deed under ch. 75. On taking such deed the county clerk shall certify that fact and

specify the descriptions to the department of natural resources.

(3) **APPORTIONMENT OF FOREST CROPLAND INCOME.** Out of all moneys received by any town from any source on account of forest croplands in such town, the town treasurer shall on or before November 15 pay 20% to the county treasurer and retain the remainder.

**History:** 1971 c. 215; 1975 c. 39 s. 211; 1977 c. 418; 1981 c. 20, 167, 391; 1983 a. 275 s. 15 (8); 1983 a. 405, 538; 1985 a. 332 s. 251 (2); 1987 a. 378

**77.05 State contribution.** The department of natural resources shall pay before June 30 annually to the town treasurer, from the appropriation under s. 20.370 (4) (ar), 20 cents for each acre of land in the town that is described as forest croplands under this subchapter.

**History:** 1971 c. 215; 1975 c. 39 s. 734; 1977 c. 29 s. 1656 (38); 1977 c. 418; 1979 c. 34 s. 2102 (39) (a); 1991 a. 39

**77.06 Forestation. (1) CUTTING TIMBER REGULATED.** No person shall cut any merchantable wood products on any forest croplands where the forest crop taxes are delinquent nor until 30 days after the owner has filed with the department of natural resources a notice of intention to cut, specifying by descriptions and the estimated amount of wood products to be removed and the proportion of present volume to be left as growing stock in the area to be cut. The department of natural resources 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 department of natural resources of the severance tax hereinafter provided. The department, after examination of the lands specified, may prescribe the amount of forest products to be removed. Cutting in excess of the amount prescribed shall render the owner liable to double the severance tax prescribed in s. 77.06 (5) and subject to cancellation under s. 77.10. Merchantable wood products include all wood products except wood used for fuel by the owner.

(2) **APPRAISAL OF TIMBER, ZONES.** Each year the department of natural resources, at the time and place it shall fix and after such public notice as it deems reasonable, shall hold a public hearing. After the hearing the department 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 croplands lie. A public hearing under this section shall be held prior to August 1 of each year and the determination of stumpage values made by the department of natural resources shall take effect on November 1 of that year. If the department of natural resources finds there is a material variance in the stumpage values in the different localities, it may fix separate zones and determine the values for each zone.

(3) **REVALUATION.** As to any locality or zone in which the department of natural resources 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 department of natural resources on forms provided by the department 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, loaded, delivered, or by tree scale certified by a qualified forester when stumpage is sold by tree measurement. The department of natural resources 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 department of natural resources shall assess and levy against the owner a severance tax on the right to cut and remove wood products covered by reports under this section, at the rate of 10% of the value of the wood products based upon the stumpage value then in force. Upon making the assessment, the department of natural resources shall mail a duplicate of the certificate by registered mail to the owner who made the report of cutting at the owner's last-known post-office address. The tax assessed is due and payable to the department of natural resources on the last day of the next calendar month after mailing the certificate. The proceeds of the tax shall be paid into the forestry account of the conservation fund for distribution under s. 77.07 (3).

**History:** 1971 c. 215; 1977 c. 29, 224.

**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 30 days after it becomes due, there shall then be added a penalty of 10%, 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 30 days the department of natural resources 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 s. 77.06 (1), or by any or all such means.

(3) **DISTRIBUTION OF SEVERANCE TAX.** All severance taxes collected under this subchapter shall be distributed as follows: The state shall retain an amount equal to the total acreage payments on the lands to which the severance taxes relate, made by the state under s. 77.05, and all penalties imposed under sub. (2) and s. 77.06 (1), and the balance shall be paid to the town treasurer to be apportioned as provided in s. 77.04 (3).

**History:** 1971 c. 215; 1977 c. 29; 1985 a. 332 s. 251 (2).

**77.08 Supplemental severance tax.** At any time within one year after any cutting should have been reported, the department of natural resources 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. (1)** Any person who fails to report or shall intentionally make any false statement or report to the department of natural resources required by s. 77.06 shall forfeit not more than \$1,000. An action under this

section shall not be a bar to a cancellation of entry and order of withdrawal under s. 77.10.

(2) The procedure in ss. 23.50 to 23.85 applies to actions brought under sub. (1).

History: 1989 a. 79.

**77.10 Withdrawal of forest croplands.** (1) INVESTIGATIONS, CANCELLATIONS, CONVEYANCES. (a) The department of natural resources shall on the application of the department of revenue or the owner of any forest croplands 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 croplands shall continue under this subchapter. If on such hearing after due notice to and opportunity to be heard by the department of revenue, the town and the owner, the department of natural resources finds that any such lands are not meeting the requirements set forth in s. 77.02 or that the owner has made use of the land for anything other than forestry or has failed to practice sound forestry on the land, the department of natural resources shall cancel the entry of such description and issue an order of withdrawal, and the owner shall be liable for the tax and penalty under sub. (2). Copies of the order of withdrawal specifying the description shall be filed by the department of natural resources with all officers designated to receive copies of the order of entry and withdrawal and this subchapter shall not thereafter apply to the lands withdrawn, except s. 77.07 so far as it may be needed to collect any previously levied severance or supplemental severance tax. If the owner shall not repay the amounts on or before the last day of February next succeeding the return of such lands to the general property tax roll as provided in sub. (4), the department of natural resources shall certify to the county treasurer the descriptions and the amounts due, and the county treasurer shall sell such lands as delinquent as described in s. 77.04 (2). Whenever any county clerk has certified to the taking of tax deed under s. 77.04 (2) the department of natural resources 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 croplands conveys such land the owner shall, within 10 days of the date of the deed, file with the department of natural resources on forms prepared by the department a transfer of ownership signed by the owner and an acceptance of transfer signed by the grantee certifying that the grantee intends to continue the practice of forestry on such land. The department of natural resources shall immediately issue a notice of transfer to all officers designated to receive copies of orders of entry and withdrawal. Whenever a purchaser of forest croplands declines to certify his or her intention to continue the practice of forestry thereon, such action shall constitute cause for cancellation of entry under par. (a) without hearing.

(2) ELECTION TO WITHDRAW LANDS. (a) 1. Any owner of forest croplands may elect to withdraw all or any of such lands from under this subchapter, by filing with the department of natural resources a declaration withdrawing from this subchapter any description owned by such person which he or she specified, and by payment by such owner to the department of natural resources within 60 days the amount of tax due from the date of entry or the most recent date of renewal, whichever is later, as determined by the department of revenue under s. 77.04 (1) with simple interest thereon at 12% per year, 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 12% per year.

2. The amount of the tax shall be determined by the department of revenue and furnished to the department of natural resources, which shall determine the exact amount of payment. When the tax rate or assessed value ratio of the current year has not been determined the rate of the preceding tax year may be used. On receiving such payment the department of natural resources shall issue an order of withdrawal and file copies thereof with the department of revenue, the supervisor of equalization, the clerk of the town and the register of deeds of the county in which the land lies. The land shall then cease to be forest croplands.

(b) Upon receipt of any taxes under this section by the state, the department of natural resources shall first deduct all moneys paid by the state on account of the lands under s. 77.05 with interest on the moneys computed according to the rule of partial payments at the rate of interest paid under par. (a) by the person withdrawing such lands. The department shall within 20 days remit the balance to the town treasurer who shall pay 20% to the county treasurer and retain the remainder.

(c) Land subject to a contract under s. 77.03 that is withdrawn and the ownership of which is transferred to the federal government, the state or a local governmental unit, as defined in s. 66.299 (1) (a), is not subject to the tax payment calculated under par. (a) if the land will be used for a public road, railroad, utility right-of-way, park, recreational trail, wildlife or fish habitat area or a public forest.

(4) TAXATION AFTER WITHDRAWAL. When any description ceases to be a part of the forest croplands, by virtue of any order of withdrawal issued by the department of natural resources, taxes thereafter levied thereon shall be payable and collectible as if such description had never been under this subchapter.

History: 1971 c. 215; 1975 c. 39 s. 734; 1977 c. 29, 201, 447; 1979 c. 110 s. 60 (13); 1983 a. 275 s. 15 (3); 1985 a. 332 s. 251 (2); 1987 a. 399; 1989 a. 79; 1991 a. 39, 316.

**77.11 Accounts of department of natural resources.** The department of natural resources shall keep a set of forest croplands books in which shall always appear as to each description in each town containing any forest croplands, the amount of taxes paid by the state to the town and received by the state from the owner. All tax payments shall be paid out of and receipts credited to the forestry account of the conservation fund.

History: 1977 c. 29.

**77.12 Review of findings, venue.** Any finding of fact made under this subchapter 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.

History: 1985 a. 332 s. 251 (2).

**77.13 Termination of forest croplands program.** (1) On and after July 20, 1985, no person may petition the department of natural resources requesting it to approve any land as forest croplands under this subchapter.

(2) On and after January 1, 1986, the department of natural resources may not act on any petition requesting the designation of land as forest croplands, issue any order entering land as forest croplands or enter into a renewal of any forest croplands contract under this subchapter.

History: 1985 a. 29; 1987 a. 27.

**77.14 Forest croplands information, protection, appropriation.** The department of natural resources shall publish and distribute information regarding the method of taxation of forest croplands under this subchapter, and may employ a fire warden in charge of fire prevention in forest croplands. All actual and necessary expenses incurred by the department of natural resources or by the department of revenue in the performance of their duties under this subchapter shall be paid from the appropriation made in s. 20.370 (1) (mu) upon certification by the department incurring such expenses.

**History:** 1975 c. 39 s. 734; 1977 c. 29 s. 1656 (38); 1979 c. 32; 1979 c. 34 s. 2102 (39) (a); 1985 a. 332 s. 251 (2).

**77.16 Woodland tax law. (1)** In this section "department" means the department of natural resources.

**(2)** The owner of 10 acres or more may file with the department an application setting forth a description of the lands which the owner desires to place under the woodland tax law and on which land the owner will practice forestry. Applications received prior to May 1 each calendar year shall be processed for entry by November 20 of that calendar year. Lands which include an entire quarter-quarter section, fractional lot or government lot as determined by U.S. government survey plat, excluding public roads and railroad rights-of-way that may have been sold, are not eligible for entry. Lands within recorded plats or the incorporated limits of cities or villages are not eligible for entry, but lands subject to a woodland tax law agreement located in a town which incorporates as a city after the agreement was entered into remain in effect. Lands on which an improvement is located having an assessed value in itself are not eligible for entry.

**(3)** Upon filing of such application the department shall examine the land, and if it finds that the facts give reasonable assurance that the woodland is suitable for the growing of timber and other forest products and the lands are not more useful for other purposes and the landowner agrees to follow an approved management plan the department 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 equalization of the district wherein the land is located, to the clerk and the assessor of the town and to the clerk and register of deeds of the county wherein the land is located. The register of deeds shall record the entry and declassification of woodland tax lands in a suitable manner on the county record. The register of deeds may collect recording fees under s. 59.57 from the owner.

**(4)** The application of the owner of the land, the signed management plan and the filing of the order by the department shall constitute a contract, running with the land, for a period of 15 years, unless terminated as provided in this section. Any order issued on or before November 20 of any year shall take effect on January 1 of the following calendar year, but all orders issued after November 20 shall take effect January 1 of the calendar year following the calendar year in which orders issued on or before November 20 would have been effective. Any contract under this section may be renewed by mutual consent of the parties at the end of its term, notwithstanding the fact that the town in which the land subject to the contract is located was incorporated as a city during the term of the contract. If at the end of 15 years the contract is not renewed by mutual consent, the land is declassified and shall be removed from the provisions of this section.

**(5)** The assessor shall reduce the total assessed valuation of each description by an amount equal to the assessed value of the acreage entered. The local assessor in preparing the assessment roll shall show the acreage for each owner covered

under this section in a column designated by the words "Woodland Tax Law" or the initials "WTL".

**(6)** The owner shall be liable and shall pay to the taxation district or city treasurer a tax computed at the rate of 20 cents per acre on all lands entered prior to 1977. All owners shall pay that tax on or before January 31. On all lands entered or renewed after December 31, 1976, the rate shall be 40 cents per acre through 1982. In 1982 and at 10-year intervals thereafter the per acre rate shall be recalculated using the method specified in s. 77.04 (2) and rounded to the nearest cent. Such acreage tax shall be subject to collection in the same manner as is the forest croplands tax under s. 77.04 (2).

**(7)** The owner of the land shall follow the management plan and shall prohibit grazing and burning on lands entered under the woodland tax law. The management plan may be revised by the owner with the consent of the department. The department may at any time cause an investigation to be made as to whether lands may continue to be classified under this section. If the department finds that the owner has not complied with the law, or if the land is no longer used for forestry purposes, it shall issue an order removing the land from the woodland tax law classification. An owner may elect to withdraw lands from under this section by filing with the department a declaration of withdrawal for any entire entry. Contracts under the woodland tax law shall be conveyed with the land to the new owner. Conveyance of lands resulting in partition of the lands under a woodland tax law contract shall be cause for declassification. Any declassification order issued on or before November 20 of any year shall take effect on January 1 of the following calendar year but all declassification orders issued after November 20 shall take effect January 1 of the calendar year following the calendar year in which declassification orders issued on or before November 20 would have been effective. A copy of the declassification order shall be sent to the owner of the land, to the supervisor of equalization of the district wherein the land is located, to the clerk and the assessor of the town or city, and to the clerk and register of deeds of the county wherein the land is located.

**(8)** The owner, town board or county board may petition the department for a public hearing to take testimony and hear evidence on whether lands shall be entered under this section. An owner, town board, city council or county board may petition the department for a public hearing on whether lands should be continued under this section. Upon the filing of a petition the department shall set the 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 department shall give 30 days' written notice of the hearing to the petitioners. The hearing may be adjourned for 60 days. The presiding officer at the hearing may be an employe of the department designated by the department to conduct the hearing.

**(9)** After hearing all the evidence and after making such independent investigation as it sees fit the department shall make its findings of fact and make and enter an order 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 equalization of the district wherein the land is located, to the clerk and the assessor of the town or city, to the county clerk and register of deeds and to the petitioner if not included above.

**(10)** The department shall furnish appropriate forms to the owners of lands interested in entry of lands under the woodland tax law.

**(11)** On declassification as a result of actions under sub. (7) the owner shall be liable for payment of a penalty to the town

or city treasurer. The payment shall be calculated by the department at a rate of one percent of the average full value per acre of the productive forest land classes under s. 70.32, in the year before declassification in the county where the land is located, for each acre for each year the acreage remained under the provisions of this section. The full value of the productive forest land classes shall be determined each year by the department of revenue. The department shall notify the town or city clerk of the amount of the penalty together with the order of declassification. The penalty shall be included in the owner's next tax bill.

(11m) The owner shall not be liable for payment of a penalty if declassification is a result of the transfer of the land to the federal government, the state or a local governmental unit, as defined in s. 66.299 (1) (a), for a public road, railroad, utility right-of-way, park, recreational trail, wildlife or fish habitat area or a public forest.

(12) The owner shall not be liable for payment of a penalty if declassification is a result of the owner's failure or refusal to renew the contract at the end of the contract period.

(13) Any decision made by the department under this section is subject to review under ch. 227.

(14) (a) On and after July 20, 1985, no person may apply to the department to place any land under this section.

(b) On and after January 1, 1986, the department may not act on any application under this section, issue any order placing land under this section or enter into a renewal of any agreement under this section.

History: 1975 c. 226; 1977 c. 29 s. 1647 (2); 1977 c. 418; 1983 a. 275 s. 15 (7); 1983 a. 405, 417, 538; 1985 a. 29; 1987 a. 27, 378; 1991 a. 39.

Detached parcels of less than 40 acres are eligible for entry under the woodland tax law. 58 Atty. Gen. 8.

**77.17 Contracts for land in the lower Wisconsin state riverway.** An owner of timber that is exempt under s. 30.44 (3) (c) 1 shall comply with a rule regulating timber cutting and harvesting promulgated under s. 30.42 (1) (d):

(1) If the rule is not inconsistent with the contract entered into under s. 77.03 or 77.16 (4); or

(2) If the owner agrees to modify the contract entered into under s. 77.03 or 77.16 (4) to require compliance with the rules.

History: 1989 a. 31.

## SUBCHAPTER II

### REAL ESTATE TRANSFER FEE

**77.21 Definitions.** In this subchapter:

(1) "Conveyance" includes deeds and other instruments for the passage of ownership interests in real estate, including contracts and assignments of a vendee's interest therein and including leases for at least 99 years but excluding leases for less than 99 years, easements and wills.

(1e) "Mergers of corporations" means the combination of 2 or more corporations under a plan of merger or a plan of consolidation.

(1k) "Partition" means the division among several persons of real property, including noncontiguous real property, that belongs to them as coowners.

(1m) "Real estate" includes, but is not limited to, fixtures; roots, vines and trees of perennial crops; stock in a cooperative building; improvements on leased land; timber; and minerals.

(2) "Register" means the register of deeds for the county in which particular real estate is located.

