

Clearinghouse Rule 10-094

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 11.13 (6) (a) 3m.; **renumber** Tax 11.92 (7) and 11.945 (1) (a) to (c); **amend** Tax 11.002(2) (d), 11.03 (2) (a) 1., 3., 4., and 5. and (b) 1. and 2., (3) (a), and (4) (a), 11.05 (2) (a), (d), (e), (f), (k), and (s), (3) (d), (L), (n), and (y), and (4) (e), 11.08 (2) (b) 2., (4) (b), and (5), 11.09 (1) (b) and (2), 11.11 (3) (a) 3., (b) 1. (intro.) and b., (c), and (d) 1., (4) (a), and (5) (b), 11.12 (2) (a), (c), (d), (f), (h), (i), and (k) 1. and 2. e., (4) (a) (intro.), 3., 4. b. and d., 5. a., 6., and 7. b. and (b) 2. and 5., (5), and (6) (a) 2. and (b) (intro.), 11.13 (6) (a) 2. and 3., (b) (intro.), 2., and 3., and (c), 11.14 (2) (c), (3) (a), (4) (b), (5) (a), (6) (a), (7) (a), (9), and (12) (a), 11.15 (1) (title), (a), (b), and (c) 1. to 5., 7., and 12., (2) (title) and (j), (3) (a), (4), and (5), 11.16 (1) (a), (am), (b), (e), and (g), (2) (a) and (c) 1. and 2., and (3) (a), 11.17 (1), (2), (3), and (4) (title) and (a) 2. and 3., 11.18 (2) (b), 11.19 (1) and (2) (a) and (d), 11.26 (1) (a), (2) (c) and (d), and (3) (b), 11.28 (2) (f) and (3) (c) 1. a. and b., 11.30 (2) (a) and (d) 1., 11.32 (2), 11.33 (4) (c), 11.34 (3) (d), 11.35 (4) (b), (6) (b), and (7), 11.40 (4), 11.41 (2) (a) (intro.) and 15. and (3) (a) (intro.), 11.46 (1) (a), (2) (intro.), and (3) (intro.), 11.51 (3) (a) 2., (d) 3., and (e) 2. and (5), 11.535 (2) (c), 11.61 (1) (a) (intro.), (b) (intro.), and (c) 1. and (2) (a) and (b) 1., 11.65 (5), 11.66 (2) (intro.), 11.67 (1), (2) (b), and (3) (d) (title), 1., and 2., 11.68 (6) (f) and (7) (b), 11.70 (2) (c) and (e), 11.78 (title) and (1) (g), 11.80 (2) (b) and (3) (a), 11.83 (2) (title), 11.87 (2) (a) and (j) and (3) (a), 11.94 (3) (a), 11.945 (2) (b), 11.97 (8), and 11.985 (1) (c) 3.; **repeal and recreate** Tax 11.14 (4) (c), 11.34 (4), 11.41 (2) (a) 4., 11.46 (5), and 11.945 (3); and **create** Tax 11.002 (3) (am), 11.41 (3) (a) 3. and (b) 9., 11.46 (2) (c), 11.61 (1) (a) 4. and (2) (b) 3., 11.67 (3) (d) 3., 11.83 (2) (e), 11.92 (7) (b), and 11.945 (1) (a) and (b); **relating to** sales and use tax.

Analysis by the Department of Revenue

Statutes interpreted: ss. 73.03 and 77.51 to 77.79, Stats.

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

Explanation of agency authority: Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: This proposed rule order does the following:

- Reflects recent law changes relating to sales and use tax.
- Makes various other changes to improve readability.
- Adds examples where needed for clarification purposes.
- Updates certain department procedures to follow, such as the various methods to register to collect Wisconsin sales or use tax and how to inactivate a seller's permit.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by this rule order.

Comparison with rules in adjacent states:

Minnesota, Michigan, and Iowa administer their sales and use tax laws in a manner consistent with Wisconsin. These states do this through a combination of statutory provisions and administrative rules.

Illinois does not administer its sales and use tax laws in a manner substantively consistent with Wisconsin.

Summary of factual data and analytical methodologies: 2009 Wisconsin Acts 2, 28, 204, and 330 adopted statutory changes to Wisconsin's sales and use tax statutes. The department has created this proposed rule order to properly reflect these changes in Wisconsin's sales and use tax laws.

Analysis and supporting documents used to determine effect on small business: As explained above, this proposed rule order is created to reflect changes in Wisconsin's sales and use tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed rule order does not have a significant effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this proposed rule order.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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SECTION 1. Tax 11.002 (2) (d) is amended to read:

Tax 11.002(2)(d) *Local exposition registration.* Every person selling lodging, alcoholic beverages, as defined in s. 77.51 (1b), Stats., if the alcoholic beverages are for consumption on the retailer's premises, candy, as defined in s. 77.51 (1fm), Stats., prepared food, as defined in s. 77.51 (10m), Stats., and soft drinks, as defined in s. 77.51 (17w), Stats., or renting automobiles subject to local exposition district taxes shall register with the department. Upon registration for local exposition district taxes, a separate seller's permit or use tax registration certificate only for local exposition district taxes will not be issued. The seller's permit or use tax

registration certificate, as described in pars. (a) and (b), issued for sales and use tax purposes will apply for local exposition district tax purposes.

Note to LRB: Delete the note at the end of Tax 11.002 (2) (d).

SECTION 2. Tax 11.002 (3) (am) is created to read:

Tax 11.002 (3) (am) 1. A person required to have a seller's permit or use tax certificate may also use the Streamlined Sales Tax Governing Board's Central Registration System (SSTGBCRS) to register for Wisconsin sales and use tax purposes. The information submitted using the SSTGBCRS is obtained by the department on a daily basis and will be used to automatically register a person in Wisconsin. If the department determines that additional information is necessary to process the registration, a person will be contacted by the department.

2. Except for a seller who uses a certified service provider, a seller who registers through the SSTGBCRS may indicate at the time of registration that it anticipates making no taxable sales in Wisconsin and is not required to file a sales and use tax return in Wisconsin until such time as the seller makes a taxable sale that is sourced to Wisconsin. However, once the seller makes a taxable sale in Wisconsin, the seller is required to file a sales and use tax return in Wisconsin by the last day of the month following the end of the calendar quarter in which the sale occurred and continue to file returns by the last day of each calendar quarter thereafter, unless they are notified in writing by the department of a different filing frequency.

