

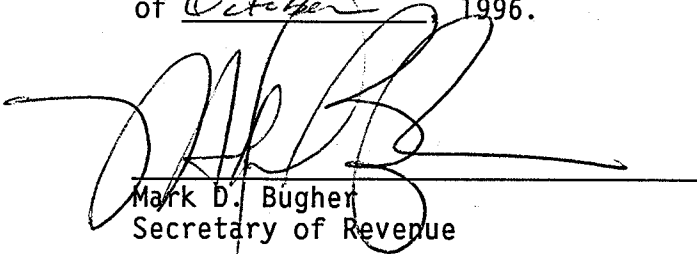
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

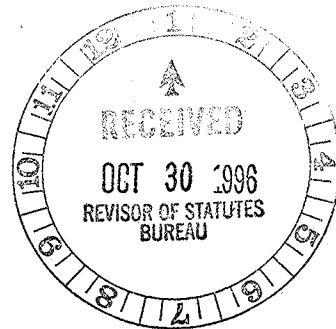
I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records, certify that the annexed rule, relating to sales and use taxes, was duly approved and adopted by this department on October 29, 1996.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 29th day of October 1996.


Mark D. Bugher
Secretary of Revenue

CKRUL/334



1-1-97

ORDER OF THE DEPARTMENT OF REVENUE
RENUMBERING, RENUMBERING AND AMENDING, AMENDING,
REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to: renumber Tax 11.28(2)(intro.), (b), (c) and (e) and Tax 11.87(1)(b), (c), (d), (e), (f) and (g); renumber and amend Tax 11.28(2)(a) and (d) and Tax 11.87(1)(a); amend Tax 11.28(title), (1)(a), (2)(title), (3)(b), (4)(c) and (5), Tax 11.46(5) (intro.), Tax 11.51(1) and (2)(a) and (b) and Tax 11.87(3)(a), (d) and (e); repeal and recreate Tax 11.28(3)(c) and Tax 11.46(3)(c); and create Tax 11.28(2)(a)(title) and Tax 11.87(1)(a), relating to Wisconsin sales and use taxes.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(14), 77.52(14), 77.53(11), 77.54(20) and 77.56(3), Stats.

SECTION 1. Tax 11.28(title), relating to gifts and other advertising specialties given away, is amended to more generally reflect the content of the rule.

Tax 11.28(1)(a), relating to definitions of "sale" and related terms, is amended to conform punctuation to Legislative Council Rules Clearinghouse standards.

Tax 11.28(2)(title), relating to gifts and sales incentive plans, is amended to more clearly reflect the text of the subsection.

SECTIONS 2, 3 AND 4. Tax 11.28(2)(intro.), relating to gifts, is renumbered Tax 11.28(2)(a) and a title is created, to conform to Legislative Council Rules Clearinghouse standards. Similarly, Tax 11.28(2)(a) through (e) are renumbered Tax 11.28(b) through (f).

Tax 11.28(2)(b), as renumbered, relating to the purchase of grand opening gifts, is amended to reflect:

a. The department's current position with respect to determining whether a retailer has accepted an exemption certificate in "good faith."

b. Section 77.56(3), Stats., which provides an exemption from use tax for property purchased without tax for resale which is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

c. Correct punctuation, per Legislative Council Rules Clearinghouse standards.

Tax 11.28(2)(e), as renumbered, relating to purchases of awards, is amended to create a title and to change punctuation, to conform to Legislative Council Rules Clearinghouse standards.

SECTION 5. Tax 11.28(3)(b), relating to cents-off coupons, is amended to conform punctuation to Legislative Council Rules Clearinghouse standards.

SECTION 6. Tax 11.28(3)(c), relating to items redeemed from a retailer, is repealed and recreated to reflect the department's current position that a resale exemption applies to property given away with a required purchase of another item, regardless of whether the item purchased is subject to, or exempt from, Wisconsin sales tax. There is no provision in the sales and use tax law that supports the position that a resale exemption is not allowed based on whether the related property purchased is taxable or exempt.

SECTION 7. Tax 11.28(4)(c), relating to items given away, is amended to clarify the department's position that food products given away are not subject to tax, assuming exemption applies under s. 77.54(20), Stats.

Tax 11.28(5), relating to trading stamps, is amended to conform language to Legislative Council Rules Clearinghouse standards.

SECTION 8. Tax 11.46(3)(c), relating to sales by summer camps, is repealed and recreated to clarify that groceries sold at camps, which are not subject to tax, are only those that are exempt from tax under s. 77.54(20), Stats.

SECTION 9. Tax 11.46(5)(intro.), relating to combined charges, is amended to conform grammar, punctuation and style to Legislative Council Rules Clearinghouse standards.