(3) "Value" means:

(a) In the case of any conveyance not a gift, the amount of the full actual consideration paid therefor or to be paid, including the amount of any lien or liens thereon; and

(b) In case of a gift, or any deed of nominal consideration or any exchange of properties, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and at prevailing general price levels.

History: 1971 c. 150; 1989 a. 31; 1991 a. 39.

**77.22 Imposition of real estate transfer fee.** (1) There is imposed on the grantor of real estate a real estate transfer fee at the rate of 30 cents for each \$100 of value or fraction thereof on every conveyance not exempted or excluded under this subchapter. In regard to land contracts the value is the total principal amount that the buyer agrees to pay the seller for the real estate. This fee shall be collected by the register at the time the instrument of conveyance is submitted for recording. Except as provided in s. 77.255, at the time of submission the grantee or his or her duly authorized agent or other person acquiring an ownership interest under the instrument, or the clerk of court in the case of a foreclosure under s. 846.16 (1), shall execute a return, signed by both grantor and grantee, on the form prescribed under sub. (2). The register shall enter the fee paid on the face of the deed or other instrument of conveyance before recording, and, except as provided in s. 77.255, submission of a completed real estate transfer return and collection by the register of the fee shall be prerequisites to acceptance of the conveyance for recording. The register shall have no duty to determine either the correct value of the real estate transferred or the validity of any exemption or exclusion claimed. If the transfer is not subject to a fee as provided in this subchapter, the reason for exemption shall be stated on the face of the conveyance to be recorded by reference to the proper subsection under s. 77.25. All returns related to conveyances exempt from the fee need not report the value of the ownership transferred except conveyances exempt under s. 77.25 (8).

(2) The secretary of revenue shall prescribe the form required under sub. (1). The form shall provide for the submission of the following:

(a) The value of the ownership interest transferred by the instrument of conveyance.

(b) The amount of the fee payable under this section.

(c) Whether the real estate transferred is subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c).

(d) If the real estate transferred is not subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c), the reason why it is not so subject or the form prescribed by the department of industry, labor and human relations under s. 101.122 (6).

(e) The financing terms under which agricultural land is transferred that are relevant to determining only the value of the property.

(f) Any other information the secretary requires.

History: 1971 c. 150; 1977 c. 29; 1981 c. 20; 1985 a. 54; 1985 a. 174 ss. 1, 2, 7; 1985 a. 332; 1987 a. 27; 1989 a. 31; 1991 a. 269.

Transfer by all owners of property held in tenancy in common to a partnership consisting of all the original tenants in common was a taxable conveyance Department of Revenue v. Mark, 168 W (2d) 288, 483 NW (2d) 302 (Ct. App 1992)

**77.23 Disposition of fees and returns; confidentiality.** (1) On or before the 15th day of each month the register shall submit to the county treasurer transfer fees collected together with the returns filed in the office during the preceding month for the treasurer's transmission to the department of revenue



under s. 77.24. The department shall distribute information from the returns, and a copy of each return, to local assessors.

(2) The returns filed under this subchapter shall be deemed privileged information, for use in any proceeding involving the amount of the requisite fee, for the use of the department of industry, labor and human relations under s. 101.122, or for use of the department of revenue, county real property lists under s. 70.09 and local assessors or their agents or employes and of governmental agencies acquiring real property for public purposes; but in a condemnation proceeding or an appeal from an assessment of real property, returns shall be open to inspection by the property owner or agent.

(3) The local assessor shall permit the inspection of all returns filed under this subchapter for property within any local unit of government for which property taxes are levied by the chief elected official, or a person designated by the official, of that unit upon the adoption of a resolution by the governing body of the unit directing the official to inspect the returns for the purpose of reviewing the basis upon which equalized values were established by the department of revenue under s. 70.57. The official or designee shall maintain the confidentiality of the returns.

History: 1975 c. 338, 421; 1979 c. 153; 1985 a. 174

**77.24. Division of fee.** Twenty percent of all fees collected under this subchapter shall be retained by the county and the balance shall be transmitted to the state. Remittances shall be made monthly by the county treasurers to the department of revenue by the 15th day of the month following the close of the month in which the fee was collected. The remittance to the department shall be accompanied by the returns executed under s. 77.22.

History: 1977 c. 29; 1981 c. 20.

**77.25 Exemptions from fee.** The fees imposed by this subchapter do not apply to a conveyance:

- (1) Prior to October 1, 1969.
- (2) From the United States or from this state or from any instrumentality, agency or subdivision of either.
- (2g) By gift, to the United States or to this state or to any instrumentality, agency or subdivision of either.
- (2r) Under s. 236.29 (1) or (2) or 236.34 (1) (e) or for the purpose of a road, street or highway, to the United States or to this state or to any instrumentality, agency or subdivision of either.
- (3) Which, executed for nominal, inadequate or no consideration, confirms, corrects or reforms a conveyance previously recorded.
- (4) On sale for delinquent taxes or assessments.
- (5) On partition.
- (6) Pursuant to mergers of corporations.
- (7) By a subsidiary corporation to its parent for no consideration, nominal consideration or in sole consideration of cancellation, surrender or transfer of capital stock between parent and subsidiary corporation.
- (8) Between husband and wife, parent and child, stepparent and stepchild, parent and son-in-law or parent and daughter-in-law for nominal or no consideration.
- (9) Between agent and principal or from a trustee to a beneficiary without actual consideration.
- (10) Solely in order to provide or release security for a debt or obligation.
- (11) By will, descent or survivorship.
- (12) Pursuant to or in lieu of condemnation.
- (13) Of real estate having a value of \$100 or less.

(14) Under a foreclosure or a deed in lieu of a foreclosure to a person holding a mortgage or to a seller under a land contract.

(15) Between a corporation and its shareholders if all of the stock is owned by spouses or lineal ascendants or descendants of each other, if the transfer is for no consideration except stock of the corporation and if the corporation owned the property for at least 3 years.

(15m) Between a partnership and one or more of its partners if all of the partners are related to each other as spouses, lineal ascendants, lineal descendants, siblings, or spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the partnership.

(16) To a trust if a transfer from the grantor to the beneficiary of the trust would be exempt under this section.

(17) Of a deed executed in fulfillment of a land contract if the proper fee was paid when the land contract or an instrument evidencing the land contract was recorded.

History: 1971 c. 150; 1985 a. 39; 1987 a. 27; 1991 a. 39, 202, 269.

Corporate stock constitutes "actual consideration" under (9). *Gottfried, Inc. v. Dept. of Revenue*, 145 W (2d) 715, 429 NW (2d) 508 (Ct. App. 1988).

**77.255 Exemptions from return.** No return is required with respect to conveyances exempt under s. 77.25 (1), (2r), (4) or (11) from the fee imposed under s. 77.22. No return is required with respect to conveyances exempt under s. 77.25 (2) unless the transferor is also a lender for the transaction.

History: 1983 a. 27; 1987 a. 27; 1991 a. 39.

**77.26 Powers of investigation, additional fees, refunds, penalties.** (1) The department of revenue may examine any records of any party to a conveyance to determine the real estate transfer fee due and the accuracy of the return submitted.

(2) If the department of revenue determines that the amount of the real estate transfer fee reported was in error or that an exemption was improperly claimed, the department shall compute the additional transfer fee to be paid by, or the amount of the overpayment of transfer fee to be refunded to, the grantor.

(3) All additional assessments and claims for refund are subject to the applicable notice provisions and procedures for review, final determination, collection, interest and penalties provided for additional income or franchise tax assessments and claims for refund under ch. 71.

(4) The department of revenue shall collect additional real estate transfer fees and divide the amount collected with the appropriate county in the proportion under s. 77.24.

(5) In the case of overpayment of transfer fees by any grantor under sub. (2), the department of revenue shall certify the overpayment to the department of administration for payment of the refund to the grantor.

(6) The department of revenue shall notify the appropriate county treasurer of any refund paid by the state, and the appropriate county treasurer shall increase the county's next payment to the state to reimburse the state for the county's share of the refund.

(7) No person may make additional assessments of transfer fees or claim a refund of excess transfer fees paid after 4 years have elapsed from the date the transfer fee was due under s. 77.22.

(8) If the department of revenue determines that the value reported on the return under s. 77.22 is understated by 25% or more or that an exemption was improperly claimed under s. 77.25, the department shall assess and collect a penalty of \$25

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or 25% of the additional fee due, whichever is greater, in the manner that additional transfer fees are collected.

History: 1983 a. 27; 1991 a. 39

**77.27 Penalty for falsifying value.** Any person who intentionally falsifies value on a return required to be filed under this subchapter may for each such offense be fined not more than \$1,000 or imprisoned in the county jail not more than one year, or both.

This section is violated when value is intentionally falsified on a Wisconsin real estate transfer return. Falsely declaring a transfer as a sale when it is in fact a gift does not constitute a violation, nor will it support the issuance of a false swearing complaint under 946.32, but it may constitute a gift tax avoidance in violation of 72.86 (6), 1989 stats. 62 Atty. Gen. 251

**77.29 Fee for recording.** In any county in which the register of deeds is compensated on a fee basis, the county shall pay the register of deeds an additional amount equal to 25% of the recording fees for all deeds or other instruments conveying real estate evidencing transfers subject to fee under this subchapter.

History: 1991 a. 316

**77.30 Rules.** The secretary of revenue may adopt, pursuant to ch. 227, such rules as the secretary deems necessary in the administration of this subchapter and may proceed under s. 73.03 (9) to enforce its provisions.

History: 1991 a. 316

**SUBCHAPTER III****GENERAL 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) "Business" includes any activity engaged in by any person or caused to be engaged in by any person with the object of gain, benefit or advantage, either direct or indirect, and includes also the furnishing and distributing of tangible personal property or taxable services for a consideration by social clubs and fraternal organizations to their members or others.

(1m) "Cloth diaper" means a cloth diaper used for sanitary purposes.

(2) "Contractors" and "subcontractors" are the consumers of tangible personal property used by them in real property construction activities and the sales and use tax applies to the sale of tangible personal property to them. In this subsection, "real property construction activities" include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modules if the modular units will have a realty function and will become a permanent accession to the realty. A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which the contractor has sound reason to believe the contractor will sell to customers for whom the contractor will not perform real property construction activities involving the use of such property.

(3) "Department" means the department of revenue, its duly authorized employes and agents.

(3m) "Diaper service" means a business primarily engaged in the lease or rental, delivery and laundering of cloth diapers.

(4) (a) "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in

money, whether received in money or otherwise, 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, including the taxes imposed by ss. 78.01, 78.40, 139.02, 139.03 and 139.31, the federal motor fuel tax and any manufacturers' or importers' excise tax; but not including any tax imposed by the United States, any other tax imposed by this state or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed upon the retailer or the consumer if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts or the federal communications tax imposed upon the services set forth in s. 77.52 (2) (a) 5. For purposes of the sales tax, if a retailer establishes 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 the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed. For the purpose of this subdivision, a tax shall be deemed "imposed upon or with respect to retail sales" only if the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax.

(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 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 or franchise 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.
5. Transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.
6. Thirty-five percent of the sale price of a new mobile home that is a primary housing unit under s. 340.01 (29) or of a new mobile home that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation. No credit may be allowed for trade-ins under subd. 3 or sub. (15) (b) 4. This subdivision does not apply to lease or rental.

(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 tangible personal property, including any fee, service charge, labor



charge or other addition to the price charged a customer by the retailer which represents or is in lieu of a tip or gratuity.

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 the retailer's 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 the purchaser 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 tangible personal property sold, except the price received for installing or applying property which, when installed or applied, will constitute an addition or capital improvement of real property and provided such amount is separately set forth from the amount received for the tangible personal property.

5. If a lessor of tangible personal property reimbursed the vendor for sales tax on the sale of the property by the vendor to the lessor, the tax due from the lessor on the rental receipts may be offset by a credit equal to, but not exceeding, the tax otherwise due on the rental receipts from this property for the reporting period. The credit shall expire when the cumulative rental receipts equal the sales price upon which the vendor paid sales taxes to this state. If a purchaser of tangible personal property reimbursed the vendor of the property for sales tax on the sale and subsequently, prior to making any use of the property other than retention, demonstration or display while holding it for sale or rental, makes a taxable sale of the property, the tax due on the taxable sale may be offset by the tax reimbursed.

6. Charges associated with time-share property that is taxable under s. 77.52 (2) (a) 1 or 2.

(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.

(5) For purposes of subs. (13) (e) and (f) and (14) (L) and s. 77.52 (2m) "incidental" means depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service.

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

(7) "Lease" includes rental, hire and license.

(8) "Newspaper" means those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1) is a newspaper. "Newspaper" also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A "newspaper" does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication

which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest.

(9) "Occasional sales" includes:

(a) Isolated and sporadic sales of tangible personal property or taxable services where the infrequency, in relation to the other circumstances, including the sales price and the gross profit, support the inference that the seller is not pursuing a vocation, occupation or business or a partial vocation or occupation or part-time business as a vendor of personal property or taxable services. No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller's permit, except that this provision does not apply to an organization required to hold a seller's permit solely for the purpose of conducting bingo games and except as provided in par. (am).

(am) The sale of personal property, other than inventory held for sale, previously used by a seller to conduct its trade or business at a location after that person has ceased actively operating in the regular course of business as a seller of tangible personal property or taxable services at that location if the seller delivers its seller's permit to the department for cancellation within 10 days after the last sale at that location of that personal property other than inventory held for sale. This transaction is an occasional sale, even though the seller holds a seller's permit for one or more other locations.

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

(10) "Person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, the United States, the state of Wisconsin, including any unit or division thereof, any county, city, village, town, municipal utility, municipal power district or other governmental unit, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(11) "Printing" and "imprinting" include lithography, photolithography, rotogravure, gravure, letterpress, silk screen printing, multilithing, multigraphing, mimeographing, photostating, steel die engraving and similar processes.

(12) "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 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.

(13) "Retailer" includes:

(a) Every seller who makes any sale of tangible personal property or taxable service.

(am) Any person making any retail sale of a motor vehicle, aircraft, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or boat registered or titled, or required to be registered or titled, under the laws of this state or of the United States.

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

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(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 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 the wholesaler sells tangible personal property to a person other than a seller as defined in sub. (17) provided such wholesaler is not expressly exempt from the sales tax on such sale or from collecting the use tax on such sale.

(e) A person selling tangible personal property to a service provider who transfers the property in conjunction with the selling, performing or furnishing of any service and the property is incidental to the service, unless the service provider is selling, performing or furnishing services under s. 77.52 (2) (a) 7, 10, 11 and 20. This subsection does not apply to sub. (2).

(f) A service provider who transfers tangible personal property in conjunction with but not incidental to the selling, performing or furnishing of any service and a service provider selling, performing or furnishing services under s. 77.52 (2) (a) 7, 10, 11 and 20. This subsection does not apply to sub. (2).

(i) A person selling materials or supplies to barbers, beauty shop operators or bootblacks for use by them in the performance of their services.

(j) A person selling materials and supplies to producers of X-ray films.

(k) As respects a lease, any person deriving rentals from a lease of tangible personal property situated in this state.

(m) A person selling tangible personal property to a veterinarian to be used or furnished by the veterinarian in the performance of services in some manner related to domestic animals, including pets or poultry.

(n) A person selling household furniture, furnishings, equipment, appliances or other items of tangible personal property to a landlord for use by tenants in leased or rented living quarters.

(o) A person selling medicine for animals to a veterinarian. As used in this paragraph, "animal" includes livestock, pets and poultry.

**(13g)** Except as provided in sub. (13h), "retailer engaged in business in this state", unless otherwise limited by federal statute, for purposes of the use tax, means any of the following:

(a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or 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, salesperson, 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 tangible personal property or taxable services.

**(13h)** "Retailer engaged in business in this state", notwithstanding sub. (13g), beginning on the applicable date does not include a foreign corporation that is the publisher of printed materials the only activities of which in this state do not exceed the storage of its raw materials for any length of time

in this state in or on property owned by a person other than the foreign corporation and the delivery of its raw materials to another person in this state if that storage and delivery are for printing by that other person, and the purchase from a printer of a printing service or of printed materials in this state for the publisher and the storage of the printed materials for any length of time in this state in or on property owned by a person other than the publisher and do not exceed maintaining, occupying and using, directly or by means of another person, a place that is in this state, that is not owned by the publisher and that is used for the distribution of printed materials. In this subsection, "applicable date" for publishers of books and periodicals other than catalogs means January 1, 1980, and for all other publishers means January 1, 1990. In this subsection "raw materials" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

**(13r)** Any person purchasing from a retailer as defined in sub. (13) shall be deemed the consumer of the tangible personal property or services purchased.

**(14)** "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 tangible personal property or services for use or consumption but not for resale as tangible personal property or services and includes:

(a) Any sale at an auction in respect to tangible personal property which is sold to a successful bidder. 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.

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

(c) A transaction whereby the possession of 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 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 that person's gross receipts.

(f) The furnishing, preparing or serving for consideration of food, meals, confections or drinks.

(g) A sale of tangible personal property to a contractor or subcontractor for use in the performance of contracts with the United States or its instrumentalities for the construction of improvements on or to real property.