Notes to LRB: 1) Amend the note at the end of Tax 11.002 as follows:

Note: Section Tax 11.002 interprets ss. 66.0615 (1m) (f), 77.52 (9) and (12), 77.53 (9) and (9m), 77.58 (2) (d), 77.61 (2), 77.982 (4), 77.991 (4) and 227.116, Stats.

2) Add a second note to the end of Tax 11.002 as follows:

Note: Section Tax 11.002 (3) (am) interprets s. 77.58 (2) (d), Stats., which became effective May 27, 2010.

SECTION 3. Tax 11.03 (2) (a) 1., 3., 4., and 5. and (b) 1. and 2., (3) (a), and (4) (a) are amended to read:

Tax 11.03 (2) (a) 1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers, or similar publications.

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

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

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

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

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

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

(4) (a) Public schools, technical colleges, state colleges and universities, and public school districts, located in Wisconsin. An exemption certificate or a purchase order shall be acceptable evidence of a sale's exempt status.

SECTION 4. Tax 11.05 (2) (a), (d), (e), (f), (k), and (s), (3) (d), (L), (n), and (y), and (4) (e) are amended to read:

Tax 11.05 (2) (a) Admissions to facilities if the activity being conducted at the facility is amusement, athletic, entertainment, or recreational in nature, except as provided in sub. (3) (r), (s), and (y).

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums, and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature, except as provided in sub. (3) (r), (s), (y), and (zg).

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

(f) Sales of maps, plat books, photocopies, or other printed material, except as provided in sub. (3) (q).

(k) Sales of soft drinks and alcoholic beverages, including sales of these items by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., and day care centers any facility certified or licensed under ch. 48, Stats., to patients, employees or guests.

(s) The sales price received for landscaping and lawn maintenance services, including weed cutting in lawn and garden areas and along highways, streets, and walkways, but not charges for damages described in sub. (3) (c).

(3) (d) Rental of buildings or space, such as offices, warehouses, and meeting rooms, used for activities which are not amusement, athletic, entertainment, or recreational in nature.

(L) Food and food ingredients, except soft drinks, ~~and alcoholic beverages~~ sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., ~~and day care centers~~ any facility certified or licensed under ch. 48, Stats., on their premises to patients, employees, residents or guests such as day care centers, child placement agencies, residential care centers, foster homes, treatment foster homes, group homes and shelter care facilities; and, including prepared food sold to the elderly or handicapped by "mobile meals on wheels." Sales of alcoholic beverages by these organizations are taxable.

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

(y) The sale or furnishing the use of recreational facilities on a periodic basis or other recreational rights, including but not limited to, membership rights, vacation services, and club memberships, in connection with the sale or use of time-share property, if the facilities or rights are not available to persons who have not purchased the time-share property, other than guests.

(4) (e) Purchases, including lodging, meals, or uniforms, by employees of a governmental unit are not exempt, whether or not the employee is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental unit, receives from the governmental unit a document as described in par. (b), and keeps a copy of both documents.

Note to LRB: Amend the second note at the end of Tax 11.05 as follows:

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

identification tags and standard samples by the Wisconsin department of agriculture, trade and consumer protection became effective October 1, 1993, pursuant to 1993 Wis. Act 16; (p) The exemption for fuel used in farming became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (q) The requirement that meals must be served on the premises of hospitals, nursing homes, etc., for exemption to apply became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (r) The exemption for sales to a local exposition district became effective April 26, 1994, pursuant to 1993 Wis. Act 263; (s) The exemption for sales of meals by community-based residential facilities became effective June 1, 1994, pursuant to 1993 Wis. Act 332; (t) The exemption for sales to the University of Wisconsin Hospitals and Clinics Authority became effective July 29, 1995, pursuant to 1995 Wis. Act 27; (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; (v) The exemption for electricity sold for use in farming was expanded to include sales of electricity during the entire year, effective for sales on or after May 1, 2000, pursuant to 1999 Wis. Act 9; (w) The exemption for sales from the collection of public benefit fees became effective October 29, 1999, pursuant to 1999 Wis. Act 9; (x) The exemption for use of recreational facilities in connection with the sale of time-share property became effective December 1, 1999, pursuant to 1999 Wis. Act 9; (y) The exemption for certain items sold from a vending machine became effective July 1, 2001, pursuant to 1999 Wis. Act 9; (z) The exemption for fuel consumed in manufacturing became effective January 1, 2006, pursuant to 2003 Wis. Act 99; (zb) The exemption for regional transit authorities and the Wisconsin Home Health Care Authority became effective July 1, 2009, pursuant to 2009 Wis. Act 28; ~~(zf)~~ (ze) The exemption for federally recognized American Indian tribes or bands in Wisconsin became effective August 1, 2009, pursuant to 2009 Act 28; ~~(zk)~~ (zh) The requirement that governmental units collect sales tax on their sales of used motor vehicles became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~(zp)~~ (zL) The exemption for low-income assistance fees became effective July 1, 2005, pursuant to 2005 Wis. Act 141; ~~(zs)~~ (zp) The exemption for certain admissions to sports activities by governmental units became effective July 1, 2009, pursuant to 2009 Wis. Act 28; ~~(zw)~~ (zr) The exemption for the police and fire protection fee became effective July 1, 2009, pursuant to 2009 Wis. Act 28; ~~and (zy)~~ (zu) The change of the term “gross receipts” to “sales price” and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (zy) The exemption for sales of food and food ingredients, except soft drinks, by any facility certified or licensed under ch. 48, Stats., became effective May 6, 2010, pursuant to 2009 Wis. Act 204.

SECTION 5. Tax 11.08 (2) (b) 2., (4) (b), and (5) are amended to read:

Tax 11.08 (2) (b) 2. Durable medical equipment is not for use in a person's home if it is purchased by a hospital, clinic, nursing home, assisted living center, convalescent home, dental office, chiropractor or optician's office. In addition, purchases of durable medical equipment by a nursing home, assisted living center, and convalescent home are not for use in a person's home even if the equipment is purchased for use by the residents of the nursing home, assisted living center, or convalescent home.