SECTION 10. Tax 11.51(1), relating to sales by grocers, is amended to reflect the proper reading of s. 77.54(20), Stats., which in no way requires that, for food, food products, and beverages to be exempt from tax, they must be used in the "home preparation of meals." The statute provides that food, food products, and beverages sold for direct consumption on the premises of the seller are subject to tax.

Tax 11.51(2)(a) and (b), relating to sales by grocers, are amended to reflect the Wisconsin Tax Appeals Commission decision in *Artesian Water Company v. Wisconsin Department of Revenue* (April 8, 1994), which held that bottled water was exempt from Wisconsin sales or use tax. Section 77.54(20)(b), Stats., specifically excludes from exemption soft drinks and soda water beverages (which would include carbonated or flavored bottled water).

Both subunits are also amended to conform punctuation and style to Legislative Council Rules Clearinghouse standards.

SECTIONS 11, 12 AND 13. Tax 11.87(1)(a) through (g), relating to sales of meals, are renumbered Tax 11.87(1)(b) through (h) and Tax 11.87(1)(a) is created to reflect the amendment to s. 77.54(20)(c)4, Stats., by 1993 Wisconsin Act 332, which exempted from sales or use tax meals sold on premises by community-based residential facilities. Tax 11.87(1)(b) as renumbered is amended to clarify that whether food is exempt from tax is determined under s. 77.54(20), Stats.

SECTION 14. Tax 11.87(3)(a), relating to sales of meals, is amended to reflect the amendment to s. 77.54(20)(c)4, Stats., by 1993 Wisconsin Act 332, which exempted from sales or use tax meals sold on premises by community-based

residential facilities.

Tax 11.87(3)(d) is amended to reflect the proper reading of s. 77.54(20), Stats., which in no way requires that, for food, food products, and beverages to be exempt from tax, they must be used in the "home preparation of meals." The statute only requires that food, food products, and beverages sold for direct consumption on the premises of the seller are subject to tax.

Tax 11.87(3)(e) is amended to correct terminology.

SECTION 1. Tax 11.28(title), (1)(a) and (2)(title) are amended to read:

Tax 11.28(title) GIFTS AND OTHER ADVERTISING SPECIALTIES. (ss. 77.51(4)(a) and (14)(k) and 77.56(3), Stats.)

(1)(a) Section 77.51(14)(k), Stats., provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms includes the sale of tangible personal property to a purchaser even though the property may be used or consumed by another person to whom the purchaser transfers the property without valuable consideration, such as gifts and other advertising specialties distributed gratis apart from the sale of other tangible personal property or services.

(2)(title) GIFTS AND SALES INCENTIVE PLANS.

SECTION 2. Tax 11.28(2)(intro.) is renumbered Tax 11.28(2)(a).

SECTION 3. Tax 11.28(2)(a)(title) is created to read:

Tax 11.28(2)(a)(title) General.

SECTION 4. Tax 11.28(2)(a), (b), (c), (d) and (e) are renumbered Tax 11.28(2)(b), (c), (d), (e) and (f) and Tax 11.28(2)(b) and (e) as renumbered are amended to read:

Tax 11.28(2)(b) Grand opening gifts. A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event, such as an open house, celebrity appearance or "farm days," cannot accept a resale certificate in good faith if the seller is

aware, or should be aware ~~with the exercise of reasonable diligence~~, of how the property will be used. ~~The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in this volume.~~ In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person seller furnishing the property to the retailer without charge is subject to the sales or use tax ~~pursuant to s. Tax 11.14(2)(e)~~ on its cost of the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

(e)(title) Awards. Persons transferring tangible personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of the property.

SECTION 5. Tax 11.28(3)(b) is amended to read:

Tax 11.28(3)(b)(title) Cents-off coupons redeemable by manufacturers. A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. The coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon, less any coupon handling fees paid by the manufacturer.

SECTION 6. Tax 11.28(3)(c) is repealed and recreated to read:

Tax 11.28(3)(c) Coupons issued and redeemable by retailers. 1. When a retailer distributes coupons which its customer may use to obtain free tangible personal property, the following shall apply:

a. When purchasing tangible personal property which will be given away to customers who must purchase other property to obtain the free property, a retailer may use a resale certificate to purchase the free property without

payment of the sales tax, since the transaction is deemed a sale of both the free property and the other property. The sale of the free property and other property by the retailer is subject to Wisconsin sales or use tax, unless an exemption applies.

b. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the use tax based on the cost of the property.