(h) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer or of any publication.

(i) Sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or structures or the alteration, repair or improvement of real property. Such transactions are deemed retail sales in whatsoever quantity sold.

(j) The granting of possession of tangible personal property by a lessor to a lessee, or to another person at the direction of the lessee. Such a transaction is deemed a continuing sale in this state by the lessor for the duration of the lease as respects any period of time the leased property is

situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other person.

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

(L) Transfers by a service provider of tangible personal property in conjunction with but not incidental to the selling, performing or furnishing of any service, and transfers by a service provider selling, performing or furnishing services under s. 77.52 (2) (a) 7, 10, 11 and 20. This subsection does not apply to sub. (2).

**(14g)** "Sale" does not include:

(a) The transfer of property to a corporation upon its organization solely in consideration for the issuance of its stock;

(b) The contribution of property to a newly formed partnership solely in consideration for a partnership interest therein;

(c) The transfer of property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation;

(d) The distribution of property by a corporation to its stockholders as a dividend or in whole or partial liquidation;

(e) The distribution of property by a partnership to its partners in whole or partial liquidation;

(f) Repossession of property by the seller from the purchaser when the only consideration is cancellation of the purchaser's obligation to pay the remaining balance of the purchase price;

(g) The transfer of property in a reorganization as defined in section 368 of the internal revenue code in which no gain or loss is recognized for franchise or income tax purposes; or

(h) Any transfer of all or substantially all the property held or used by a person in the course of an activity requiring the holding of a seller's permit, if after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the 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 the corporation or other entity. In this paragraph, "substantially similar" means 80% or more of ownership.

**(14r)** A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, except that for purposes of this subsection a common carrier or the U.S. postal service shall be deemed the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

**(15)** (a) "Sales price" means the total amount for which 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 including the taxes imposed by ss. 78.01, 78.40, 139.02, 139.03 and 139.31 and the federal motor fuel tax and including also any manufacturers' or importers' excise tax; but not includ-

ing any tax imposed by the United States, any other tax imposed by this state, or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed on the retailer or consumer, if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts, and not including the federal communications tax imposed upon the services set forth in s. 77.52 (2) (a) 5. For the purpose of this subdivision, a tax shall be deemed "imposed upon or with respect to retail sales" only if the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax.

(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 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.

5. Thirty-five percent of the total amount for which a new mobile home that is a primary housing unit under s. 340.01 (29) is sold. No credit may be allowed for trade-ins under subd. 4 or sub. (4) (b) 3. This subdivision does not apply to lease or rental.

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

1. Any services that are a part of the sale of tangible personal property, including any fee, service charge, labor charge or other addition to the price charged a customer by the retailer which represents or is in lieu of a tip or gratuity.

2. The amount charged for labor or services rendered in installing or applying tangible personal property sold, except the price received for installing or applying property which, when installed or applied, will constitute an addition or capital improvement of real property and provided such amount is separately set forth from the amount charged for the tangible personal property.

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

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

**(17m)** "Service address" means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location; as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like; "service address" means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent.

**(18)** "Storage" includes any keeping or retention in this state for any purpose except sales in the regular course of business of tangible personal property purchased from a retailer.

**(20)** "Tangible personal property" means all tangible personal property of every kind and description and includes electricity, natural gas, steam and water and also leased property affixed to realty if the lessor has the right to remove the property upon breach or termination of the lease agreement, unless the lessor of the property is also the lessor of the realty to which the property is affixed. "Tangible personal property" also includes coins and stamps of the United States

sold or traded as collectors' items above their face value and computer programs except custom computer programs.

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

(21m) "Telecommunications services" means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. "Telecommunications services" does not include sending collect telecommunications that are received outside of the state.

(22) (a) "Use" includes the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession or enjoyment of the property or services, or the results produced by the services, including installation or affixation to real property and including the possession of, or the exercise of any right or power over tangible personal property by a lessee under a lease, except that it does not include the sale or rental of the property in the regular course of business.

(b) In this subsection "enjoyment" includes a purchaser's right to direct the disposition of property, whether or not the purchaser has possession of the property. "Enjoyment" also includes, but is not limited to, having shipped into this state by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.

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

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 269, 316

Tax on personal property assets upheld since seller had permit under (10) (a), 1983 stats. [now (9) (a)] *Ramrod, Inc. v. Dept. of Revenue*, 64 W (2d) 499, 219 NW (2d) 604.

Under sub. (18), 1983 stats. [now (2)], building materials includes sale of assembly kit to dealers for construction of Harvestore silo and such dealers are contractors. Where Harvestore was erected on owned land, it is real property for purposes of this section. *Dept. of Revenue v. Smith Harvestore Products*, 72 W (2d) 60, 240 NW (2d) 357.

Retail sale within meaning of (4), 1983 stats. [now (14)] is the final and ultimate employment of the property which results in its withdrawal from the marketplace. See note to 77.52, citing *Dept. of Revenue v. Milw. Refining Corp.* 80 W (2d) 44, 257 NW (2d) 855.

Provisions of UCC as to time title passes are inapplicable to sales tax law. Application of 77.51 subsections discussed. *Harold W. Fuchs Agency, Inc. v. Dept. of Revenue*, 91 W (2d) 283, 282 NW (2d) 625 (Ct. App. 1979).

Sale of business assets of taxpayer which held seller's permit was not exempted as "occasional sale" under (10) (a), 1983 stats. [now (9) (a)] Constitutionality discussed. *Midcontinent Broadcasting Co. v. Dept. of Revenue*, 98 W (2d) 379, 297 NW (2d) 191 (1980).

Manhole fabricator was not engaged in real property construction activities under (2). *Advance Pipe & Supply v. Revenue Dept.* 128 W (2d) 431, 383 NW (2d) 502 (Ct. App. 1986).

Photocopying expenses billed to law firm's clients are not subject to sales tax. *Frisch, Dudek & Slattery v. Rev. Dept.* 133 W (2d) 444, 396 NW (2d) 355 (Ct. App. 1986).

Discussion of unconstitutionality of (14) (m) and 77.52 (2) (a) 4, 1987-88 Stats., based on equal protection violation. *GTE Sprint v. Wisconsin Bell*, 155 W (2d) 184, 454 NW (2d) 797 (1990).

**77.52 Imposition of retail sales tax.** (1) For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the gross receipts from the sale, lease or rental of tangible personal property, including accessories, compo-

nents, attachments, parts, supplies and materials, sold, leased or rented at retail in this state.

(1m) 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. 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.

(2) For the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

(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, including the furnishing of rooms or lodging through the sale of a time-share property, as defined in s. 707.02 (32), if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit. In this subdivision, "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. In this subdivision, "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, including mobile homes as defined in s. 66.058 (1) (d), 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 amusement, athletic, entertainment or recreational events or places, the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players 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 devices or facilities, including, in connection with the sale or use of time-share property, as defined in s. 707.02 (32), the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.

5. The sale of telecommunications services, not including services paid for by the insertion of coins in a coin-operated

telephone, that originate in this state and are charged to a service address in this state, regardless of the location where that charge is billed or paid.

6. Laundry, dry cleaning, pressing and dyeing services, except when performed on raw materials or goods in process destined for sale, except when performed on cloth diapers by a diaper service 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.

9. Parking or providing parking space for motor vehicles and aircraft for a consideration and docking or providing storage space for boats for a consideration.

10. Except for installing or applying tangible personal property which, when installed or applied, will constitute an addition or capital improvement of real property, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all items of tangible personal property unless, at the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance, a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51 (14r). For purposes of this paragraph, the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs. "Service" does not include services performed by veterinarians.

11. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting. This subdivision does not apply to the printing or imprinting of tangible personal property which will be subsequently transported outside the state for use outside the state by the consumer for advertising purposes.

12. The sale of cable television system services including installation charges.

20. The sale of landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services.

(am) For purposes of par. (a) 12 "cable television system" means any facility which, for a fee, regularly amplifies and transmits by wire, coaxial cable, lightwave or microwave, simultaneously to 50 or more subscribers, programs broadcast by television or radio stations or originated by themselves or any other party. "Cable television system" does not include a master antenna system which serves one residential, commercial or government building or complex of buildings under common ownership or control if that facility does not provide any broadcast signals other than those which may be viewed in that facility.

(2m) (a) With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property if the property transferred by the service provider is incidental to the selling, performing or furnishing of the service, except as provided in par. (b).

(b) With respect to the services subject to tax under sub. (2) (a) 7, 10, 11 and 20, all property physically transferred to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property separate from the selling, performing or furnishing of the service.

(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 retailer's 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 or franchise tax purposes. If the retailer has previously paid the tax, the retailer 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 or franchise tax purposes. If any such accounts are thereafter collected in whole or in part by the retailer, the amount as collected shall be included in the first return filed after such collection and the tax paid with the return.

(7) Every person desiring to operate as a seller within this state shall file with the department an application for a permit for each place of operations. 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 intends to operate, the location of the applicant's place of operations, 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. A nonprofit organization that has gross receipts taxable under s. 77.54 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable gross receipts received after it is required to obtain that permit. If that organization becomes eligible later for the



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exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

(8) (a) At the time of making an application the applicant shall pay to the department a permit fee of \$5 for each permit.

(b) A seller whose permit has been previously suspended or revoked shall pay the department a fee of \$5 for the renewal or issuance of a 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 operations 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 operations at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(10) (a) Each permit issued on or after September 1, 1977, shall expire every 2 years on the last day of the month of its original issuance. Each permit issued before September 1, 1977, shall expire every 2 years on the last day of the month of its original issuance but in no case before August 31, 1979.

(b) Permits which expire under par. (a) are automatically renewable and the department shall issue a new permit unless, on the date the permit expires, the permittee has a delinquent liability in respect to any tax under ch. 71, 72, 76, 77, 78 or 139, including costs, penalties and interest thereon, of \$400 or more, any part of which is delinquent for 5 months or longer. Thirty days prior to the expiration date, the department shall notify in writing any permittee who has such liability on the department's records at that time that the department may refuse to renew the permit. A person receiving such notice may petition the department for a hearing under sub. (11) (b).

(c) After payment of all delinquent sales and use taxes, including costs, penalties and interest thereon, and after compliance with subs. (7) and (8) and s. 77.61 (2), a person who has been refused renewal of a permit shall be issued a permit.

(11) (a) If any person fails to comply with any provision of this subchapter relating to the sales tax or any rule of the department relating to the sales tax adopted under this subchapter, is delinquent in respect to any tax imposed by the department or fails timely to file any return or report in respect to any tax under ch. 71, 72, 76, 77, 78 or 139 after having been requested to file that return or report, the department upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring the person to show cause why the permit should not be revoked or suspended, 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 the permits. The notices required in this paragraph may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. If the department suspends or revokes a permanent permit under this paragraph, it may grant a temporary permit that is valid for one month and may then grant additional temporary permits if the person pays all amounts owed under this chapter for the month for which the previous temporary permit was issued. Persons who receive a temporary permit waive the notice requirement under s. 77.61 (2). The department shall not issue a new permanent 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 subchapter, the rules of the department relating to the sales tax and the provisions relating to other taxes administered by the department.

(b) Any person who receives a notice under sub. (10) (b) may, within 10 days after receipt thereof, but not thereafter,

petition the department for a review of the decision not to renew the permit. The petition is timely if it fulfills the requirements under s. 77.61 (14). If the permittee so petitions, the permit shall remain valid until 10 days after the petitioner receives the department's decision. Within 10 days after receipt of the petition, the department shall notify the petitioner of the time and place for a hearing. At the hearing, the petitioner may appear in person or by counsel or both and may present statements, testimony, evidence and argument showing why the department's action to not renew the permit should be reversed. After the hearing, the department shall issue a decision in writing and serve it upon the petitioner by mail.

(12) A person who operates as a seller in this state without a permit or after a permit has been suspended, revoked or has expired, unless the person has a temporary permit under sub. (11) (a), and each officer of any corporation, partnership member or other person authorized to act on behalf of a seller who so operates, is guilty of a misdemeanor. Permits shall be held only by persons actively operating as sellers of tangible personal property or taxable services. Any person not so operating shall forthwith surrender that person's permit to the department for cancellation. The department may revoke the permit of a person found not to be actively operating as a seller of tangible personal property or taxable services.

(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 receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a taxable sale at retail is upon the person who makes the sale unless that person 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 a) taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services and who holds the permit provided for in sub. (9) and who, at the time of purchasing the tangible personal property or services, intends to sell it in the regular course of operations 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, or b) if taken in good faith from a person claiming exemption. The certificate shall be signed by and bear the name and address of the purchaser, and shall indicate the general character of the tangible personal property or service sold by the purchaser and the basis for the claimed exemption. The certificate shall be in such form as the department prescribes.

(15) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of the purchaser's operations, the use shall be taxable to the purchaser under s. 77.53 as of the time the property is first used by the purchaser, and the sales price of the property to the purchaser 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.

(16) Any person who gives a resale certificate for property or services which that person knows at the time of purchase is not to be resold by that person in the regular course of that person's operations as a seller for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor. Any person certifying to the seller that the sale of property or taxable service is exempt, knowing at the time of purchase that it is



not exempt, 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 the retailer's business or stock of goods or quits the business, the retailer's 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, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser 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 the purchaser's 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 the retailer's 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:** 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316

Where gold sold to dentists was used in dental work, sale was not taxable under (1). *Dept. of Revenue v. Milw. Refining Corp.* 80 W (2d) 44, 257 NW (2d) 855

Data processing service, which transfers tangible property such as cards, tapes and printouts, but whose essential service is the sale of intangible coded or processed data, is not taxable under this section. *Janesville Data Center v. Dept. of Revenue*, 84 W (2d) 341, 267 NW (2d) 656 (1978).

See note to Art. I, sec. 18, citing *Kollasch v. Adamany*, 104 W (2d) 552, 313 NW (2d) 47 (1981).

Discussion of unconstitutionality of 77.52 (2) (a) 4, 1987-88 Stats., and 77.51 (14) (m) based on equal protection violation. See also 77.52 (2) (a) 5. *GTE Sprint v. Wisconsin Bell*, 155 W (2d) 184, 454 NW (2d) 797 (1990).

Phrase "in this state" as used in (1) and defined in 77.51 (6) does not include airspace. *Republic Airlines, Inc.*, 159 W (2d) 247, 464 NW (2d) 62 (Ct. App. 1990).

**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 tangible personal property or taxable services

described in s. 77.52 purchased from any retailer at the rate of 5% of the sales price of the property or taxable services.

(2) Every person storing, using or otherwise consuming in this state tangible personal property or taxable services purchased from a retailer is liable for the tax imposed by this section. The person's liability is not extinguished until the tax has been paid to this state, but a receipt with the tax separately stated from a retailer engaged in business in this state or from a retailer who is authorized 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 under sub. (3) relieves 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 tangible personal property or taxable services for delivery into this state or with knowledge directly or indirectly that the property or service is intended 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 or taxable service is not then taxable under this section, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt in the manner and form prescribed by the department.

(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 or franchise tax purposes. If the retailer has previously paid the amount of the tax, the retailer 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 or franchise 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.

(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) or (7) is guilty of a misdemeanor.

(9) Every retailer selling tangible personal property or taxable services 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.

(9m) Any person who is not otherwise required to collect any tax imposed by this subchapter and who makes sales to persons within this state of tangible personal property or taxable services the use of which is subject to tax under this subchapter may, if the person so elects, register with the department, under such terms and conditions as the department imposes, and thereby be authorized and required to collect, report and remit to the department the use tax imposed by this subchapter.

(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 tangible personal property or taxable services 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 that person takes from the purchaser a certificate to the effect that the property or taxable service is purchased for resale, or otherwise exempt from the tax.

(11) The certificate referred to in sub. (10) relieves the person selling the property or service from the burden of proof only if taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services and who holds the permit provided for by s. 77.52 (9) and who, at the time of purchasing the tangible personal property or taxable service, intends to sell it in the regular course of operations 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, or if taken in good faith from a person claiming exemption. The certificate shall be signed by and bear the name and address of the purchaser and shall indicate the number of the permit issued to the purchaser, the general character of tangible personal property or taxable service sold by the purchaser and the basis for the claimed exemption. The certificate shall be substantially in the form the department prescribes.

(12) If a purchaser who gives a certificate makes any storage or use of the property or service other than retention, demonstration or display while holding it for sale in the regular course of operations as a seller, the storage or use is taxable as of the time the property or service is first so stored or used.

(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 tangible personal property or taxable services shipped or brought to this state by the purchaser were purchased from or serviced by a retailer.

(15) It is presumed that tangible personal property or taxable services delivered outside this state to a purchaser known by the retailer to be a resident of this state were 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 written statement, signed by the purchaser or an authorized representative, and retained by the seller that the property or service 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 or service was not purchased for storage, use or other consumption in this state.

(16) If the purchase, rental or lease of tangible personal property or service subject to the tax imposed by this section was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section. In this subsection "sales tax" includes a use or excise tax imposed on the use of tangible personal property or taxable service by the state in which the sale occurred and "state" includes the District of Columbia but does not include the commonwealth of Puerto Rico or the several territories organized by congress.