Notes to LRB: 1) Amend the note at the end of Tax 11.08 (2) (c) as follows:

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility-enhancing equipment₁ and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

2) Amend the note at the end of Tax 11.08 (3) (b) as follows:

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility-enhancing equipment₁ and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

(4) (b) A device is "worn in or on the body" if the device is implanted or attached so that it becomes part of the body or if it is carried by the body and does not hinder the mobility of the individual. Items that are attached to the body, but are either stationary or placed on a pole, cart₁ or other device that makes them portable are durable medical equipment and not prosthetic devices. Therefore, these items are only exempt if they are purchased for use in a person's home.

Notes to LRB: 1) Amend the note at the end of Tax 11.08 (4) (c) as follows:

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility-enhancing equipment₁ and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

2) Amend the second note at the end of Tax 11.08 (4) (d) as follows:

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility-enhancing equipment₁ and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

(5) PARTS, ACCESSORIES AND SERVICE. The sales price from the sale of repair and replacement parts, accessories₁ and services to the exempt property identified in s. 77.54 (22b), Stats., is also exempt.

SECTION 6. Tax 11.09 (1) (b) and (2) are amended to read:

Tax 11.09 (1) (b) It is intended for use in diagnosing, curing, mitigating, treating₁ or preventing a disease.

(2) ITEMS WHICH ARE DRUGS. Drugs include the following items described in sub. (1):

Acne medications.

Alcohol (rubbing).

Analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.).

Antacids.

Antibiotic creams and ointments.

Antifungal creams and sprays.
 Antihistamines.
 Antiseptics (betadyne, iodine).
 Birth control (pills and patches and implants).
 Burn remedies.
 Contraceptives (creams, gels, foams, and medicated condoms).
 Cold and cough medicines, drops, and lozenges.
 Contact lens solutions.
 Decongestants.
 Dermal fillers (injectable).
 Dialysis dialysate solution.
 Diaper rash creams.
 Enema preparations.
 Eye drops.
 Gases — medical grade (air, carbon dioxide, helium, nitrogen, oxygen).
 Hand sanitizers.
 Hydrogen peroxide.
 Insulin.
 Laxatives.
 Lip balm.
 Nutrition formulas (enteral and parenteral with a drug facts label).
 Oxygen.
 Prescription medicines.
 Radioactive isotopes.
 Rubs, mentholated.
 Sleeping pills.
 Smoking cessation products such as ~~Nicorette gum~~ gums, lozenges, and patches that contain nicotine.
 Sterile water (for injections).
 Sterile normal saline .9% (IV or irrigation).
 Vaccines.
 Yeast infection medications.

Notes to LRB: 1) Amend the note at the end of Tax 11.09 (2) as follows:

Note: A listing that contains numerous items and descriptions of items that have been categorized as drugs, durable medical equipment, mobility-enhancing equipment, and prosthetic devices can be found in the Streamlined Sales Tax Governing Board, Inc.'s Rules and Procedures, available at www.streamlinedsalestax.org.

2) Amend the first note at the end of Tax 11.09 (5) as follows:

Note: For exemption of ~~medicines~~ drugs used on farm livestock or other animals, refer to ss. Tax 11.12 and 11.61.

3) Amend the note at the end of Tax 11.11 (2) as follows:

Note: Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines, and pipelines, approved

by the department, write to Wisconsin Department of Revenue, Manufacturing and Utility Section, PO Box 8971, Madison WI 53708-8971; telephone (608) 266-8162; send an e-mail to utility@revenue.wi.gov; or access the department's internet web site at www.revenue.wi.gov/contact/slfbmta.html.

SECTION 7. Tax 11.11 (3) (a) 3., (b) 1. (intro.) and b., (c), and (d) 1., (4) (a), and (5) (b) are amended to read:

Tax 11.11 (3) (a) 3. The collection system throughout the area served by the treatment facility, the effluent pipeline carrying the treated sewage away from the central treatment plant, earthen dikes, and chain link fences on the boundary of a treatment plant, and dredge material disposal sites are not exempt. The collection systems includes the lift stations, force mains, and associated pumping equipment used to bring the raw sewage to the central treatment plant.

(b) 1. (intro.) A facility constructed by a municipality to meet mandates of ch. 287, Stats., regarding the reuse, recycling, and recovery of waste material to reduce the need for waste disposal is exempt if the activities include all of the following:

b. Processing recyclable materials which may include removing contaminants, baling paper, shredding paper, pelletizing plastics, and crushing glass.

(c) *Sanitary landfill.* A sanitary landfill, including the treatment equipment, such as the collection and burner system, laboratory equipment, maintenance buildings, garages, office buildings, fences, and gates, qualifies for exemption.

(d) 1. A municipal facility constructed to treat hazardous or contaminated groundwater, including oil and water separators, air strippers, aerators, blowers, filters, carbon units, controls, thermal oxidizers, and pumps, qualifies for exemption.

(4) (a) The repair, service, alteration, cleaning, painting, and maintenance of a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m), and a municipal waste treatment facility described in sub. (3) as well as the repair parts and replacement for those types of facilities are exempt from the sales and use tax.

(5) (b) *Taxable purchases.* A contractor's purchases of items used or consumed in the performance of the construction contract, and which do not become a component part of the waste treatment facility, are subject to the tax. This includes industrial gases, form lumber, tunnel shields, and supplies used by a contractor during construction. Payments by a contractor for equipment purchased or leased to perform a construction job are also taxable.

SECTION 8. Tax 11.12 (2) (a), (c), (d), (f), (h), (i), and (k) 1. and 2. e., (4) (a) (intro.), 3., 4. b. and d., 5. a., 6., and 7. b. and (b) 2. and 5., (5), and (6) (a) 2. and (b) (intro.) are amended to read:

Tax 11.12 (2) (a) "Animal bedding" used in farming means disposable loose materials, including straw, shavings, sawdust, leaves, sand, and shredded paper, used where an animal may lie, to promote cleanliness and absorb urine or liquid manure. It does not include nonabsorbent items, including rubber floor mats.