Examples: 1) A retailer knows key chains it purchases will be given away to customers when those customers purchase gasoline, food items, or other tangible personal property. The retailer may purchase the key chains without Wisconsin sales tax by giving a resale certificate to its supplier.

2) A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier a resale certificate, the retailer is liable for tax measured by the cost of the key chains given away.

2. The taxable gross receipts of retailers, who issue cents-off coupons which reduce the price of merchandise they sell, and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

SECTION 7. Tax 11.28(4)(c) and (5) are amended to read:

Tax 11.28(4)(c) ~~Except for meals, retailers~~ Retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies. ~~No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.~~

Note to Revisor: Insert the following example after sub. (4)(c):

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods (rolls, bagels, muffins, bread), ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A's customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods (rolls, bagels, muffins, bread), ground coffee beans, and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items not for direct consumption on the premises of the vendor under s. 77.54(20), Stats. Motel A's purchases of the napkins, plastic utensils, and paper plates and cups are subject to sales or use tax because no exemption applies.

(5) TRADING STAMPS. (a) Furnishing trading stamps and stamp books, with or without a charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of ~~such~~ the material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts ~~shall~~ may not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of ~~such~~ the stamps.

SECTION 8. Tax 11.46(3)(c) is repealed and recreated to read:

Tax 11.46(3)(c) Food, food products and beverages as defined in s. 77.54(20)(a) and (b), Stats., excluding those food, food products and beverages listed in s. 77.54(20)(c), Stats., sold at a camp for consumption off the premises of the camp. "Off the premises of the camp" means a location outside the boundaries of the camp.

SECTION 9. Tax 11.46(5)(intro.) is amended to read:

Tax 11.46(5)(intro.) An allocation between taxable and exempt receipts shall be made when a single, combined, charge is made for all the privileges extended by a camp. Adequate records shall be kept ~~and~~ maintained to enable the proper allocation; otherwise, the total charge shall be taxable. For purposes of allocating, the following shall apply:

SECTION 10. Tax 11.51(1) and (2)(a) and (b) are amended to read:

Tax 11.51(1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption ~~necessary for the home preparation of meals~~ off the premises of the grocer. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages, including bases or concentrates to produce soft drinks and fruit drinks, beer, intoxicating liquors, candy, paper products and detergents. The following lists in sub. (2)(a) and (b) shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

Note to Revisor: Amend only the following portions of the alphabetical lists in sub. (2)(a) and (b):

(2)(a) . . .

Cameras and supplies.

Can openers.

Candied fruits.

Candy.

Candy apples.

Canning and freezer supplies.

~~Can-openers.~~

. . .

Water, ~~bottled, sparkling, spring and distilled~~ carbonated or flavored.

Water conditioners.

Wax paper.

Waxing.

~~Wax-paper.~~

. . .

(b) . . .

Granola bars, ~~see par. (a)~~ except candy or yogurt coated.

. . .

Pasta.

Peanut butter.

Peanuts, in shell or canned, salted or not, ~~see par. (a)~~ except candy or yogurt coated.

~~Peanut butter.~~

. . .

Raisins, ~~see par. (a)~~ except candy or yogurt coated.

. . .

Waffle mix.

Water, uncarbonated and unflavored.

Yeast.

. . .

SECTION 11. Tax 11.87(1)(a) is renumbered Tax 11.87(1)(b) and amended to read:

Tax 11.87(1)(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20), Stats.

SECTION 12. Tax 11.87(1)(a) is created to read:

Tax 11.87(1)(a) "Community-based residential facility" has the meaning in s. 50.01(1g), Stats.

SECTION 13. Tax 11.87(1)(b), (c), (d), (e), (f) and (g) are renumbered Tax 11.87(1)(c), (d), (e), (f), (g) and (h).

SECTION 14. Tax 11.87(3)(a), (d) and (e) are amended to read:

Tax 11.87(3)(a) Health care facilities. Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities or day care centers

registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption does not apply.

(d) Groceries. Sales of ~~the basic food items~~ food, food products and beverages for human consumption ~~purchased for the home preparation of meals~~ exempt from tax under s. 77.54(20), Stats. This includes sales of prepackaged ice cream, ice milk or sherbet in pint or larger sizes, whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of these products are taxable. Sales of ice cream, ice milk, sherbet or yogurt as cones, sundaes, sodas, shakes and frozen chocolate bars made from these products are taxable.

Note to Revisor: Insert the following note after sub. (3)(d):

Note: See s. Tax 11.51 for more information.