(17) This section does not apply to tangible personal property purchased outside this state, other than motor vehicles, boats, snowmobiles, mobile homes not exceeding 45

feet in length, trailers, semitrailers, all-terrain vehicles and airplanes registered or titled or required to be registered or titled in this state, which is brought into this state by a nondomiciliary for the person's own storage, use or other consumption while temporarily within this state when such property is not stored, used or otherwise consumed in this state in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(17m) This section does not apply to a boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made.

(17r) This section does not apply to an aircraft if all of the following requirements are fulfilled:

(a) It is purchased in another state.

(b) Its owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.

(c) If the owner or lessee is a corporation, that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of this state nor has real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(d) If the owner or lessee is a partnership, all of the corporate partners fulfill the requirements under par. (c) and none of the general partners and none of the limited partners who has management or control responsibilities is domiciled in this state and the partnership has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(e) If the owner or lessee is an individual, the owner or lessee is not domiciled in this state.

(f) If the owner or lessee is an estate, trust or cooperative; that estate, that trust and its grantor or that cooperative does not have real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.

(g) The department has not determined that the owner, if the owner is a corporation, trust or partnership, was formed to qualify for the exception under this subsection.

(18) This section does not apply to the storage, use or other consumption in this state of household goods for personal use or to aircraft, motor vehicles, boats, snowmobiles, mobile homes, trailers, semitrailers and all-terrain vehicles, for personal use, purchased by a nondomiciliary of this state outside this state 90 days or more before bringing the goods or property into this state in connection with a change of domicile to this state.

History: 1971 c. 125, 211; 1977 c. 29, 418; 1979 c. 1, 174; 1981 c. 317; 1983 a. 2; 1985 a. 29; 1987 a. 27, 268, 399; 1991 a. 39, 316

**77.535 Increases; building materials.** Increases in the rates of the taxes under this subchapter do not apply to building materials purchased by persons engaged in constructing, altering, repairing or improving real estate for others when the materials so purchased by those persons are affixed and made a structural part of real estate in the fulfillment of a written contract for a fixed price not subject to change or modification, or to a formal written bid that cannot be altered

or withdrawn, if the contract is entered into or the bid is made before the effective date of the sales and use tax rate increase.

History: 1981 c. 317.

**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 tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity.

(2m) The gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. In this subsection, "shoppers guides", "newspapers" and "periodicals" have the meanings under sub. (15). The exemption under this subdivision does not apply to advertising supplements that are not newspapers.

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

(b) In par. (a):

1. "Building" has the meaning given under s. 70.111 (10) (a) 1.

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

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

(c) For purposes of this subsection, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to or built into real property:

1. Auxiliary power generators.
2. Bale loaders.
3. Barn cleaners and elevators.
4. Conveyors.
5. Feed elevators and augers.
6. Grain dryers and grinders.
7. Milk coolers.
8. Milking machines; including piping, pipeline washers and compressors.

9. Powered feeders, excluding platforms and troughs constructed from ordinary building materials.

10. Silo unloaders.

(3m) The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise.

(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 or secondary school, exempted as such from payment of income or franchise tax under ch. 71, whether public or private.

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

(a) Aircraft, including accessories, attachments, fuel and parts therefor, 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, buses, 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, buses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38.

(c) Motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

(d) Mobile units used for mixing and processing and the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units.

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

(a) Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment.

(b) Containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property, if such items are used by the purchaser to transfer merchandise to customers and meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging

and shipping materials for use in packing, packaging or shipping meat or meat products regardless of whether such items are used to transfer merchandise to customers.

(c) Fuel converted to electric energy, gas or steam by utilities and that portion of the amount of fuel converted to steam for purposes of resale by persons other than utilities.

(6m) For purposes of sub. (6) (a) "manufacturing" is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing. "Manufacturing" includes but is not limited to:

(a) Crushing, washing, grading and blending sand, rock, gravel and other minerals.

(b) Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.

(6r) The exemption under sub. (6) shall be strictly construed.

(7) (a) Except as provided in pars. (b) to (d), the occasional sales of tangible personal property and services and the storage, use or other consumption in this state of tangible personal property the transfer of which to the purchaser is an occasional sale.

(b) If the item transferred is a motor vehicle, snowmobile, mobile home not exceeding 45 feet in length, trailer, semi-trailer, all-terrain vehicle or aircraft and the item is registered or titled, or required to be registered or titled, in this state or if the item is a boat that is registered or titled, or required to be registered or titled, in this state or under the laws of the United States, the exemption under par. (a) applies only if all of the following conditions are fulfilled:

1. The item is transferred to a child, spouse, parent, father-in-law, mother-in-law, daughter-in-law or son-in-law of the transferor or, if the item is a motor vehicle, from the transferor to a corporation owned solely by the transferor or by the transferor's spouse.

2. The item has been registered or titled in the name of the transferor.

3. The transferor is not engaged in the business of selling the type of item that is transferred.

(c) The exemption under par. (a) does not apply to the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(d) The exemption under par. (a) does not apply to sales by a nonprofit organization.

(7m) Occasional sales of tangible personal property or services, including but not limited to admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds \$300 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year. The exemption under this subsection does not apply to gross receipts from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

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

(9a) The gross receipts from sales to, and the storage by, use by or other consumption of tangible personal property and taxable services by:

(a) This state or any agency thereof.

(b) Any county, city, village, town or school district in this state.

(c) A county-city hospital established under s. 66.47.

(d) A sewerage commission organized under s. 144.07 (4) or a metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918.

(e) Any other unit of government in this state or any agency or instrumentality of one or more units of government in this state.

(f) 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, except hospital service insurance corporations under s. 613.80 (2), 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 sale of all admission fees, admission stickers or camping fees under s. 27.01 (7) to (11) and all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

(11) The gross receipts from the sales of and the storage, use or other consumption in this state of motor fuel, general aviation fuel or special fuel, subject to taxation under ch. 78, unless the motor fuel or special fuel tax is refunded under s. 78.75 because the buyer does not use the fuel in operating a motor vehicle upon the public highways.

(12) The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.

(13) The gross receipts from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor.

(14) The gross receipts from the sales of and the storage, use or other consumption in this state of medicines:

(a) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law;

(b) Furnished by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment of the patient;

(c) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, podiatrist or dentist;

(d) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being; or

(e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

**(14g)** "Medicines" as used in sub. (14) means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use; but "medicines" do not include:

(a) Any auditory, prosthetic, ophthalmic or ocular device or appliance.

(b) Articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts or accessories thereof.

(c) Any alcohol beverage the manufacture, sale, purchase, possession or transportation of which is licensed or regulated under the laws of this state.

**(14m)** For purposes of sub. (14), insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed dispensed on prescription.

**(14r)** For purposes of sub. (14) hospital has the meaning ascribed to it in s. 50.33 (2).

**(14s)** The gross receipts from the sale or rental of and the storage, use or other consumption in this state of equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen.

**(15)** The gross receipts from the sale of and the storage, use or other consumption of all newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, of controlled circulation publications sold to commercial publishers for distribution without charge or mainly without charge or regularly distributed by or on behalf of publishers without charge or mainly without charge to the recipient and of shoppers guides which distribute no less than 48 issues in a 12-month period. In this subsection, "shoppers guide" means a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals. In this subsection, "controlled circulation publication" means a publication that has at least 24 pages, is issued at regular intervals not exceeding 3 months, that devotes not more than 75% of its pages to advertising and that is not conducted as an auxiliary to, and essentially for the advancement of, the main business or calling of the person that owns and controls it.

**(16)** The gross receipts from the sale of and the storage, use or other consumption of fire trucks and fire fighting equipment, including accessories, attachments, parts and supplies therefor, sold to volunteer fire departments.

**(17)** The gross receipts from the sales of and the storage, use or other consumption of water when delivered through mains.

**(18)** When the sale, lease or rental of a service or property that was previously exempt or not taxable under this subchapter becomes taxable, and the service or property is furnished under a written contract by which the seller is unconditionally obligated to provide the service or property for the amount fixed under the contract, the seller is exempt from sales or use tax on the gross receipts for services or property provided until the contract is terminated, extended, renewed or modified. However, from the time the service or property becomes taxable until the contract is terminated, extended, renewed or modified the user is subject to use tax, measured by the sales price, on the service or property purchased under the contract.

**(20)** Except as provided in par. (c), there are exempt from the taxes imposed by this subchapter the gross receipts from the sales of, and the storage, use or other consumption of, food, food products and beverages for human consumption.

(a) "Food", "food products" and "beverages" include, by way of illustration and not of limitation, milk and milk products, cereal and cereal products (meal, grits, flour, bread and other bakery products), meats and meat products, fish and fish products, seafoods, poultry and poultry products, vegetables and vegetable juices, fruits and fruit juices as defined in ch. 97, 1967 stats., canned goods (including jams, jellies and preserves), nuts, berries, melons, sugar, salt, coffee, coffee substitutes, tea, cocoa, condiments, spices, coffee, relishes, desserts, flavoring, oleomargarine, shortening, candy, confections, dietary foods, health supplements, or any combination of the above.

(b) "Food", "food products" and "beverages" do not include:

1. Medicines, tonics, vitamins and medicinal preparations in any form.
2. Fermented malt beverages as defined in s. 125.02.
3. Intoxicating liquors as defined in s. 139.01 (3).
4. Soda water beverages as defined in s. 97.29 (1) (i), 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), 1967 stats.

(c) 1. The gross receipts from sales of meals, food, food products and beverages sold by any person, organization or establishment for direct consumption on the premises are taxable, except as provided in subd. 4.

2. The gross receipts from sales by any person, organization or establishment of the following items for off-premises consumption are taxable:

- a. Meals and sandwiches, whether heated or not.
- b. Heated food or heated beverages.
- c. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones and sodas.
- d. Candy, chewing gum, lozenges, popcorn and confections.

3. Taxable gross receipts shall include cover, minimum, entertainment, service or other charges made to patrons or customers.

4. Taxable sales do not include meals, food, food products or beverages sold by hospitals, sanatoriums, nursing homes, retirement homes or day care centers registered under ch. 48 and served at a hospital, sanatorium, nursing home, retirement home or day care center. In this subdivision "retirement home" means a nonprofit residential facility where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents. Taxable sales do not include meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

5. Taxable sales shall not include meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education.

6. For purposes of subd. 1, "premises" shall be construed broadly, and, by way of illustration but not limitation, shall include the lobby, aisles and auditorium of a theater or the seating, aisles and parking area of an arena, rink or stadium or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served. Vending machine premises shall include the room or area in which located.



(21) The gross receipts from the sales of and the storage, use or other consumption of caskets and burial vaults for human remains.

(22) The gross receipts from the sales of or the storage, use or other consumption of the following property and of parts and accessories for the following property:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual.

(b) Artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body.

(c) Artificial teeth sold by a dentist.

(d) Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser.

(e) Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled.

(f) Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer.

(g) Adaptive equipment that makes it possible for handicapped persons to enter, operate or leave a vehicle, as defined in s. 27.01 (7) (a) 2, if that equipment is purchased by the individual who will use it, a person acting directly on behalf of that individual or a nonprofit organization.

(23m) The gross receipts from the sale, lease or rental of or the storage, use or other consumption of motion picture film or tape, and advertising materials related thereto, sold, leased or rented to a motion picture theater or radio or television station.

(24) The gross receipts from the sale of and the storage, use or other consumption of apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals.

(25) The gross receipts from the sale of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.

(26) The gross receipts from the sales of and the storage, use, or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or tangible personal property which becomes a component part of a waste treatment facility of this state or any agency thereof, or any political subdivision of the state or agency thereof as provided in s. 40.02 (28). The exemption includes replacement parts therefor, and also applies to chemicals and supplies used or consumed in operating a waste treatment facility and to purchases of tangible personal property made by construction contractors who transfer such property to their customers in fulfillment of a real property construction activity. This exemption does not apply to tangible personal property installed in fulfillment of a written construction contract entered into, or a formal written bid made, prior to July 31, 1975.

(26m) The gross receipts from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling

activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

(27) The gross receipts from the sale of semen used for artificial insemination of livestock.

(28) The gross receipts from the sale of and the storage, use or other consumption to or by the ultimate consumer of apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level.

(29) The gross receipts from the sales of and the storage, use or other consumption of equipment used in the production of maple syrup.

(30) (a) The gross receipts from the sale of:

1. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel sold for residential use.

2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.

3. Electricity sold during the months of November, December, January, February, March and April for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

4. Any residue that is used as fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.

5. Fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

(b) For purposes of this subsection, electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed.

(c) If fuel or electricity is sold partly for a use exempt under this subsection and partly for a use which is not exempt under this subsection, no tax shall be collected on that percentage of the gross receipts equal to the percentage of the fuel or electricity which is used for an exempt use, as specified in an exemption certificate provided by the purchaser to the seller.

(d) In this subsection "residential use" means use in a structure or portion of a structure which is a person's permanent residence, but does not include use in transient accommodations, as specified in s. 77.52 (2) (a) 1, motor homes, travel trailers or other recreational vehicles.

(e) For purposes of this subsection, a seller of electricity or natural gas is not required to comply with the requirement of obtaining exemption certificates under s. 77.52 (13) for sales of electricity or natural gas to accounts not covered by par. (c) which are properly classified as residential or farms pursuant to schedules which are filed for rate tariff purposes with the public service commission under s. 196.19 and which are in force at the time of the sales or are properly so classified for classification purposes as directed by the federal rural electrification administration. Nothing in this paragraph shall be construed to broaden the exemption specified in par. (a).



(f) Sellers of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel shall not be required to obtain an exemption certificate under s. 77.52 (13) from a purchaser if all the fuel sold is for residential use and the seller maintains adequate records to identify which sales are exempt.

(31) The gross receipts from the sale of and the storage, use or other consumption in this state, but not the lease or rental, of used mobile homes that are primary housing units under s. 340.01 (29).

(32) The gross receipts from charges, including charges for a search, imposed by an authority, as defined in s. 19.32 (1), for copies of a public record that a person may examine and use under s. 16.61 (12) or for copies of a record under s. 19.35 (1).

(33) The gross receipts from sales of and the storage, use or other consumption of medicines used on farm livestock, not including workstock.

(34) The gross receipts from the sale of and the storage, use or other consumption of milk house supplies used exclusively in producing and handling milk on dairy farms.

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

(36) The gross receipts from the rental for a continuous period of one month or more of a mobile home, as defined in s. 66.058 (1) (d), that is used as a residence.

(37) The gross receipts from revenues collected under s. 146.70 (3).

(38) The gross receipts from the sale of and the storage, use or other consumption of snowmobile trail groomers and attachments for them that are purchased, stored, used or consumed by a snowmobile club that meets at least 3 times a year, that has at least 10 members, that promotes snowmobiling and that participates in the department of natural resources' snowmobile program under s. 350.12 (4) (b).

(39) The gross receipts from the sale of and the storage, use or other consumption of off-highway, heavy mechanical equipment such as feller bunchers, slashers, delimiters, chippers, hydraulic loaders, loaders, skidder-forwarders, skidders, timber wagons and tractors used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the logging business. In this subsection, "heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

(40) The gross receipts from the sale, lease or rental of and the storage, use or other consumption of cloth diapers.

(41) The gross receipts from the sale of building materials, supplies and equipment to; and the storage, use or other consumption of those kinds of property by; owners, contractors, subcontractors or builders if that property is acquired solely for or used solely in, the construction, renovation or development of property that would be exempt under s. 70.11 (36).

**History:** 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316.

A taxpayer in the business of processing scrap metal is engaged in manufacturing as defined by 77.51 (27), 1983 stats. [now 77.54 (6m)]. *H. Samuels Co v. Dept. of Revenue*, 70 W (2d) 1076, 236 NW (2d) 250.

A carrier's contract status is established under the "primary business test" if his primary occupation is the supplying of transportation for compensation even though the operator owns the goods at time of transport and carries them for the purpose of sale; if, however, the operator's primary business is manufacturing or another noncarrier commercial enterprise, a determination must be made as to whether the motor operations are in furtherance of the primary business or are conducted as a related enterprise with the purpose of profiting

from the transportation. *Gensler v. Dept. of Revenue*, 70 W (2d) 1108, 236 NW (2d) 648.

Sale of furnishings and equipment of supper club was an "occasional sale" under 77.54 (7) as defined under 77.51 (10), 1983 stats. [now 77.51 (9)]. *Three Lions Supper Club v. Dept. of Revenue*, 72 W (2d) 546, 241 NW (2d) 190.

Consumption of gas at interstate pipeline compressor stations in Wisconsin is protected from state use tax by commerce clause. *Midwestern Gas Transmission Co. v. Revenue Dept.* 84 W (2d) 261, 267 NW (2d) 253 (1978).

To satisfy 77.51 (27), 1983 stats. [now 77.54 (6m)], change in name must be attributable to change in nature, purpose, and function of article. *Dept. of Revenue v. Bailey-Bohrman Steel Corp.* 93 W (2d) 602, 287 NW (2d) 715 (1980).