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

(d) "Farm livestock drugs" means any substance or preparation used in the diagnosis, cure, mitigation, treatment₁ or prevention of disease in farm livestock. This includes antibiotics, dewormers, mastitis treatments, medicated shampoos and vaccines in the form of boluses, capsules, feed additives, fluids, pills, powders, ointments₁ and salves. This also includes disinfectants, flea powder and flea sprays, mastitis indicators, teat dips, udder wash₁ and vitamins. "Farm livestock drug" does not include drugs for work stock, horses used in racing, pleasure riding₁ or show or small domestic animals, including dogs and cats. It also does not include laboratory equipment used by a veterinarian, non-medicated shampoos, non-medicated pet foods, and non-medicated bandages, or plaster of paris that is used to set an animal's broken bone.

(f) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, poultry, domesticated rabbits₁ or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "farming" includes raising earthworms, pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul₁ and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses and llamas for sale; and raising ginseng, mushrooms₁ and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; operating sporting or recreational facilities, such as riding stables or shooting preserves; operating stockyards, slaughterhouses₁ or feed lots as described in par. (g); pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices₁ or syrup.

(h) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants₁ or shrubs, including such operations as greenhouses.

(i) "Horticulture" means the business of producing vegetables, vegetable plants, fruits₁ and nursery stock, including the operation of commercial nurseries and orchards but not businesses which hold stock for purposes other than propagation or growth. "Horticulture" does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(k) 1. "Silviculture" means the business of raising trees for timber, lumber₁ or other wood products. Silviculture includes the logging of timber when it is performed by a person engaged in the business of silviculture and the logging is conducted with respect to that person's silviculture activity. Silviculture does not include pulp or sawmill operations.

2. e. Activities conducted in the forest incidental to the felling, cutting₁ and removal of trees from the forest such as the clearing of the forest to allow access to and removal of the timber from the forest land.

(4) (a) (intro.) Section 77.54 (3) (a), Stats., exempts the sales price from the sales of and the storage, use₁ or other consumption of tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, 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 or items or property under s. 77.52 (1) (b) or (c), Stats., 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, or item or property under s. 77.52 (1) (b) or (c), Stats., makes to the production process in that building or real property and regardless of the extent to which that personal property, or item or property under s. 77.52 (1) (b) or (c), Stats., functions as a machine, except as provided in subd. 4. d. For purposes of this section:

3. 'Accessories, attachments, and parts.' Included within the exemption are accessories, attachments, and parts for tractors and machines used exclusively and directly, or which are consumed or lose their identities in the business of farming. "Accessories" and "attachments" include devices designed to be mounted on a machine, such as a slow moving vehicle sign attached to a tractor or pipes attached to an irrigation pump, or devices to be pushed or pulled by a machine such as a farm wagon or a plow. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor tires, oil filters, and fuel pumps. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids such as antifreeze, hydraulic fluids, or diesel fuel anti-gel additives. These are "other tangible personal property" rather than "parts."

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

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

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

6. 'Motor vehicles and their accessories, attachments, and parts.' Specifically excluded from the exemption are "motor vehicles for highway use," which includes motor trucks, automobiles, station wagons, buses and motorcycles. The exclusion from the exemption also applies to accessories, attachments, and parts for motor vehicles for highway use. "For highway use" means registered or required to be registered for that use. Charges for labor for the repair of vehicles registered for highway use, such as nurse tanks and trailers, are taxable. Sales of parts for vehicles registered for highway use which are used exclusively and directly in farming or are consumed in farming, such as nurse tanks and trailers, are ~~not~~ taxable.

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

(b) 2. 'Plants.' "Plants" include herbs, shrubs or young trees, slips, seedlings, or saplings planted or ready to plant.

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

(5) (a) Sales tax imposed under s. 77.52 (2) (a) 10., Stats., does not apply to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., if the farmer may purchase the property, item, or good without tax under s. 77.54 (3), (3m), (27), (30) (a) 3. and 5., ~~and~~ (33), and (50), Stats.

(b) Fees for breeding farm livestock or farm work stock, ~~and~~ charges for artificial insemination of farm livestock or farm work stock, and medical and hospitalization services furnished by veterinarians are not taxable.

(c) The exemptions under s. 77.54 (3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52 (2) (a), Stats., including telephone, laundry, dry cleaning, photographic services, and breeding or artificial insemination of animals other than farm livestock or farm work stock.

(6) (a) 2. 'Training animals.' The training of horses, dogs, or other animals.

(b) (intro.) Charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property or items, property or goods under s. 77.52 (1) (b), (c), or (d), Stats., are taxable, unless at the time such services are performed, a sale in Wisconsin of the type of property, item or good so serviced would have been exempt from Wisconsin sales tax. Taxable services to tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., include:

Note to LRB: Amend the example at the end of Tax 11.13 (5) (b) 3. as follows:

Example: On October 1, 2009, Company A begins using its direct pay permit when purchasing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., from Company B. Company A provides a written statement to Company B that the use of its direct pay permit will be continuous. All purchases of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, except those described in sub. (6) (a) and (b), by Company A from Company B on or after October 1, 2009, while continuous use is in effect, must be made without paying sales or use tax to the retailer using the direct pay permit. While continuous use of a direct pay permit is in effect, no other exemption certificate may be used.

SECTION 9. Tax 11.13 (6) (a) 2. and 3. are amended to read:

Tax 11.13 (6) (a) 2. Section 77.52 (2) (a) 2., Stats., relating to admissions to amusement, athletic, entertainment, or recreational events, devices, or facilities.

3. Section 77.52 (2) (a) 5. and 5m., Stats., relating to telecommunications Internet access services; prepaid calling services and intrastate, interstate, and international telecommunications services, except interstate 800 services; ancillary services, and telecommunications message services.

SECTION 10. Tax 11.13 (6) (a) 3m. is repealed.

SECTION 11. Tax 11.13 (6) (b) (intro.), 2., and 3. and (c) are amended to read:

(b) (intro.) A direct pay permit holder shall pay Wisconsin sales or use tax to a retailer on the retailer's sale, lease, license, or rental to the direct pay permit holder of the following tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.:

2. Motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semitrailers, all-terrain vehicles, or aircraft.

3. Candy as defined in s. 77.51 (1fm), Stats., soft drinks as defined in s. 77.51 (17w), Stats., dietary supplements as defined in s. 77.51 (3n), Stats., ~~and~~ prepared foods as defined in s. 77.51 (10m), Stats., and alcoholic beverages as defined in s. 77.51 (1b), Stats.