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

Note to Revisor: Replace the note at the end of Tax 11.87 with the following:

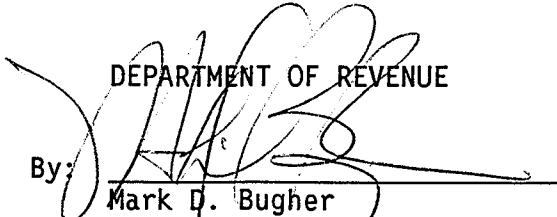
Note: The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chapter 250, Laws of 1977; (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; and (c) Sales of meals by community-based residential facilities on their premises became exempt on June 1, 1994, pursuant to 1993 Wis. Act. 332.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

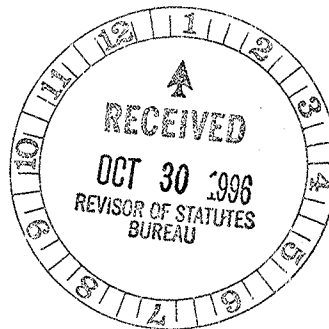
Final Regulatory Flexibility Analysis

The rule order does not have a significant economic impact on a substantial number of small businesses.

Dated October 29, 1996

DEPARTMENT OF REVENUE
By: 
Mark D. Bugher
Secretary of Revenue

CKRUL/207



LRB or Bill No./Adm. Rule No.

Tax 11.28, 11.46, 11.51 and 11.87

Amendment No. if Applicable

**FISCAL ESTIMATE
DOA-2048 N(R10/94)**

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Sales and Use Tax Treatment of Gifts and Advertising Specialties, and the Sale of Food and Beverages

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule order updates the Department of Revenue's Administrative Code with respect to the sales and use tax.

Section 5 amends Tax 11.28 (2)(b) to provide an exemption for property purchased for resale which is donated to an exempt entity. Section 8 amends Tax 11.46 (3)(c) to clarify that groceries sold to campers by summer camps are exempt. Section 9 modifies Tax 11.51 (1) to reflect the Department's position that food and beverages do not have to be used in home preparation of meals in order to be exempt. This section also makes changes to Tax 11.51 (2)(a) and (b) which reflect a Wisconsin Tax Appeals Commission decision on the sales tax treatment of bottled water. Section 13 amends Tax 11.87 (3)(a) to reflect 1993 Wisconsin Act 332, which exempts meals sold at community-based residential facilities.

Other rule sections rename or create titles, clarify existing language to conform to the Department's current position, correct terminology, renumber and create rule sections to accommodate other rule changes, and modify punctuation, style and format to conform with Legislative Council Rules Clearinghouse standards.

It is anticipated that these changes will have no significant fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue

Craig Kammholz, (608) 261-8984

Authorized Signature/Telephone No.

Yeang-Eng Braun
(608) 266-2700

Yeang Eng Braun

Date

5/23/96



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

October 29, 1996

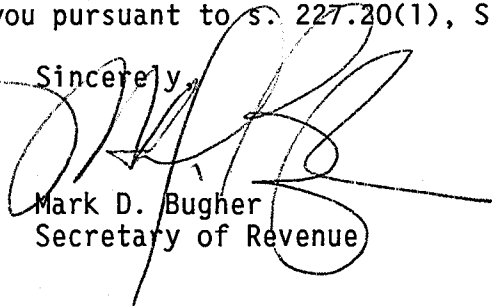
Douglas La Follette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary La Follette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 96-091.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,

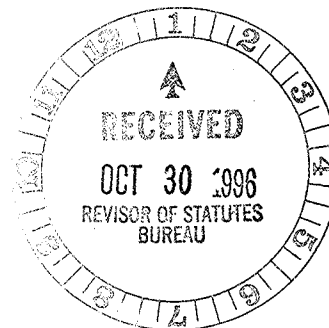


Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKRUL/330

Enclosure

cc: Deputy Revisor





State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

October 29, 1996

Gary L. Poulson
Deputy Revisor
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

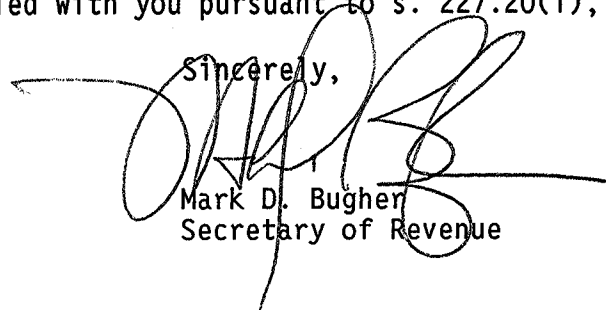
Re: Clearinghouse Rule 96-091

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use taxes.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKRUL/331

Enclosure

cc: Douglas J. La Follette, Secretary of State
Commerce Clearing House, Inc.
Research Institute of America, Inc.