Semitrailers are "truck bodies" under (5) (a). *Dept. of Revenue v. Trudell Trailer Sales*, 104 W (2d) 39, 310 NW (2d) 612 (1981).

Vending machine company, which placed machines in schools and hospitals, was "seller" of products dispensed by machine. *Servomation Corp. v. Dept. of Revenue*, 106 W (2d) 616, 317 NW (2d) 464 (1982).

Under "use or function" test, greenhouse was "machine" used in floriculture under (3). *Revenue Dept. v. Greiling*, 112 W (2d) 602, 334 NW (2d) 118 (1983).

Exemption under (9a) (f) is limited to services used by tax-exempt organizations and doesn't extend to services by such foundations. *Rev. Dept. v. EAA Aviation Foundation*, 143 W (2d) 681, 422 NW (2d) 458 (Ct. App. 1988).

Calf hutches are not "machines" exempt from sales taxes under (3). *L.T. Hampel Corp. v. DOR*, 157 W (2d) 422, 459 NW (2d) 598 (Ct. App. 1990).

**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 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 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.

(2m) There are exempted from the computation of the amount of sales tax the gross receipts from sales of railroad crossties to a common or contract carrier, shipped wholly or in part by way of 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 if the property is transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier. Interruption of the shipment for storage, drying, processing or creosoting of the railroad crossties in this state does not invalidate the exemption under this subsection.

(3) There are exempted from the computation of the amount of the sales tax the gross receipts from sales of 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:** 1985 a. 29.

**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 reported to the department 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.

(3) The donation to an entity specified under s. 77.54 (9a) of property that has been purchased tax-free for resale or upon the presentation of a valid exemption certificate is exempt from the use tax.

History: 1989 a. 31.

**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 is liable for payment of the sales tax. The tax shall be measured by the sales price of the property to the purchaser, but if the taxable use first occurs more than 6 months after the sale to the purchaser, the purchaser may use as the measure of the tax either that sales price or the fair market value of the property at the time the taxable use first occurs.

History: 1983 a. 405.

Seller is not relieved of liability if purchaser's certificate on its face fails to state a legal basis for exempting the sale. Department of Revenue v. Moebius Printing Co. 89 W (2d) 610, 279 NW (2d) 213 (1979)

**77.58 Returns and payments.** (1) The taxes imposed by this subchapter for each calendar quarter are due and payable on the last day of the month next succeeding the calendar quarter for which imposed except that:

(a) If the amount of tax for any calendar quarter exceeds \$600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the last day of the month next succeeding the calendar month for which imposed.

(b) If the amount of tax for any calendar quarter exceeds \$3,600, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in the notice are due and payable on the 20th day of the month next succeeding the calendar month for which imposed. The payment is timely if it fulfills the requirements under s. 77.61 (14).

(2) A return shall be filed by the last day of the month next succeeding each calendar quarter for taxes imposed for the preceding calendar quarter except that:

(a) If payments are required to be made monthly and are due and payable on the last day of the month next succeeding the calendar month for which imposed under sub. (1) (a), 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.

(b) If payments are required to be made monthly and are due and payable on the 20th day of the month next succeeding the calendar month for which imposed under sub. (1) (b), a return shall be filed by the 20th day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

(c) Returns and payments under this section are timely if they meet the requirements under s. 77.61 (14).

(3) (a) 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 engaged in business in this state and by every person purchasing tangible personal property or services, 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 a duly authorized agent but need not be verified by oath.

(b) 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 or taxable services sold, the storage, use or consumption of which became subject to the use tax during the preceding reporting period. In case of a sales or use tax return filed by a purchaser, the return shall show the total sales price of the property and taxable services purchased, 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 this 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 designates.

(5) The department, if it deems it necessary to ensure 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, if satisfied that the revenues will be adequately safeguarded, permit returns and payments of the amount of taxes for other than quarterly periods. Such returns or payments shall be due or payable by the last day of the month next succeeding the end of the reporting or paying period, except that the department may require by written notice to the taxpayer that the returns or payments shall be due or payable by the 20th day of the month next succeeding the end of the reporting or paying period. Any person who discontinues business or whose permit has not been renewed under s. 77.52 (10) or (11) (b) prior to the end of a reporting period shall, within 30 days of such discontinuance or nonrenewal, file a return and make payment of the taxes due from the beginning of such reporting period. If a business is discontinued and a final report thereon has been made covering all payments due or refunds claimed as provided in this section, the account shall be closed, the seller's permit terminated and, notwithstanding any other provisions of this section, no further reports may be required.

(6) For the purposes of the sales tax gross receipts from rentals or leases of 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.

(8) In any case in which a retailer who has accepted a resale or exemption certificate is subsequently required to pay a sales or use tax measured by the sale, the retailer may recover the amount of the tax as a debt due from the person who furnished such certificate.

History: 1971 c. 316; 1975 c. 39, 199; 1977 c. 29, 142; 1979 c. 1, 174, 221, 355; 1981 c. 20; 1983 a. 405; 1991 a. 316.

**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 under this subchapter. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information in the department's possession. The determination may be made on the basis of sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents. The department may 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 may subpoena any person to give testimony under oath before it and to produce whatever books, records or memoranda are necessary in order to enable the department to verify the tax liability of that 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 its correctness. A determination by the department in a field audit becomes final at the expiration of the appeal periods provided in sub. (6), and the tax liability of the taxpayer for the period audited may not be subsequently adjusted except as provided in sub. (4) (a), (8) or (8m). If the taxpayer files or is required to file more than one return for the taxpayer's fiscal year or for a calendar year, the determination made by field audit for that fiscal or calendar year shall be based on the receipts, purchases, deductions and exemptions for the entire fiscal or calendar year.

(3) No determination of the tax liability of a person may be made unless written notice of the determination is given to the taxpayer within 4 years after the due date of the taxpayer's Wisconsin income or franchise tax return or, if exempt, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year, within 4 years of the dissolution of a corporation or within 4 years of the date any sales and use tax return required to be filed for any period in that year was filed, whichever is later. The notice required under this paragraph shall specify whether the determination is an office audit determination or a field audit determination, and it shall be in writing. If the department is unable to obtain service by mail, publication of it as a class 3 notice, under ch. 985, shall be service of notice in any case where notice is required under this subchapter.

(3m) If the taxpayer has consented in writing to the giving of notice of determination after the time under sub. (3), the notice may be given, and the taxpayer may file a claim for a refund, 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.

(4) Except as provided in sub. (3m), at any time within 4 years after the due date of a person's corresponding Wisconsin income or franchise tax return or, if exempt, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year for which that person files a claim, that 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 to the department by that person. A claim is timely if it fulfills the requirements under s. 77.61 (14). The 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 unless the taxpayer has

consented in writing to an extension of the one-year time period prior to its expiration.

(a) A claim for refund that is not to be passed along to customers under sub. (8m) may be made within 2 years of the determination of a tax assessed by office audit or field audit and paid if the tax was not protested by the filing of a petition for redetermination. A claim is timely if it fulfills the requirements under s. 77.61 (14). No claim may be allowed under this paragraph for any tax self-assessed by the taxpayer. If a claim is filed under this paragraph, the department may make an additional assessment in respect to any item that was a subject of the prior assessment.

(5) In making a determination, the department may offset the amount of any refund for a period, together with interest on the refund, against deficiencies for another period, and against penalties and interest on the deficiencies, or against any amount of whatever kind, due and owing on the books of the department from the person claiming the refund.

(6) Except as provided in sub. (4) (a), a determination by the department is final unless, within 60 days after receipt of the notice of the determination, the taxpayer, or other person directly interested, petitions the department for a redetermination. A petition is timely if it fulfills the requirements under s. 77.61 (14). In the case of notice served by publication, the 60-day period commences with the last day of publication of the notice.

(a) Within 6 months of the receipt by the department of the petition for redetermination, the department shall notify the petitioner of its redetermination. The redetermination shall become final 60 days after receipt by the petitioner of notice of the redetermination unless, within that 60-day period, the petitioner appeals the redetermination under par. (b).

(b) Appeals from the department's redeterminations shall be governed by the statutes applicable to income or franchise tax appeals but all appeals from decisions of the tax appeals commission with respect to the taxes imposed by this subchapter shall be appealed to the circuit court for Dane county.

(c) The department shall notify any person who files a petition for redetermination that the person may deposit the entire deficiency determination, including any penalty or interest, with the department when the petition is filed or at any time before the department makes its redetermination. Any deposited amount which is refunded shall bear interest at the rate of 9% per year during the time the funds were on deposit. A person may also pay any portion of a deficiency determination admitted to be correct and the payment shall be considered an admission of the validity of that portion of the deficiency determination and may not be recovered in an appeal or in any other action or proceeding.

(7) If the department believes that the collection of any tax imposed by this subchapter will be jeopardized by delay, it shall notify the person determined to owe the tax of its intention to proceed under s. 71.91 (5) for collection of the amount determined to be owing, including penalties and interest. Such notice shall be by certified or registered mail or by personal service and the warrant of the department shall not issue if the person, within 10 days after such notice furnishes a bond in such amount not exceeding double the amount determined to be owing and with such sureties as the department approves, conditioned upon the payment of so much of the taxes, interest and penalties as shall finally be determined to be due. Nothing in this subsection shall affect the review of determinations of tax as provided in this subchapter and any amounts collected under this subsection shall be deposited with the state treasurer and disbursed after

final determination of the taxes as are amounts deposited under ss. 71.89 (1) and 71.90 (2).

(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.

(8m) Within the time period under sub (4), the department of revenue may refund excess taxes paid to it under this chapter, even if the person applying for the refund has been field audited in respect to those taxes, if the applicant's customers have filed valid claims for refunds with the applicant and if the refund is passed along to those customers.

(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 tangible personal property or taxable service sold or purchased by the person, the sale by or the storage, use or other consumption of which in this state is subject to sales or 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 25% 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.

(10) As used in this section, "tax" or "taxes" include penalties and interest.

**History:** 1975 c. 186; 1979 c. 174, 203, 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1985 a. 261 ss. 13g, 13m, 13t; 1987 a. 312 s. 17; 1991 a. 39, 269

"Spot check" by department of taxpayer's records for single month was "field audit" under (2) covering that period only. Department of Revenue v. Moebius Printing Co. 89 W (2d) 610, 279 NW (2d) 213 (1979).

All persons who have paid excess sales tax are entitled to file claim for refund under (4) regardless of whether taxes were paid to retailer or to department Dairyland Harvestore v DOR, 151 W (2d) 799, 447 NW (2d) 56 (Ct. App. 1989)

**77.60 Interest and penalties.** (1) (a) Except as provided in par. (b), unpaid taxes shall bear interest at the rate of 12% per year from the due date of the return until paid or deposited with the department, and all refunded taxes shall bear interest at 9% per year from the due date of the return to the date on which the refund is certified on the refund rolls. An extension of time within which to file a return shall not extend the due date of the return for purposes of interest computation.

(b) Any unpaid taxes for a calendar year or a fiscal year resulting from a field audit shall bear interest at the rate of 12% per year from the due date of the taxpayer's Wisconsin income or franchise tax return for that calendar or fiscal year or, if exempt, from the 15th day of the 4th month of the year after the close of the calendar or fiscal year for which the taxes are due to the date on which the taxes are paid or, if unpaid, become delinquent, whichever is earlier.

(1m) All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

(2) Delinquent sales and use tax returns shall be subject to a \$10 late filing fee. The fee shall not apply if the department has failed to issue a seller's permit or a use tax registration within 30 days of the receipt of an application for a seller's permit or use tax registration accompanied by the permit fee required under s. 77.52 (8) and either the security required under s. 77.61 (2) or evidence of compliance with s. 77.52 (10) (c). Delinquent sales and use taxes shall bear interest at the rate of 1.5% per month until paid. The taxes imposed by this subchapter shall become delinquent if not paid:

(a) In the case of a timely filed return, on or before the due date of the return, or on or before 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 determinations, on or before the first day of the calendar month following the calendar month in which the determination becomes final, except that if the determination is contested before the tax appeals commission or in the courts, on or before the 30th day following the date on which the order or judgment representing the final determination, becomes final.

(3) If due to neglect an incorrect return is filed, the entire tax finally determined shall be subject to a penalty of 25%, or 50% in the case of returns under s. 77.61 (1) (c), of the tax exclusive of interest or other penalty. A person filing an incorrect return shall have the burden of proving that the error or errors were due to good cause and not due to neglect.

(4) In case of failure to file any return required under authority of s. 77.58 by the due date, determined with regard to any extension of time for filing, unless it is shown that such failure was due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on such return 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

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

(6) Any person who fails to furnish any return required to be made or who fails to furnish any data required by the department is guilty of a misdemeanor.

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

(8) Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation or profession not taxable under this subchapter, shall keep books to show separately the transactions used in determining the tax herein levied. In the event of such person failing to keep such separate books, there shall be levied upon the person a tax at the rate provided in s. 77.52 or 77.53 on the receipts of both or all of the person's businesses, occupations or professions.

(9) Any officer or employe of any corporation subject to this subchapter or other person who has responsibility for

making payment of the amount of tax imposed under this subchapter and who wilfully fails to make such payment to the department shall be personally liable for such amounts, including interest and penalties thereon, if that corporation is unable to pay such amounts to the department, and the personal liability of such officer, employe or other responsible person as provided herein shall survive the dissolution of the corporation. Such personal liability may be assessed by the department against such officer, employe or other responsible person pursuant to this subchapter for the making of sales tax determinations against retailers and shall be subject to the provisions for review of sales tax determinations against retailers, but the time for making such determinations shall not be limited by s. 77.59 (3) or by any other statute.

(10) It is unlawful for any person to aid, abet or assist another in making any false or fraudulent return or false statement in any return required by this subchapter, with intent to defraud the state or evade payment of the tax, or any part thereof, imposed by this subchapter. Anyone in violation hereof shall be guilty of a misdemeanor.

(11) Whenever a person collects tax moneys imposed under s. 77.52, 77.53 or 77.71 from a consumer, user or purchaser, the person receives those tax moneys as trust funds and state property. Any person who intentionally fails or refuses to pay over those tax moneys to the state at the time required by this subchapter or who fraudulently withholds, appropriates or uses any of those tax moneys is guilty of theft under s. 943.20, punishable as specified in s. 943.20 (3) according to the amount of tax moneys involved. This subsection applies regardless of the person's interest in those tax moneys. Payment to creditors in preference to the payment of those tax moneys to the state by any person is prima facie evidence of an intent to fraudulently use those tax moneys.

**History:** 1975 c. 39, 186; 1979 c. 110 s. 60 (13); 1979 c. 221, 230; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1991 a. 39, 269, 316.

**77.61 Administrative provisions.** (1) (a) No motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft shall be registered or titled 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, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles or aircraft registered or titled, or required to be registered or titled, in this state purchased from persons who are not Wisconsin boat, trailer or semitrailer dealers, licensed Wisconsin aircraft, motor vehicle or mobile home dealers or registered Wisconsin snowmobile or all-terrain vehicle dealers, the purchaser shall file a sales tax return and pay the tax prior to registering or titling the motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft in this state.

(2) In order to protect the revenue of the state, the department may require any person who is or will be liable to it for the tax imposed by this subchapter to place with it, before or after a permit is issued, the security, not in excess of \$15,000, that the department determines. In determining the amount of security to require under this subsection, the department may consider the person's payment of other taxes administered by the department and any other relevant facts. If any taxpayer fails or refuses to place that security, the department may refuse or revoke the 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, costs and penalties from the security placed with the department by the taxpayer in the following order: costs, penalties, delinquent interest, delinquent tax. No interest may be paid or allowed by the state to any person for the deposit of security. Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter.

(3) The department shall provide a bracket system to be used by retailers in collecting the amount of the tax from their customers, but the use of such brackets shall not relieve the retailer from liability for payment of the full amount of the tax levied by ss. 77.51 to 77.62.

(4) (a) Every seller and retailer and every person storing, using or otherwise consuming in this state tangible personal property or taxable services purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the department requires. The department may, after giving notice, require any person to keep whatever records are needed for the department to compute the sales or use taxes the person should pay. Thereafter, the department shall add to any taxes assessed on the basis of information not contained in the records required a penalty of 25% of the amount of the tax so assessed in addition to all other penalties under this chapter.

(b) For reporting the sales tax and collecting and reporting the use tax imposed on the retailer under s. 77.53 (3) and the accounting connected therewith, retailers may deduct one percent of the total sales and use tax payable each reporting period as administration expenses if the payment of the taxes is not delinquent.