Note to LRB: Remove the note at the end of Tax 11.13 (6) (b) 3.

(c) *Exemptions.* Although not eligible to be purchased without paying Wisconsin sales or use tax to a retailer using a direct pay permit, the taxable services and tangible personal property, and items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., described in pars. (a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farming, manufacturing, or other exemption applies. Documentation is required to purchase without tax, as provided in s. Tax 11.14.

SECTION 12. Tax 11.14 (2) (c), (3) (a), and (4) (b) are amended to read:

Tax 11.14 (2) (c) If a purchaser provides an exemption certificate indicating that the property, item, good, or service purchased will be used for activities or under circumstances which make the purchase of the property, item, good, or service exempt from the sales tax or for resale, and the property, item, good, or service is subsequently used by the purchaser in a manner that makes the property, item, good, or service ineligible for exemption from tax, the purchaser is liable for payment of the applicable sales or use tax.

(3) (a) Except as provided in par. (b), a seller is relieved of liability for the tax if the seller obtains from the purchaser, prior to the date of the sale or within 90 days after the date of the sale, a fully completed exemption certificate which indicates that the purchaser will use the property or service in a manner that is exempt from Wisconsin sales and use tax.

(4) (b) If a seller does not obtain an exemption certificate as provided in sub. (3) (a) or the relevant data elements provided in par. (a), the seller may, within 120 days after it is requested by the department to substantiate a claimed exemption, either obtain, in good faith, a fully completed exemption certificate from the purchaser; or by some other means provide proof

that the transaction was not subject to Wisconsin sales or use tax. If a seller cannot prove that a transaction was exempt by one of these methods, the seller is not relieved from liability for the tax, interest, or penalties.

SECTION 13. Tax 11.14 (4) (c) is repealed and recreated to read:

Tax 11.14 (4) (c) 1. A seller accepts an exemption certificate as provided in sub. (4) (b) in good faith if all of the following apply:

a. The exemption claimed was authorized by law on the date of the transaction in the jurisdiction to which the transaction is sourced.

b. The exemption could be applicable to the property, item, good, or service being purchased.

c. The exemption being claimed is reasonable for the purchaser's type of business.

2. If a seller obtains the information in subd. 1., the seller is relieved of its liability for the tax unless it is discovered through the audit process that the seller had knowledge or reason to know at the time the information relating to the exemption was provided that the information was materially false or the seller otherwise knowingly participated in an activity intended to purposefully evade the tax that is properly due on the transaction.

SECTION 14. Tax 11.14 (5) (a), (6) (a), (7) (a), (9), and (12) (a) are amended to read:

Tax 11.14 (5) (a) Continuous or blanket exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change, or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(6) (a) *Effect of obtaining exemption certificate claiming resale.* 1. The burden of proving that a sale of property, items, goods, or services is not at retail is upon the seller unless the seller accepts an exemption certificate from the purchaser as provided in sub. (3) (a) or captures and maintains the data elements as required in sub. (4) (a) that indicate the property, item, good, or service is purchased for resale. Obtaining the certificate or capturing and maintaining the data elements that indicate the property, item, good, or service is purchased for resale, relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives an exemption certificate as provided in sub. (3) (a) or provides the data elements described in sub. (4) (a), claiming resale for property, item, good, or service acquired and then makes any storage or use of the property, item, good, or service other than retention, demonstration, or display while holding it for sale, lease, license, or rental in the regular course of business, the storage or use is taxable to the purchaser as of the time the property, item, good, or service is first stored or used. The sales tax shall be reported and paid by the purchaser with the tax return for the period in which the property, item, good, or service is first so stored or used.

(7) (a) A supplier who accepts a ~~properly~~ fully completed exemption certificate claiming a manufacturing exemption marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of the property, items, or services sold qualifies for one of

the exempt uses claimed by the manufacturer on the form. If an exemption certificate is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser shall designate which items are taxable.

Note to LRB: Amend the note at the end of Tax 11.14 (8) as follows:

Note: Section Tax 11.12 describes the types of property, items, goods, and services which may be sold to farmers without tax, and the use of the exemption certificate to claim farming exemptions.

(9) EXEMPTION FOR FUEL OIL, PROPANE, COAL, STEAM₁ AND WOOD FOR FUEL FOR RESIDENTIAL OR FARM USE. A retailer shall have a signed exemption certificate if the sale of fuel oil, propane, coal, steam₁ or wood for residential or farm use is partially exempt from sales or use tax. If the sale is 100% exempt, an exemption certificate is not required.

(12) (a) Containers and other packaging, packing₁ and shipping materials used to transfer merchandise to customers of the purchaser.

SECTION 15. Tax 11.15 (1) (title), (a), (b), and (c) 1. to 5., 7., and 12., (2) (title) and (j), (3) (a), (4), and (5) are amended to read:

Tax 11.15 (1) (title) ~~ITEMS~~ PROPERTY EXEMPT UNDER S. 77.54 (6) (B), STATS.

(a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags₁ or other packaging and shipping materials for use in packing, packaging₁ or shipping tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., shall be "used by the purchaser to transfer merchandise to customers." Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor. The exemption does not apply to containers used in the incidental transfer of property to customers by persons providing services.

(b) Containers include barrels, bottles, cartons, chemical carboys₁ and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize₁ or protect the contents, such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice₁ and batting, and rope, twine, gummed tape, wrapping paper, rubber bands, crates₁ and crating materials, pallets, skids₁ and mailing tubes.

(c) 1. Cans in which canned goods, paints₁ and other commodities are contained; medicine bottles; boxes in which jewelry, candy, suits, dresses₁ and hats are delivered to customers; and ice cream cartons.

2. Bottles and cases used by breweries, wineries₁ or soda water beverage producers to transfer the product to customers.

3. Barrels, half-barrels, kegs₁ and the like, used by a brewery to transfer draft beer to wholesalers or retailers.

4. Caps for milk, beer₁ and soda water bottles.

5. "Fragile," "Handle with Care₁" or other shipping labels.

7. Paper bags purchased by grocery stores, bakeries₁ or other retailers and used by their customers in carrying out their purchases.

12. Packaging and shipping materials for use in packing, packaging₁ or shipping meat or meat products, regardless of whether these items are used to transfer merchandise to customers.

(2) (title) ~~ITEMS~~ PROPERTY NOT EXEMPT UNDER S. 77.54 (6) (B), STATS.

(j) Bags, boxes, hangers₁ and other containers transferred to customers by laundries, dry cleaners₁ and other persons providing services.

(3) (a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., such as soft drink bottles, beer bottles₁ and milk containers, and refunds of the deposits may be excluded from the computation of the taxable sales price if they are excluded from the sales price on the retailer's books of account.

(4) DISPOSABLE ITEMS USED BY RESTAURANTS. (a) The sales price from sales to restaurants, cafeterias, caterers, nursing homes₂ or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, wrapping materials₁ and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products, and beverages to customers are not subject to the tax.

(b) The sales price from the sale of disposable products to a restaurant that are transferred with candy, soft drinks, dietary supplements₁ and prepared foods furnished for no consideration by the restaurant to the restaurant's own employees during the employee's work hours is not subject to the tax.

(5) DEMURRAGE, LEASE₁ OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a charge is made to the customer for the use of the container and the container is used *exclusively* for those leasing purposes, the gas supplier may issue a ~~resale~~ an exemption certificate claiming resale when the supplier purchases the container.

SECTION 16. Tax 11.16 (1) (a), (am), (b), (e), and (g), (2) (a) and (c) 1. and 2., and (3) (a) are amended to read:

Tax 11.16 (1) (a) *Exemption.* Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for motor trucks, truck tractors, road tractors, buses, trailers₁ and semitrailers, and accessories, attachments, parts, supplies₁ and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers₁ and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38, Stats.

(am) *Exclusively.* As used in s. 77.54 (5) (b), Stats., and this section, "exclusively" means that the motor trucks, truck tractors, road tractors, buses, trailers₁ and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the

sales and use tax exemption for this tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

(b) *Accessories and attachments.* Accessories, attachments, parts, and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54 (5) (b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle's load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps and shoring beams. This exemption does not include corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. (g).

(e) *Equipment and supplies.* Equipment acquired by a carrier for the repair, service, or maintenance of its exempt vehicles is not exempt, including repair tools, welding torches, battery chargers, and grinding discs.

(g) *Packaging materials.* The transfer to a customer of corrugated boxes, containers, and related packing materials in conjunction with moving or transporting a customer's goods is incidental to the selling, performing, or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

Note to LRB: Amend the second example at the end of Tax 11.16 (1) (h) as follows:

2) Cutting down trees, cutting them into logs, and hauling them to a mill as a private business operation voids the exemption in par. (a), even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

(2) (a) Section 77.54 (12), Stats., provides a sales and use tax exemption for the sales price 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.

(c) 1. Rails, crossties, and other road building and maintenance materials. However, sales of crossties to a common or contract carrier are exempt if they are 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 Wisconsin if the property is transported outside Wisconsin for use by the carrier in the conduct of its business as a carrier. The exemption will not be invalidated because of interruption of the shipment for storage, drying, processing, or creosoting of the crossties in Wisconsin.

2. Bracing materials, rough lumber, and dunnage materials.

(3) (a) Section 77.54 (13), Stats., provides a sales and use tax exemption for the sales price 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.

SECTION 17. Tax 11.17 (1), (2), (3), and (4) (title) and (a) 2. and 3. are amended to read:

Tax 11.17 (1) GENERAL. (a) Although professional personnel in hospitals and clinics and other members of medical professions including physicians, surgeons, oculists, optometrists, and podiatrists regularly transfer antibiotics, bandages, splints, and other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to their patients in the performance of professional services, the transfer of that property, item, or good is an incident of a service rather than a retail sale of the property, item, or good. The persons are, therefore, deemed the consumers of the property, items, or goods in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics, and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Stats., specifically provides an exemption for drugs furnished by a licensed physician, surgeon, or podiatrist to that person's patient for medical treatment. Section 77.54 (22b), Stats., provides an exemption for durable medical equipment for home use, mobility-enhancing equipment, and prosthetic devices, and repair and replacement parts and accessories for such equipment or devices, if such equipment or devices are used by a human being. The scope of these exemptions is set forth in ss. Tax 11.08, 11.09, and 11.45.

(2) **PURCHASES BY HOSPITALS.** Purchases by hospitals, except hospital service insurance corporations under s. 613.80 (2), Stats., are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a Certificate of Exempt Status, "CES", by the department. When purchasing property, items, goods, and services, a hospital shall furnish its CES number to its supplier, and the supplier may then make sales of every type of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) **PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSION.** Purchases made by physicians and medical clinics that do not hold a Certificate of Exempt Status, "CES," are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list shall be furnished to patients at the direction of a physician, surgeon, or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of the health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	*Antiembolism elastic hose and stockings, including parts and accessories
Alcoholic beverages	
Apparatus and equipment for treatment of diabetes	*Artificial eyes and limbs, including parts and accessories
Bandages, gauze and cotton	
Bed pans	*Blood sugar level testing supplies
Beds and linens	
Blankets	Bone pins and plates, including parts and accessories
Cold packs and hot packs	
Compresses and dressings	* Crutches and wheel chairs, including motorized wheelchairs and scooters, including parts and accessories
Cosmetics	

Deodorants and disinfectants	Diaphragms
Distilled water	*Disposable syringes containing insulin
Enema kits	Drugs
Instruments	Dye
Laboratory equipment and supplies	* Hearing aids and parts , including parts and accessories
Medical equipment	Medical oxygen
Needles and syringes	Oral contraceptives
Office equipment and supplies	Pacemakers, including parts and accessories
Oxygen delivery equipment	Prophylactics
Paper products	Rubbing alcohol
Printed material	Suppositories
Rib belts and supports	Sutures
Soda water beverages	Vaccines
Soap	Vaginal creams and jellies
Splints and cast materials	Vitamins
Uniforms and gowns	
X-ray film and machines	

(4) (title) SALES BY HOSPITALS, HOSPITAL AUXILIARIES, CLINICS, AND MEMBERS OF THE MEDICAL PROFESSIONS.