(c) For reporting the sales tax and collecting and reporting the use tax imposed on the retailer under s. 77.53 (3) and the accounting connected with it, retailers may deduct 0.5% of the sales and use tax payable as administration expenses if the payment of the taxes is not delinquent. For purposes of calculating the retailer's discount under this paragraph, the taxes on retail sales reported by retailers under subch. V, including taxes collected and remitted as required under s. 77.785, shall be included if the payment of those 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. This paragraph does not prohibit the department of revenue from publishing statistics classified so as not to disclose the identity of particular returns or reports and the items thereof. This paragraph does not prohibit employes or agents of the department of revenue from offering or submitting information obtained by investigation or any return or any schedule, exhibit or writing pertaining to a return or any copy of, or information derived from, any of those documents as evidence into the record of any contested matter involving the department in proceedings or litigation on state tax matters if that evidence has reasonable probative value.

(b) Subject to pars. (c) and (d) and to rules of the department, any sales tax or use tax returns or any schedules, exhibits, writings or audit reports pertaining to the same, on file with the department, 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

1. The secretary of revenue, or any officer, agent or employe of the department of revenue;

2. The attorney general, department of justice employes;

3. Members of the senate committee on organization or its authorized agents or the assembly committee on organization or its authorized agents provided the examination is approved by a majority vote of a quorum of its members and the tax return information is disclosed only in a meeting closed to the public. The committee may disclose tax return information to the senate or assembly or to other legislative committees if the information does not disclose the identity of particular returns or reports and the items thereof. The department of revenue shall provide assistance to the committees or their authorized agents in order to identify returns deemed necessary by them to accomplish the review and analysis of tax policy;

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 that person's authorized agent or attorney;

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

6. Any person examining a return pursuant to a court order duly obtained upon a showing to the court that the information contained in the return is relevant to a pending court action or pursuant to a subpoena signed by a judge of a court of record ordering the department's custodian of returns to produce a return in open court in a court action pending before the judge.

7. Any person against whom the department asserts liability under this subchapter, including a successor, guarantor or surety.

8. Employes of this state, to the extent that the department deems the examination necessary for the employes to perform their duties under contracts or agreements between the department and any other department, division, bureau, board or commission of this state relating to the administration of tax laws.

9. The administrator of the lottery division in the gaming commission for the purpose of withholding of lottery winnings under s. 565.30 (5).

(c) Copies of sales tax or use tax returns, schedules, exhibits, writings or audit reports shall not be furnished to the persons listed under par. (b), except persons under par. (b) 5 or under an agreement between the department and another agency of government.

(d) The use of information obtained under par. (b) or (c) is restricted to the discharge of duties imposed upon the persons by law or by the duties of their office or by order of a court as specified under par. (b) 6.

(e) The department may charge for the reasonable cost of divulging information under this subsection.

(f) District attorneys may examine tax information of persons on file with the department of revenue as follows:

1. Such tax information may be examined for use in preparation for any judicial proceeding or any investigation which may result in a judicial proceeding involving sales or use tax if:

a. The taxpayer is or may be a party to such proceeding;

b. The treatment of an item reflected in such tax information is or may be related to the resolution of an issue in the proceeding or investigation; or

c. The tax information relates or may relate to a transactional relationship between the taxpayer and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in such proceeding or investigation.

2. When the department of revenue allows examination of tax information under subd. 1:

a. If the department has referred the case to a district attorney, the department may make disclosure on its own motion.

b. If a district attorney requests examination of tax information relating to a person, the request must be in writing, clearly identify the requester and the person to whom the information relates and explain the need for the information. The department may then allow the examination of tax information so requested and the information may be examined and used solely for the proceeding or investigation for which it was requested.

3. Such tax information may be examined for use in preparation for any administrative or judicial proceeding or an investigation which may result in such proceeding pertaining to the enforcement of a specifically designated state criminal statute not involving tax administration to which this state or a governmental subdivision thereof is a party. Such tax information may be used solely for the proceeding or investigation for which it is requested.

4. The department of revenue may allow an examination of tax information under subd. 3 only if a district attorney petitions a court of record in this state for an order allowing the examination and the court issues an order after finding:

a. There is a reasonable cause to believe, based on information believed to be reliable, that a specific criminal act has been committed;

b. There is reason to believe that such tax information is probative evidence of a matter in issue related to the commission of such criminal act; and

c. The information sought to be examined cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the tax information constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

5. If the department determines that examination of tax information ordered under subd. 4 would identify a confidential informant or seriously impair a civil or criminal tax investigation, the department may deny access and shall certify the reason therefor to the court.

(fm) The department of revenue shall inform each requester of the amount paid or payable under s. 77.52 for any reporting period and reported on a return filed by any city, village, town, county, school district, special purpose district or vocational, technical and adult education district; whether that amount was paid by the statutory due date; the amount of any tax, fees, penalties or interest assessed by the department; and the total amount due or assessed under s. 77.52 but unpaid by the filer, except that the department may not divulge tax return information that in the department's opinion violates the confidentiality of that information with respect to any person other than the units of government and districts specified in this paragraph. The department shall provide to the requester a written explanation if it fails to divulge information on grounds of confidentiality. The department shall collect from the person requesting the information a fee of \$4 for each return.



(g) 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.

(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 unless specifically requested on the appropriate form designated by the department.

(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.

(11) Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit as required by this subchapter or has been informed by an employe of the department that the department will issue a seller's permit to that person.

(12) (a) No natural person shall be excused from testifying or from producing any books, papers, records or memoranda in any investigation, or upon any hearing when ordered to do so by the secretary of revenue or the secretary's designee upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject the person to criminal penalty, but no such natural person so ordered shall be prosecuted or subjected to any criminal penalty for, or on account of such testimony or books, papers, records or memoranda which the person produces upon such investigation or hearing. No person so testifying shall be exempt from prosecution and punishment for perjury in so testifying.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(13) No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under this subchapter.

(14) Documents and payments required or permitted under this subchapter are timely furnished, filed or made if they are mailed in a properly addressed envelope with the postage duly prepaid, if the envelope is postmarked before midnight of the due date and if the document or payment is received by the department within 5 days after the prescribed date.

**History:** 1971 c. 125; 1975 c. 186, 224; 1977 c. 29, 200, 418; 1979 c. 89, 125, 174; 1981 c. 20; 1983 a. 189 s. 329 (12); 1983 a. 405; 1983 a. 544 s. 47 (1); 1985 a. 29, 41; 1987 a. 27, 92, 119, 246; 1989 a. 31, 122, 359; 1991 a. 39, 269, 316.

See note to 885.25, concerning (12), citing *State v. Alioto*, 64 W (2d) 354, 219 NW (2d) 585.

**77.62 Collection of delinquent sales and use taxes.** (1) The department of revenue may exercise the powers vested in it by ss. 71.80 (12), 71.82 (2), 71.91 (1) (a) and (c), (2) to (5m) and (7) and 71.92 in connection with collection of delinquent sales and use taxes including, without limitation because of enumeration, the power incorporated by reference in s. 71.91 (5) (j), and the power to:

- (a) Use the warrant procedures under ss. 71.80 (12), 71.91 (1) (a) and (c) and (2) to (5m) and 71.92.
- (b) Release real property from the lien of a warrant;
- (c) Satisfy warrants;
- (d) Approve instalment payment agreements;

- (e) Compromise on the basis of ability to pay; or
- (f) Compromise delinquent estimated assessments on the basis of fairness and equity.

**History:** 1975 c. 224; 1987 a. 312 s. 17

**Cross Reference:** See 73.03 (27) for provision as to writing off uncollectible sales and use taxes.

## SUBCHAPTER V

### COUNTY SALES AND USE TAXES

**77.70 Adoption by county ordinance.** Any county desiring to impose county sales and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter. That ordinance shall be effective on the first day of January, the first day of April, the first day of July or the first day of October. A certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date. The repeal of any such ordinance shall be effective on December 31. A certified copy of a repeal ordinance shall be delivered to the secretary of revenue at least 60 days before the effective date of the repeal.

**History:** 1985 a. 41, 120; 1987 a. 27; 1991 a. 39

A county may not impose a tax upon admissions to amusements except as part of a general sales and use tax at the statutorily prescribed rate of one-half of 1%. 58 Atty. Gen. 212

County board may not control municipal use of county sales tax revenue. 60 Atty. Gen. 387.

**77.71 Imposition of county sales and use taxes.** Whenever a county sales and use tax ordinance is adopted under s. 77.70, the following taxes are imposed:

(1) For the privilege of selling, leasing or renting tangible personal property and for the privilege of selling, performing or furnishing services a sales tax is imposed upon retailers at the rate of 0.5% of the gross receipts from the sale, lease or rental of tangible personal property, except property taxed under sub. (4), sold, leased or rented at retail in the county or from selling, performing or furnishing services described under s. 77.52 (2) in the county.

(2) An excise tax is imposed at the rate of 0.5% of the sales price upon every person storing, using or otherwise consuming in the county tangible personal property or services if the property or service is subject to the state use tax under s. 77.53, except that a receipt indicating that the tax under sub. (1), (3) or (4) has been paid relieves the buyer of liability for the tax under this subsection and except that if the buyer has paid a similar local tax in another state on a purchase of the same property or services that tax shall be credited against the tax under this subsection.

(3) An excise tax is imposed upon a contractor engaged in construction activities within the county, at the rate of 0.5% of the sales price of tangible personal property that is used in constructing, altering, repairing or improving real property and that becomes a component part of real property in that county, unless the contractor has paid the sales tax of a county in this state on that property, and except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property that tax shall be credited against the tax under this subsection.

(4) An excise tax is imposed at the rate of 0.5% of the sales price upon every person storing, using or otherwise consuming a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft, if that property must be registered or titled

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with this state and if that property is to be customarily kept in a county that has in effect an ordinance under s. 77.70, except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property that tax shall be credited against the tax under this subsection.

History: 1985 a. 41; 1987 a. 27

**77.72 Situs. (1) GENERAL RULE FOR PROPERTY.** For the purposes of this subchapter, all retail sales of tangible personal property are completed at the time when, and the place where, the seller or the seller's agent transfers possession to the buyer or the buyer's agent. In this subsection, a common carrier or the U.S. postal service is the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid. Rentals and leases of property, except property under sub. (2), have a situs at the location of that property.

**(2) LEASED OR RENTED MOVING PROPERTY.** (a) *Motor vehicles.* Leased or rented motor vehicles and other equipment used principally on the highway at normal highway speeds are located in the county in which they are customarily kept, except that drive-it-yourself motor vehicles and equipment used principally on the highway at normal highway speeds, if those vehicles or that equipment are used for one-way trips or leased for less than one month, are located in the county in which they come into the lessee's possession.

(b) *Other moving property.* Except for motor vehicles and equipment described in par. (a), leased or rented property that characteristically is moving property, including but not limited to aircraft and boats, is located in a county if it is used primarily in that county or it is usually kept in that county when it is not in use.

**(3) SERVICES.** (a) *General rule.* Except as provided in par. (b), services have a situs at the location where they are furnished.

(b) *Exceptions.* Communication service has a situs where the customer is billed for the service if the customer calls collect or pays by credit card. Towing services have a situs at the location to which the vehicle is delivered. Services performed on tangible personal property have a situs at the location where the property is delivered to the buyer.

History: 1985 a. 41

**77.73 Jurisdiction to tax. (1)** Retailers making deliveries in their company-operated vehicles of tangible personal property, or of property on which taxable services were performed, to purchasers in a county are doing business in that county, and that county has jurisdiction to impose the taxes under this subchapter on them.

**(2)** Counties do not have jurisdiction to impose the tax under s. 77.71 (2) in regard to tangible personal property purchased in a sale that is consummated in another county in this state that does not have in effect an ordinance imposing the taxes under this subchapter and later brought by the buyer into the county that has imposed a tax under s. 77.71 (2).

History: 1985 a. 41

**77.74 Seller permits.** An additional seller's permit shall not be required of any retailer who has been issued a permit under subch. III.

**77.75 Reports.** Every person subject to county sales and use taxes shall, for each reporting period, record that person's sales made in the enacting county separately from sales made elsewhere in this state and report the measure of the county sales and use taxes and the tax due thereon separately to the

department of revenue on forms to be provided by the department.

History: 1985 a. 41.

**77.76 Administration. (1)** The department of revenue shall have full power to levy, enforce and collect county sales and use taxes and may take any action, conduct any proceeding, impose interest and penalties and in all respects proceed as it is authorized to proceed for the taxes imposed by subch. III. The department of transportation and the department of natural resources may administer the county sales and use taxes in regard to items under s. 77.61 (1).

**(2)** Judicial and administrative review of departmental determinations shall be as provided in subch. III for state sales and use taxes, and no county may intervene in any matter related to the levy, enforcement and collection of the taxes under this subchapter.

**(3)** From the appropriation under s. 20.835 (4) (g) the department shall distribute 98.5% of the county taxes reported for each enacting county, minus the county portion of the retailers' discounts, to the county and shall indicate the taxes reported by each taxpayer, no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. In this subsection, the "county portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross county sales and use taxes payable and the denominator of which is the sum of the gross state and county sales and use taxes payable. The county taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the county taxes previously distributed. Interest paid on refunds of county sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (g) at the rate paid by this state under s. 77.60 (1) (a). The county may retain the amount it receives or it may distribute all or a portion of the amount it receives to the towns, villages, cities and school districts in the county. Any county receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5).

**(4)** There shall be retained by the state 1.5% of the taxes collected under this subchapter to cover costs incurred by the state in administering, enforcing and collecting the tax. All interest and penalties collected shall be deposited and retained by this state in the general fund.

History: 1985 a. 29, 41; 1991 a. 37, 269

**77.77 Transitional provisions. (1)** The gross receipts from services subject to the tax under s. 77.52 (2) are not subject to the county taxes, and the incremental amount of tax caused by a rate increase applicable to those services is not due, if those services are billed to the customer and paid for before the effective date of the county ordinance or rate increase, whether the service is furnished to the customer before or after that date.

**(2)** Lease or rental receipts from tangible personal property that the lessor is obligated to furnish at a fixed price under a contract entered into before the effective date of a county ordinance are subject to the county taxes on the effective date of the ordinance, as provided for the state sales tax under s. 77.54 (18).

**(3)** The sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not subject to the county taxes, and the incremental amount of tax caused by the rate increase applicable to those materials is not due, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor is fixed without regard to the costs

incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance or rate increase or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

History: 1985 a. 41.

**77.78 Registration.** No motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semi-trailer, all-terrain vehicle or aircraft that is required to be registered by this state may be registered or titled by this state unless the registrant files a sales and use tax report and pays the county tax at the time of registering or titling to the state agency that registers or titles the property. That state agency shall transmit those tax revenues to the department of revenue.

History: 1985 a. 41

**77.785 Duties of retailers. (1)** All retailers shall collect and report the taxes under this subchapter on the gross receipts from leases and rentals of property under s. 77.71 (4).

**(2)** Prior to registration or titling, boat, all-terrain vehicle, trailer and semi-trailer dealers and licensed aircraft, motor vehicle, mobile home and snowmobile dealers shall collect the taxes under this subchapter on sales of items under s. 77.71 (4). The dealer shall remit those taxes to the department of revenue along with payments of the taxes under subch. III.

History: 1985 a. 41; 1987 a. 141.

**77.79 Relation to subchapter III.** The provisions of subch. III; including those related to exemptions, exceptions, exclusions and the retailers' discount; that are consistent with this subchapter, as they apply to the taxes under that subchapter, apply to the taxes under this subchapter.

History: 1985 a. 41.

## SUBCHAPTER VI

### MANAGED FOREST LAND

**77.80 Purpose.** The purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

History: 1985 a. 29

**77.81 Definitions.** In this subchapter:

**(1)** "Department" means the department of natural resources.

**(2)** "Forestry" means managing forest lands and their related resources, including trees and other plants, animals, soil, water and air.

**(3)** "Merchantable timber" means standing trees which, because of their size and quality, are salable.

**(4)** "Municipality" means a town or village.

History: 1985 a. 29

**77.82 Managed forest land; petition. (1) ELIGIBILITY REQUIREMENTS.** (a) A parcel of land is eligible for designation as managed forest land only if it fulfills the following requirements:

1. It consists of at least 10 contiguous acres in a single municipality. The fact that a lake, river, stream or flowage, a public or private road or a railroad or utility right-of-way

separates any part of the land from any other part does not render a parcel of land noncontiguous.

2. At least 80% of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year.

(b) The following land is not eligible for designation as managed forest land:

1. A parcel of which more than 20% consists of land that is unsuitable for producing merchantable timber, including water, marsh, muskeg, bog, rock outcrops, sand dunes, farmland, roadway or railroad and utility rights-of-way.

2. A parcel that is developed for commercial recreation, industry, human residence or any other use determined by the department to be incompatible with the practice of forestry.

**(2) PETITION.** Any owner of land may petition the department to designate any eligible parcel of land as managed forest land. A petition may include any number of eligible parcels under the same ownership in a single municipality. Each petition shall be submitted on a form provided by the department, shall be accompanied by a nonrefundable \$10 application fee which shall be credited to the conservation fund, and shall include all of the following:

(a) The name and address of each owner.

(b) The legal description or the location and acreage of each parcel of land.

(c) The legal description of the area in which the parcel is located.

(d) A description of the physical characteristics of the land, in sufficient detail to enable the department to determine if it meets the eligibility requirements under sub. (1).