(a) 2. Hospitals' sales of food and food ingredients, except soft drinks, ~~to patients, staff, or visitors.~~

3. Prepared food sold to the elderly or handicapped by persons providing "mobile meals on wheels."

Notes to LRB: 1) Amend the third note at the end of Tax 11.17 (5) as follows:

Note: The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for needles and syringes used by diabetics became effective November 19, 1975, pursuant to Ch. 102, Laws of 1975; (b) The exemption for oxygen equipment became effective September 1, 1983, pursuant to 1983 Wis. Act 27; (c) The exemption for motorized scooters became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for diabetic apparatus and equipment and supplies for determining blood sugar levels became effective March 1, 1989, pursuant to 1987 Wis. Act 399; (e) The exemption for antiembolism elastic hose and stockings prescribed by a physician became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The purchases by a hospital service insurance corporation under s. 613.80 (2), Stats., became taxable effective September 1, 1985, pursuant to 1985 Wis. Act 29; (g) The exemption for parts and accessories for certain medical equipment became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (h) The sales of meals by hospitals off the hospital's premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemptions for durable medical equipment for home use, mobility-enhancing equipment, and prosthetic devices became exempt October 1, 2009 pursuant to 2009 Wis. Act 2; and (j) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and

digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

2) Insert the following note between the second and third notes at the end of Tax 11.17 (5):

Note: Refer to s. Tax 11.33 for additional information relating to occasional sales.

SECTION 18. Tax 11.18 (2) (b) is amended to read:

Tax 11.18 (2) (b) The items described in par. (a) include braces and other corrective and supporting devices, such as teeth, mouth₁ and jaw braces and supports.

SECTION 19. Tax 11.19 (1) and (2) (a) and (d) are amended to read:

Tax 11.19 (1) GENERAL. All retail sales of tangible personal property and items, property₁ and goods under s. 77.52 (1) (b), (c), and (d), Stats., including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This section describes exemptions which commonly apply to sales of printed material.

(2) (a) Section 77.52 (2) (a) 11., Stats., imposes the sales and use tax on certain services. However, an exemption is provided for the printing or imprinting of tangible personal property and items, property₁ and goods under s. 77.52 (1) (b), (c), and (d), Stats., furnished by customers, that results in printed materials, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

(d) Section 77.54 (2m), Stats., provides an exemption for the sales price from the sales of and the storage, use₁ or other consumption of tangible personal property or services that are used exclusively and directly by a manufacturer in manufacturing shoppers guides, newspapers, or periodicals and that become an ingredient or component of shoppers guides, newspapers₁ or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers₁ or periodicals, whether or not the shoppers guides, newspapers₁ or periodicals are transferred with charge to the recipient. This exemption applies to newspapers, shoppers guides₁ and periodicals which are issued at average intervals not exceeding 3 months or issued at average intervals not exceeding 6 months by an educational association or corporation sales to which are exempt under s. 77.54 (9a) (f), Stats. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (8), Stats.

Note to LRB: Amend the first note at the end of Tax 11.19 (6) as follows:

Note: Section Tax 11.19 interprets ss. 77.51 (1fr), (8) and (13h), 77.52 (1), (2) (a) 11., 77.54 (2m), (9a), (15), (25), (25m)₁ and (43) and 77.55 (1), Stats.

SECTION 20. Tax 11.26 (1) (a), (2) (c) and (d), and (3) (b) are amended to read:

Tax 11.26 (1) (a) Tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., sold at retail are subjected to many direct and indirect taxes prior to reaching a retailer. The taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. The tax may be imposed by Wisconsin, the federal government₁ or a municipality.

(2) (c) Any federal stamp tax and manufacturer's or importer's excise tax not imposed directly on the purchaser. Federal excise taxes include excise taxes on alcohol, tobacco, motor and aviation fuel except motor fuel taxes refunded, tires, firearms, sporting goods, and air or ship transportation.

(d) A federal, county, or municipal fuel tax included in the price of alternate fuels and general aviation fuel subject to sales tax.

Note to LRB: Amend the example at the end of Tax 11.26 (2) (d) as follows:

Example: Fuel taxes are included in the price of fuel used in aircraft, boats, and for other nonhighway use. The taxes are included in the sales price.

(3) (b) Any tax imposed by the United States, this state, or a Wisconsin municipality upon or with respect to retail sales.

Note to LRB: Amend the third example at the end of Tax 11.26 (3) (b) as follows:

3) The county, stadium, and regional transit authority sales and use taxes imposed under s. 77.71, Stats.

SECTION 21. Tax 11.28 (2) (f) and (3) (c) 1. a. and b. are amended to read:

Tax 11.28 (2) (f) *Gifts originally purchased for resale.* When a person purchases property for resale or for another exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or another exempt purpose and does not donate the property to an entity described in s. 77.54 (9a), Stats., the purchaser shall be liable for tax on its purchase price of the property.

(3) (c) 1. a. When purchasing tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which will be given away to customers who must purchase other property, items, or goods to obtain the free property, item, or good, a retailer may not use an exemption certificate to purchase the free property, item, or good without payment of the sales tax. The retailer is deemed the consumer of the free property as provided in s. 77.52 (21), Stats. If the free property, item, or good was acquired without tax for resale, the retailer shall report the tax on ~~their~~ its purchase price of the property, item, or good.

b. A retailer may not use an exemption certificate when purchasing taxable tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property, items, or goods to receive the free property, item, or good. If the property, item, or good that is given away was acquired without tax for resale, the retailer shall report the tax on its purchase price of the property, item, or good.

Note to LRB: Amend the second example at the end of Tax 11.28 (3) (c) 1. b. as follows:

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 an exemption certificate claiming resale, the retailer is liable for tax on its purchase price of the key chains given away.

SECTION 22. Tax 11.30 (2) (a) and (d) 1. are amended to read:

Tax 11.30 (2) (a) *Definition of bad debt.* “Bad debt” is defined in s. 77.585 (1) (a), Stats., to mean the portion of the sales price or purchase price that the seller has reported as taxable and for which the seller has paid the tax under this subchapter ~~subch. III of ch. 77, Stats.,~~ and that the seller may claim as a deduction under section 166 of the Internal Revenue Code. “Bad debt” does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that remain in the seller’s possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debts, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

(d) 1. ‘Nontaxable receipts.’ If an account found worthless and charged off as a bad debt is comprised in part of nontaxable receipts, such as interest, financing, or insurance, and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied proportionately against the various charges comprising the amount the purchaser contracted to pay.