(e) A statement of the owner's forest management objectives for the production of merchantable timber, in sufficient detail to provide direction for the development and approval of a management plan. The petition may also state additional forest management objectives, which may include wildlife habitat management, aesthetic considerations, watershed management and recreational use.

(f) Proof that each person holding any encumbrance on the land agrees to the petition.

(g) A map, diagram or aerial photograph showing the location and acreage of any area that will be designated as closed to the public under s. 77.83.

(h) Whether the land will be designated as managed forest land for 25 or 50 years.

(i) If a proposed management plan is not submitted with the petition, a request that the department prepare a management plan.

**(3) MANAGEMENT PLAN.** (a) The petitioner may submit a proposed management plan for the entire acreage of each parcel with the petition. The department, after considering the owner's forest management objectives as stated under sub. (2) (e), shall either approve or disapprove the proposed plan. If the department disapproves a plan, it shall inform the petitioner of the changes necessary to qualify the plan for approval.

(b) If the petitioner requests that the department prepare the management plan, the department shall comply with the request.

(c) To qualify for approval, a management plan shall include all of the following:

1. The name and address of each owner of the land.

2. The legal description of the parcel or of the area in which the parcel is located.

3. A statement of the owner's forest management objectives.

4. A map, diagram or aerial photograph which identifies both forested and unforested areas of the land, using conven-

tional map symbols indicating the species, size and density of vegetation and the other major features of the land.

5. A map, diagram or aerial photograph which identifies the areas designated as open and closed under s. 77.83.

6. A description of the forestry practices, including harvesting, thinning and reforestation, that will be undertaken during the term of the order, specifying the period in which each is intended to be completed.

7. A description of soil conservation practices that may be necessary to control any soil erosion that may result from the forestry practices specified under subd. 6.

(d) The management plan may also specify activities that will be undertaken for the management of forest resources other than trees, including wildlife habitat, watersheds and aesthetic features.

(e) A management plan shall contain a statement that the owner agrees to comply with all of its terms and with the conditions of this subchapter and shall be signed by the owner and a representative of the department.

(f) An owner and the department may mutually agree to amend a management plan.

**(4) ADDITIONS TO MANAGED FOREST LAND.** An owner may petition the department to designate as managed forest land an additional parcel of land in the same municipality if the additional parcel is at least 3 acres in size and is contiguous to any of the owner's designated land. The petition shall be accompanied by a nonrefundable \$10 application fee which shall be credited to the conservation fund, shall be submitted on a department form and shall contain any additional information required by the department.

**(5) NOTICE OF PETITION; REQUEST FOR DENIAL.** (a) Upon receipt of a petition under sub. (2) or (4), the department shall provide written notice of the petition to the clerk of the municipality in which the land is located. The department shall also publish a class 1 notice, under ch. 985, of the petition.

(b) The governing body of the municipality in which the proposed managed forest land is located or a resident or property tax payer of the municipality may, within 15 days after the notice under par. (a) is published, request the department to deny the petition on the grounds that the land fails to meet the eligibility requirements under sub. (1) or that, if the addition is approved, the entire parcel will fail to meet those eligibility requirements. The request shall be in writing and shall specify the reason for believing that the land is or would be ineligible.

**(6) INVESTIGATION; HEARING.** (a) The department shall conduct any investigation necessary to reach a decision on a petition.

(b) 1. If the department determines, after receipt of a request under sub. (5) (b) or as a result of its investigation, that further information is needed, it may schedule a public hearing to take testimony relating to the eligibility of the land.

2. At least 10 days before the date of the hearing, the department shall mail written notice of the date, time and place of the hearing to the petitioner, each person who submitted a request under sub. (5) (b) and the clerk of the municipality in which the land is located.

3. A public hearing held under this paragraph may be adjourned. No notice of the adjourned hearing is required other than an announcement of the date, time and place given at the initial hearing by the person presiding at the hearing.

**(7) DECISION.** (a) After considering the testimony presented at the public hearing, if any, the facts discovered by its investigation and the land use in the area in which the land is located, the department shall approve a petition under sub. (2) if it determines all of the following:

1. That the land meets the eligibility requirements under sub. (1).

2. That all facts stated in the petition are correct.

3. That a stand of merchantable timber will be developed on at least 80% of the land within a reasonable period of time.

4. That the use of the land as managed forest land is not incompatible with the existing uses of the land in the municipality in which it is located.

5. That there are no delinquent taxes on the land.

(b) After considering the testimony presented at the public hearing, if any, and the facts discovered by its investigation, the department shall approve a petition under sub. (4) if it determines all of the following:

1. That all facts stated in the petition are correct.

2. That the total parcel with the addition will meet the eligibility requirements under sub. (1).

3. That there are no delinquent taxes on either the land originally designated or on the proposed additional parcel.

4. That the owner agrees to any amendments to the management plan determined by the department to be necessary as a result of the addition.

(c) If a petition is received on or before March 31 of any year, the department shall investigate and shall either approve the petition and issue the order under sub. (8) or deny the petition on or before the following November 21.

**(8) ORDER.** If a petition under sub. (2) is approved, the department shall issue an order designating the land as managed forest land for the time period specified in the petition. If a petition under sub. (4) is approved, the department shall amend the original order to include the additional parcel. The department shall provide the petitioner with a copy of the order or amended order and shall also file a copy with the department of revenue, the supervisor of assessments, the clerk of the municipality and the register of deeds in the county in which the land is located.

**(9) EFFECTIVE DATE OF ORDER.** An order or amended order under sub. (8) issued before November 21 of any year takes effect on the January 1 after the date of issuance. An order or amended order under sub. (8) issued on or after November 21 of any year takes effect on the 2nd January 1 after the date of issuance.

**(10) DENIAL.** If the department denies a petition, it shall notify the petitioner in writing, stating the reason for the denial.

**(11) DURATION.** An order under this subchapter remains in effect for the period specified in the petition unless the land is withdrawn under s. 77.84 (3) (b) or 77.88. An amendment to or repeal of this subchapter does not affect the terms of an order or management plan, except as expressly agreed to in writing by the owner and the department except as provided in sub. (11m).

**(11m) ORDERS FOR THE LAND IN THE LOWER WISCONSIN STATE RIVERWAY.** An owner of timber that is exempt under s. 30.44 (3) (c) 2 shall comply with a rule regulating timber cutting and harvesting promulgated under s. 30.42 (1) (d):

(a) If the rule is not inconsistent with the order issued under sub. (8); or

(b) If the owner agrees to amend the order issued under sub. (8) to require compliance with the rules.

**(12) RENEWAL.** The department shall notify each owner of managed forest land of the expiration date of an order no later than the January 31 preceding the expiration date. The owner may petition the department for renewal of the order. The petition shall be filed no later than the March 31 before the expiration date and shall specify whether the owner wants the order renewed for 25 or 50 years. The notice and hearing provisions under subs. (5) and (6) do not apply to a petition

under this subsection. The department may deny the petition only if the land fails to meet the eligibility requirements under sub. (1), if the owner has failed to comply with the management plan or if there are delinquent taxes on the land. If the petition is denied, the department shall state the reason for the denial in writing.

History: 1985 a. 29; 1989 a. 31.

**77.83 Closed, open and restricted areas. (1) CLOSED AREAS.** (a) An owner may designate one area in a parcel of managed forest land as closed to public access. All of an owner's contiguous acreage in a municipality shall be considered a single parcel for purposes of this section. A closed area may consist of either:

1. Not more than 80 contiguous acres.
2. One or a combination of any 2 of the following:
  - a. A quarter quarter section.
  - b. A government lot as determined by the U.S. government survey plat.
  - c. A fractional lot as determined by the U.S. government survey plat.

(b) If any area of an owner's managed forest land is already designated as closed, an addition to the parcel approved under s. 77.82 (7) (b) may be designated as closed only under the following conditions:

1. The addition does not result in increasing the closed portion of the land to an area greater than that permitted under par. (a).
2. The additional area is contiguous to the area that is already designated as closed.

(c) If all or any part of an owner's closed managed forest land is withdrawn or transferred as provided under s. 77.88, the owner may designate a different or an additional closed area if it meets the requirements of par. (b).

**(2) OPEN AREAS; RESTRICTIONS.** (a) Except as provided in sub. (1) and pars. (b) and (c), each owner of managed forest land shall permit public access to the land for hunting, fishing, hiking, sight-seeing and cross-country skiing.

(b) An owner may restrict public access to any area of open managed forest land which is within 300 feet of any building or within 300 feet of a commercial logging operation that conforms to the management plan.

(c) An owner may prohibit the use of motor vehicles, as defined under s. 340.01 (35), or snowmobiles, as defined under s. 340.01 (58a), or both on any open managed forest land. At the request of an owner, the department may provide assistance in enforcing the prohibition.

**(3) SIGNS.** An owner may post signs specifying the designation of or restrictions applicable to any area of managed forest land. The department may, by rule, specify design standards for these signs.

**(4) PENALTY.** Any person who fails to comply with sub. (2) (a) or any rule promulgated under sub. (3) shall forfeit not more than \$500.

History: 1985 a. 29; 1989 a. 79.

**77.84 Taxation of managed forest land. (1) TAX ROLL.** The municipal clerk shall enter in a special column or other appropriate place on the tax roll the description of each parcel of land designated as managed forest land, and shall specify, by the designation "MFL-O" or "MFL-C", the acreage of each parcel that is designated open or closed under s. 77.83. The land shall be assessed and is subject to review under ch. 70. Except as provided in this subchapter, no tax may be levied on managed forest land, except that any building on managed forest land is subject to taxation as personal property under ch. 70.

**(2) ACREAGE SHARE; PAYMENT FOR CLOSED LAND.** (a) Each owner of managed forest land shall pay to the municipal treasurer an acreage share of 74 cents per acre on or before January 31.

(b) In addition to the payment under par. (a), each owner shall pay \$1 for each acre that is designated as closed under s. 77.83. The payment shall be made to the municipal treasurer on or before January 31.

(c) In 1992 and each 5th year thereafter, the department of revenue shall adjust the amounts under pars. (a) and (b) by multiplying the amount specified by a ratio using as the denominator the department of revenue's estimate of the average statewide tax per acre of property classes under s. 70.32 (2) (b) 4, 5 and 6 for 1986 and, as the numerator, the department of revenue's estimate of the average tax per acre for the same classes of property for the year in which the adjustment is made.

**(3) DELINQUENCY.** (a) The procedures specified for the collection of delinquent taxes under ch. 74, and for the sale of land for delinquent taxes under ch. 75 apply to taxes returned delinquent under this subsection. Immediately upon the expiration of 2 years after the date the county acquires a tax certificate, the county clerk shall take a tax deed as provided under ch. 75. The county clerk shall certify to the department that a tax deed has been taken and shall include the legal description of the land subject to the tax deed.

(b) Immediately after receiving the certification of the county clerk that a tax deed has been taken, the department shall issue an order withdrawing the land as managed forest land. The notice requirement under s. 77.88 (1) does not apply to the department's action under this paragraph. The department shall notify the county treasurer of the amount of the withdrawal tax, as determined under s. 77.88 (5), and the amount of the tax shall be payable to the department under s. 75.36 (3) if the property is sold by the county. The amount shall be credited to the conservation fund.

History: 1985 a. 29; 1987 a. 378.

**77.85 State contribution.** The department shall pay before June 30 annually the municipal treasurer, from the appropriation under s. 20.370 (4) (ar), 20 cents for each acre of land in the municipality that is designated as managed forest land under this subchapter.

History: 1985 a. 29; 1991 a. 39.

**77.86 Forestry practices. (1) CUTTING REGULATED.** (a) Except as provided under sub. (6), no person may cut merchantable timber on managed forest land on which the payment under s. 77.84 (2) is delinquent.

(b) Except as provided under sub. (6), an owner who intends to cut merchantable timber on managed forest land shall, at least 30 days before the cutting is to take place, on a form provided by the department, file a notice of intent to cut and request approval of the proposed cutting from the department.

(c) If the proposed cutting conforms to the management plan, the department shall approve the request.

(d) If the proposed cutting does not conform to the management plan, the department shall assist the owner in developing an acceptable proposal before approving the request.

**(2) BOND.** The department may require an owner who intends to cut merchantable timber on managed forest land to file with the department a noncancelable bond furnished by a surety company licensed to do business in this state in the amount expected to be required as payment of the yield tax under s. 77.87 (1).

(3) **TIME LIMIT.** All cutting specified in the notice under sub. (1) (b) shall be commenced within one year after the date the proposed cutting is approved. The owner shall report to the department the date on which the cutting is commenced.

(4) **REPORTING.** Within 30 days after completion of any cutting approved under this section, the owner shall report to the department, on a form provided by the department, a description of the species of wood, kind of product and the quantity of each species cut as shown by the scale or measurement made on the ground as cut, skidded, loaded or delivered, or by tree scale certified by a forester acceptable to the department if the wood is sold by tree measurement.

(5) **PENALTIES.** (a) Any person who fails to file the notice required under sub. (1) (b) or who intentionally files a false report under sub. (4) shall forfeit not more than \$1,000.

(b) Any owner who intentionally cuts merchantable timber in violation of this section is subject to a forfeiture equal to 20% of the current value of the merchantable timber cut, based on the stumpage value established under s. 77.91 (1).

(6) **EXCEPTION.** This section does not apply to an owner who cuts wood on managed forest land for use as fuel in the owner's dwelling.

History: 1985 a. 29.

**77.87 Yield tax. (1) TAXATION.** The department shall assess a yield tax against each owner who cuts merchantable timber under s. 77.86. The yield tax shall equal 5% of the value of the merchantable timber cut, based on the stumpage value established under s. 77.91 (1). The department shall mail a copy of the certificate of assessment to the owner at the owner's last-known address.

(2) **SUPPLEMENTAL TAX.** At any time within one year after a report is filed under s. 77.86 (4), the department, after notifying the owner and providing the owner with the opportunity for a hearing, may determine whether the report is accurate. If the department determines that the quantity of merchantable timber cut exceeded the amount on which the tax was assessed under sub. (1), the department shall assess a supplemental tax on the additional amount as provided under sub. (1).

(3) **PAYMENT.** A tax assessed under sub. (1) or (2) is due and payable to the department on the last day of the month following the date the certificate is mailed to the owner. The department shall collect interest at the rate of 12% per year on any tax that is paid later than the due date. Amounts received shall be credited to the conservation fund.

(4) **OWNER'S LIABILITY.** The owner is personally liable for a tax assessed under sub. (1) or (2). An unpaid tax becomes a lien against the merchantable timber that was cut. If the merchantable timber cut is mingled with other wood products, the unpaid tax becomes a lien against all of the wood products while they are in the owner's possession, or in the possession of any person other than a purchaser for value without notice in the usual course of business.

(5) **DELINQUENCY.** If a tax due under this section is not paid on or before the last day of the August following the date specified under sub. (3), the department shall certify to the taxation district clerk the description of the land and the amount due for the tax and interest. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

History: 1985 a. 29; 1991 a. 39.

**77.875 Grazing restricted.** An owner of managed forest land may not permit domesticated animals to graze on managed forest land.

History: 1985 a. 29.

**77.88 Withdrawal; transfer of ownership; nonrenewal. (1) WITHDRAWAL BY DEPARTMENT ORDER.** (a) The department may, at the request of the owner of managed forest land or of the governing body of the municipality in which any managed forest land is located, or at its own discretion, investigate to determine whether the designation as managed forest land should be withdrawn. The department shall notify the owner of the land and the chairperson of the town or the president of the village in which the land is located of the investigation.

(b) Following an investigation under par. (a), the department may order the withdrawal of all or any part of a parcel of managed forest land for any of the following reasons:

1. Failure of the land to conform to an eligibility requirement under s. 77.82 (1).

2. The owner's failure to comply with this subchapter or the management plan.

3. Intentional cutting by the owner in violation of s. 77.86.

4. The owner's development or use of any part of the parcel for a purpose which is incompatible with the purposes specified in s. 77.80.

5. The owner's posting of signs or otherwise denying access to open managed forest land.

(c) If the department determines that land should be withdrawn, it shall issue an order withdrawing the land as managed forest land and shall assess against the owner the tax under sub. (5).

(2) **SALE OR TRANSFER OF OWNERSHIP.** (a) An owner may sell or otherwise transfer ownership of all or part of the owner's managed forest land if the land transferred is one of the following:

1. An entire parcel of managed forest land.

2. An entire quarter quarter section.

3. A government lot or fractional lot as determined by the U.S. government survey plat.

(b) If the land remaining after a transfer under par. (a) is contiguous and meets the eligibility requirements under s. 77.82 (1) (a) 2 and (b), it shall continue to be designated as managed forest land until the expiration of the existing order, even if the parcel contains less than 10 acres. Notwithstanding s. 77.82 (12), an owner may not petition the department for renewal of the order if the parcel contains less than 10 acres. No withdrawal tax under sub. (5) may be assessed when the remaining land is withdrawn at the expiration of the order.

(c) If the remaining land does not meet the eligibility requirements under s. 77.82 (1) (a) 2 and (b), the department shall issue an order withdrawing the land and shall assess against the owner the tax under sub. (5). Notwithstanding s. 77.90, the owner is not entitled to a hearing on an order withdrawing land under this paragraph.

(d) Within 10 days after a transfer of ownership, the former owner shall, on a form provided by the department, file with the department a report of the transfer signed by the former owner and the transferee. The report shall be accompanied by a \$20 fee which shall be credited to the conservation fund. The department shall immediately notify each person entitled to notice under s. 77.82 (8).

(e) The transferred land shall remain managed forest land if the transferee, within 30 days after the transfer, certifies to the department an intent to comply with the existing management plan for the land and with any amendments agreed to by the department and the transferee, and provides proof that each person holding any encumbrance on the land agrees to the designation. The transferee may designate an area of the transferred land closed to public access as provided under s. 77.83. The department shall issue an order continuing the



designation of the land as managed forest land under the new ownership.

(f) If the transferee does not provide the department with the certification required under par. (e), the department shall issue an order withdrawing the land and shall assess against the transferee the tax under sub. (5). Notwithstanding s. 77.90, the transferee is not entitled to a hearing on an order withdrawing land under this paragraph.

(3) **VOLUNTARY WITHDRAWAL.** An owner may request that the department withdraw all or any part of the owner's land meeting one of the requirements specified under sub. (2) (a) 1 to 3. If any remaining land meets the eligibility requirements under s. 77.82 (1), the department shall issue an order withdrawing the land subject to the request and shall assess against the owner the tax under sub. (5).

(4) **NONRENEWAL.** If an owner does not petition the department to renew a managed forest land order, the department shall order the land withdrawn at the expiration of the order. No withdrawal tax under sub. (5) shall be assessed.

(5) **WITHDRAWAL TAX.** The withdrawal tax shall be determined as follows:

(a) For land withdrawn during an initial managed forest land order, the withdrawal tax shall be the higher of the following:

1. An amount equal to the product of the total net property tax rate in the municipality in the year prior to the withdrawal and the assessed value of the land for the same year, as computed by the department of revenue, multiplied by the number of years the land was designated as managed forest land, less any amounts paid by the owner under ss. 77.84 (2) (a) and 77.87.

2. Five percent of the stumpage value of the merchantable timber on the land, less any amounts paid by the owner under ss. 77.84 (2) (a) and 77.87.

(b) For land withdrawn after the renewal of a managed forest land order, the withdrawal tax shall be the higher of the following:

1. An amount equal to the product of the total net property tax rate in the municipality in the year prior to the withdrawal and the assessed value of the land for the same year, as computed by the department of revenue, multiplied by the number of years since the renewal, less any amounts paid by the owner under ss. 77.84 (2) (a) and 77.87.

2. Five percent of the stumpage value of the merchantable timber on the land, less any amounts paid by the owner under ss. 77.84 (2) (a) and 77.87.

(6) **DETERMINATION OF STUMPAGE VALUE.** In determining the stumpage value of merchantable timber for purposes of this section, an estimator agreed upon by the parties or, if they cannot agree, a forester appointed by a judge of the circuit court in the county in which the land is located shall estimate the volume of merchantable timber on the land. The estimate obtained shall be final. The department shall determine the current stumpage value of the merchantable timber, based on the rule promulgated under s. 77.91 (1). The owner shall pay the entire cost of obtaining the estimate.

(7) **PAYMENT; DELINQUENCY.** A tax under sub. (5) is due and payable to the department on the last day of the month following the effective date of the withdrawal order. Amounts received shall be credited to the conservation fund. If the owner of the land fails to pay the tax, the department shall certify to the taxation district clerk the amount due. The taxation district clerk shall enter the delinquent amount on the property tax roll as a special charge.

(8) **EXCEPTION.** No withdrawal tax may be assessed against an owner who transfers ownership of managed forest land for a public road or railroad or utility right-of-way. No with-

drawal tax may be assessed against an owner who transfers ownership of managed forest land for a park, recreational trail, wildlife or fish habitat area or a public forest to the federal government, the state or a local governmental unit, as defined in s. 66.299 (1) (a). The department may not order withdrawal of the remainder of the land unless the remainder fails to meet the eligibility requirements under s. 77.82 (1).

(9) **ORDER; MISCELLANEOUS PROVISIONS.** (a) Each withdrawal order issued under this section shall include the legal description of the land withdrawn.

(b) The department shall notify the owner in writing of the withdrawal order, stating the reason for the withdrawal.

(c) The department shall mail a copy of the withdrawal order to each person specified under s. 77.82 (8).

(d) A withdrawal order issued before December 15 of any year takes effect on the January 1 after the date of issuance. A withdrawal order issued on or after December 15 of any year takes effect on the 2nd January 1 after the date of issuance.

(e) If less than a total parcel of managed forest land is withdrawn, the department shall amend the order under s. 77.82 and the management plan to correct the description of the remaining land.

(10) **APPLICABLE TAXES.** Chapter 70 applies to any land withdrawn from the managed forest land program under this section.

(11) **LIABILITY FOR PREVIOUS TAXES.** Withdrawal of land under this section does not affect the liability of the owner for previously levied taxes under s. 77.84 or 77.87.

History: 1985 a 29; 1991 a 39.

**77.89 Distribution of moneys received.** (1) **PAYMENT TO MUNICIPALITIES.** By June 30 of each year, the department, from the appropriation under s. 20.370 (4) (ar), shall pay 50% of each payment received under s. 77.84 (3) (b), 77.87 (3) or 77.88 (7) to the treasurer of the municipality in which is located the land to which the payment applies.

(2) **PAYMENT TO COUNTIES.** Each municipal treasurer shall pay 20% of each payment received under sub. (1) or s. 77.84 (2) (a) or 77.85 to the county treasurer and shall deposit the remainder in the municipal treasury. The payment to the county treasurer for money received before November 1 of any year shall be made on or before the November 15 after its receipt. For money received on or after November 1 of any year, the payment to the county treasurer shall be made on or before November 15 of the following year.

(3) **CONSERVATION FUND CREDIT.** The municipal treasurer shall pay all amounts received under s. 77.84 (2) (b) to the county treasurer, as provided under ss. 74.25 and 74.30. The county treasurer shall, by June 30 of each year, pay all amounts received under this subsection to the department. All amounts received by the department shall be credited to the conservation fund and shall be reserved for land acquisition and resource management activities.

History: 1985 a 29; 1987 a 378; 1991 a 39.

**77.90 Right to hearing.** A petitioner under s. 77.82 or an owner of managed forest land who is adversely affected by a decision of the department under this subchapter is entitled to a contested case hearing under ch. 227.

History: 1985 a 29

**77.905 Procedure in forfeiture actions.** The procedure in ss. 23.50 to 23.85 applies to actions to recover forfeitures brought under this subchapter.

History: 1989 a 79.

**77.91 Miscellaneous provisions.** (1) **RULE MAKING; STUMPAGE VALUE.** Each year the department shall promulgate a rule establishing a reasonable stumpage value for the merchant-

able timber grown in the municipalities in which managed forest land is located. If the department finds that stumpage values vary in different parts of the state, it may establish different zones and specify the stumpage value for each zone. The rule shall take effect on November 1 of each year.

(2) **PUBLICATION OF INFORMATION.** (a) The department, with the cooperation of the university of Wisconsin-extension, shall publish and distribute information describing the managed forest land program, including the applicable taxes and penalties and the forestry and resource management practices that are acceptable as part of a management plan.

(b) The department shall prepare, update annually and, by March 31 of each year, offer for sale to the public information describing the location of managed forest land designated as open under s. 77.83.

(3) **STUDY.** The department and the university of Wisconsin-extension shall study and evaluate the first 5 years of the operation of the managed forest land program to determine whether it has achieved the purposes specified under s. 77.80 and shall, before January 1, 1992, submit a report of their findings and recommendations to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3). This subsection applies from July 1, 1989 to December 31, 1991.

(3m) **REPORT TO LEGISLATURE.** Beginning with calendar year 1992, the department shall calculate for each calendar year whether the amount of land exempt from penalty or tax under s. 77.10 (2) (c), 77.16 (11m) or 77.88 (8) that is withdrawn during that calendar year under s. 77.10 or 77.88 or declassified or withdrawn under s. 77.16 (7) exceeds 1% of the total amount of land that is subject to contracts under subch. I or subject to orders under this subchapter on December 31 of that calendar year. If the amount of withdrawn or classified land that is so exempt exceeds 1%, the department shall make a report of its calculations to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

(4) **EXPENSES.** The department's expenses for the administration of this subchapter shall be paid from the appropriation under s. 20.370 (1) (mu).

(5) **RECORDING.** Each register of deeds who receives notice of an order under this subchapter shall record the action as provided under s. 59.51. The department shall pay the register of deeds the fee specified under s. 59.57 (1) (a) from the conservation fund.

(6) **SIGNATURES.** (a) The signature of an official or an employe of the department may be stamped, printed or otherwise reproduced on an order under this subchapter after the official or employe adopts the stamped, printed or otherwise reproduced signature as his or her facsimile signature.

(b) The signature or the facsimile signature under par. (a) of an official or an employe of the department meets the requirements under s. 706.05 (2) (a).

(c) The requirements of s. 706.05 (2) (b) do not apply to orders issued under this subchapter.

History: 1985 a. 29; 1987 a. 186; 1991 a. 39.

## SUBCHAPTER VII

### TEMPORARY RECYCLING SURCHARGE

**77.92 Definitions.** In this subchapter:

(1) "Farming" has the meaning given in section 464 (e) 1 of the internal revenue code.

(3) "Gross tax liability" means a corporation's tax liability under ch. 71, without regard to any tax credit.

(4) "Net business income", with respect to a partnership, means ordinary income from trade or business activities as reported under subch. III of ch. 71. "Net business income", with respect to a natural person, estate or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employe as defined in section 3121 (d) (3) of the internal revenue code.

(5) "Trade or business" has the meaning given in section 1402 (c) of the internal revenue code, except that "trade or business" does not include the following:

- (a) Farming.
- (b) Service performed by a person under section 1402 (c) (4) of the internal revenue code.
- (c) Service performed, not as an employe, by a person under section 1402 (c) (5) of the internal revenue code.

History: 1989 a. 335; 1991 a. 39, 269.

**77.93 Applicability.** For the privilege of doing business in this state, there is imposed a temporary recycling surcharge on the following entities:

(1) All corporations required to file a return under subch. IV or V of ch. 71 for the taxable year except corporations that are exempt from taxation under s. 71.26 (1) and that have no unrelated business income reportable under s. 71.24 (1m). The surcharge is imposed on the tax-option corporation, not on its shareholders, except that if a tax-option corporation's surcharge is delinquent, its shareholders are jointly and severally liable for it.

(2) All natural persons, estates and trusts that are required to file a return under subch. I or II of ch. 71 for the taxable year and that either are an employe as defined in section 3121 (d) (3) of the internal revenue code or file a form indicating a profit or loss from a trade or business for federal income tax purposes for the taxable year. The surcharge is imposed on each such natural person regardless of ch. 766 and regardless of whether or not the person files jointly under ch. 71. The surcharge is not imposed on net business income of individuals for which the surcharge is imposed on a tax-option corporation of which an individual is a shareholder or a partnership of which an individual is a partner.

(3) All partnerships, except partnerships that have net business income only from farming, that are required to file a return under s. 71.20 (1) for the taxable year. The surcharge is imposed on the partnership, not on its partners, except that if a partnership's surcharge is delinquent the partners are jointly and severally liable for it.

(4) All insurers that are required to file a return under subch. VII of ch. 71 for the taxable year.

(5) All natural persons, estates, trusts and partnerships that are engaged in farming. The surcharge is imposed on the partnership, not on its partners, except that if a partnership's surcharge is delinquent the partners are jointly and severally liable for it.

History: 1989 a. 335; 1991 a. 39, 269.

**77.94 Surcharge determination.** (1) Except as provided in subs. (2) and (3), for taxable years ending after April 1, 1991, the surcharge imposed under s. 77.93 is calculated as follows:

(a) On a corporation under s. 77.93 (1) and (4), an amount equal to the amount calculated by multiplying gross tax liability for the taxable year of the corporation by 5.5%, or in the case of a tax-option corporation an amount equal to the amount calculated by multiplying net income under s. 71.34 by 0.4345%, up to a maximum of \$9,800, or \$25, whichever is greater.

(b) On an entity under s. 77.93 (2) or (3), except an entity that has less than \$1,000 of gross receipts, an amount equal to the amount calculated by multiplying net business income as allocated or apportioned to this state by means of the methods under s. 71.04, for the taxable year of the entity by 0.4345%, up to a maximum of \$9,800, or \$25, whichever is greater.

(c) On an entity under s. 77.93 (5), except an entity that has a net farm profit of less than \$1,000, a surcharge of \$25, regardless of whether the entity is subject to a surcharge determined under par. (b).

(2) (a) In this subsection:

1. "Begins to do business" includes but is not limited to a change in corporate form and the occurrence of any event that creates a short taxable year for purposes of the taxes under ch. 71.

2. "Ceases to do business" includes but is not limited to a change in corporate form, the death of an individual and the occurrence of any event that creates a short taxable year for purposes of the taxes under ch. 71.

(b) If an entity under s. 77.93 (1) to (4) begins to do business in this state after the beginning of its taxable year or ceases to do business in this state before the end of its taxable year, subject to the maximum and minimum surcharge, the surcharge imposed on it under s. 77.93 is calculated as follows:

1. Multiply its gross tax liability or net business income for the taxable year by a fraction the numerator of which is 365 and, if the entity begins to do business in this state after the beginning of its taxable year, the denominator of which is the number of days from the day that it begins to do business in this state until the end of its taxable year and, if the entity ceases to do business in this state before the end of its taxable year, the denominator of which is the number of days from the beginning of its taxable year until the day that it ceases to do business in this state and, if the entity both begins to do business in this state after the beginning of its taxable year and ceases to do business in this state before the end of its taxable year, the denominator of which is the number of days from the day that it begins to do business in this state to the day that it ceases to do business in this state.

2. Determine the surcharge that would be imposed under sub. (1) on the amount calculated under subd. 1.

3. Divide the surcharge under subd. 2 by the fraction under subd. 1.

(3) For taxable years that end after April 1, 1992, and end before April 1, 1999, the rates for the surcharge imposed under s. 77.93 are determined under s. 77.945.

(4) The surcharge imposed under s. 77.93 does not apply to taxable years that end after April 1, 1999.

History: 1989 a. 335; 1991 a. 39, 60.

**77.945 Surcharge adjustments.** Annually, in December, the department of revenue shall estimate the amount of revenue necessary to fund all appropriations for the next fiscal year from the recycling fund under s. 25.49. Subject to approval by the joint committee on finance, the department shall establish annual recycling surcharge rates for taxable years that end after April 1, 1992, and that end before April 1, 1999, that are necessary to generate a sufficient level of revenue to fund those appropriations in each fiscal year.

History: 1991 a. 60.

**77.95 Interest and penalties.** The interest and penalty provisions under ss. 71.82 (1) (a) and (b) and (2) (a) and (b), 71.83 (1) (a) 1, 2 and 7 and (b) 1, (2) (a) 1 to 3 and (b) 1 to 3 and (3) and 71.85, as they apply to the taxes under ch. 71, apply to the surcharge under this subchapter, including the estimated surcharge under s. 77.96 (2).

History: 1989 a. 335; 1991 a. 39.

**77.96 Administration. (1)** An entity's taxable year for the surcharge under this subchapter is the same as the entity's taxable year for the taxes under ch. 71.

(2) The surcharge under this subchapter is due on the date on which the entity's return under ch. 71 is due. If a taxpayer receives an extension for the return under ch. 71, the taxpayer shall, on or before the unextended due date for the return under ch. 71, pay an estimated surcharge under this subchapter based on the taxpayer's gross tax liability or net business income for the previous year. The department of revenue shall refund or bill the taxpayer for the difference between that payment and the amount due.

(3) The department of revenue shall levy, enforce and collect the surcharge under this subchapter.

(4) Sections 71.74 (1) to (3), (6), (7) and (9) to (15), 71.75 (1), (2), (4), (5) and (6) to (10), 71.76, 71.77, 71.78 (1) to (8), 71.80 (1) (a) to (d), (3), (3m), (6), (8) to (12), (14) and (18), 71.87, 71.88, 71.89, 71.90, 71.91 and 71.93, as they apply to the taxes under ch. 71, apply to the surcharge under this subchapter.

(5) Each person subject to a surcharge under s. 77.93 shall, on or before the due date under sub. (2), file with the department of revenue, on a form prescribed by the department, an accurate statement of its gross tax liability or net business income.

(6) The department of revenue shall refer to the surcharge under this subchapter as the temporary recycling surcharge.

History: 1989 a. 335; 1991 a. 39, 269, 315.

**77.97 Use of revenue.** The department of revenue shall deposit the surcharge, interest and penalties collected under this subchapter in the recycling fund under s. 25.49.

History: 1989 a. 335; 1991 a. 39.