Note to LRB: Amend the example at the end of Tax 11.30 (2) (f) as follows:

Example: At the time when the tax rate is 5%, a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$750. A down payment of \$2,150 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totaling \$6,800, the motor home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession ~~due to rather extensive damage to the motor home.~~ The deductible bad debt loss upon repossession of the motor home is computed as follows:

	Cash Sales Price	Sales Tax	Finance Charge	Total
1. Sales price and tax	\$15,000.00	\$750.00	-	\$15,750.00
2. Down payment allocation (1)	<u>2,047.62</u>	<u>102.38</u>	=	<u>2,150.00</u>
3. Balance to finance	\$12,952.38	\$647.62	-	\$13,600.00
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$12,952.38	\$647.62	\$1,360.00	\$14,960.00
6. Payments on contract (2).....	<u>5,887.45</u>	<u>294.37</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance — date of repossession	\$7,064.93	\$353.25	\$741.82	\$8,160.00
8. Wholesale value of repossession (2)	<u>5,194.81</u>	<u>259.74</u>	<u>545.45</u>	<u>6,000.00</u>
9. Deductible loss	<u>\$1,870.12</u>			\$1,870.12
10. Nondeductible loss		<u>\$93.51</u>	<u>\$196.37</u>	<u>289.88</u>
11. Total loss				<u>\$2,160.00</u>
12. Percentage of sales price and tax (Line 1)	95.2381%	4.7619%		100%
13. Percentage of contract balance (Line 5)	86.5801%	4.3290%	9.0909%	100%

(1) The down payment on line 2 is allocated between the total cash sales price of the motor home and the sales tax thereon on the basis of the percentage of each to their total. The percentages are shown on line 12.

- (2) The payments on the contract on line 6 and the wholesale value on the date of repossession of the property repossessed on line 8 are allocated on the basis of the contract balances on line 5. The percentages thereof are shown on line 13.

SECTION 23. Tax 11.32 (2) is amended to read:

Tax 11.32 (2) DELIVERY, HANDLING AND SERVICE CHARGES. A retailer's charges for customer alterations, handling services, small orders, returned merchandise, restocking, split shipments, shipping, postage, crating, packing, fuel surcharges, and similar charges for services related to retail sales, are included in the sales price derived from the sale of taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services. Cancelled order charges are not taxable if there is no transfer of merchandise to a customer. For orders that include property and items that are subject to tax and property and items that are not subject to tax, the amount of the delivery charge that the seller allocates to the property and items subject to tax shall be based either upon the total sales price of property and items that are subject to tax as compared to the total sales price of all of the property and items included in the shipment or on the weight of the property and items subject to tax compared to the total weight of all of the property and items included in the shipment.

SECTION 24. Tax 11.33 (4) (c) is amended to read:

Tax 11.33 (4) (c) The transfer of a motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle or aircraft to a spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law, or daughter-in-law, of the transferor provided the property has been previously registered in Wisconsin in the name of the transferor, if required to be registered, and the transferor is not engaged in the business of selling this type of property.

SECTION 25. Tax 11.34 (3) (d) is amended to read:

Tax 11.34 (3) (d) The holder of a seller's permit shall wait until ceasing business before delivering requesting the inactivation of the permit to the department because a person may not continue regular business operations without a permit.

SECTION 26. Tax 11.34 (4) is repealed and recreated to read:

Tax 11.34 (4) INACTIVATION OF SELLER'S PERMIT. (a) A permit holder may request that the department inactivate its seller's permit by providing the department with the permit holder's name, address, seller's permit number, and the date the permit holder ceased business. The request may be made in any one of the following ways:

1. A permit holder may make a written request for seller's permit inactivation. The department shall presume that the request was made at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the request, the permit holder may use certified mail, return receipt requested.

Note: A person making a written request for seller's permit inactivation should send its request to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902.

2. A permit holder may make a request for seller's permit inactivation by telephone. The department shall presume that the request was made at 12:01 a.m. on the day the department received the telephone call.

Note: A person requesting seller's permit inactivation by telephone should call (608) 266-2776.

3. A permit holder may make a request for seller's permit inactivation by electronic mail. The department shall presume that the request was made at 12:01 a.m. on the day the department received the electronic mail message.

Note: A person requesting seller's permit inactivation by electronic mail should send its request to sales10@revenue.wi.gov.

4. A permit holder may make a request for seller's permit inactivation in person at one of the department's income, sales and excise tax division offices. The department shall presume that the request was made at 12:01 a.m. on the day the department received the request.

(b) A person who has requested inactivation of its seller's permit may not qualify for the occasional sale exemption if the person contemplates resumption of those activities which would require that the person hold a seller's permit, unless the person qualifies for exemption under sub. (3) (b).

(c) The fact that a business ceases operating and no longer conducts its day-to-day sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services does not result in the automatic inactivation of its seller's permit.

SECTION 27. Tax 11.35 (4) (b), (6) (b), and (7) are amended to read:

Tax 11.35 (4) (b) Entertainment is not involved at an event for which charges by the organization constitute admissions.

(6) (b) A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may obtain a ~~temporary~~ seller's permit from the department for the day or days involving entertainment, pay the sales tax on that event and request inactivation of its seller's permit after the event, and still have exempt occasional sales on days not covered by the ~~temporary~~ seller's permit. Days and receipts from events involving admissions to entertainment for which a ~~temporary~~ seller's permit was obtained are included with all other sales in determining the 20-day test and the \$25,000 taxable receipts test described in sub. (5). A nonprofit organization that obtains a seller's permit for an event and does not request inactivation of its seller's permit after the event does not qualify for the occasional sale exemption while the seller's permit is active, regardless of the number of days and dollar amount of its sales.

Note to LRB: Amend the examples at the end of Tax 11.35 (6) (b) as follows:

Examples: 1) A nonprofit organization plans 5 events covering 3 days each for the year ~~(for a total of 15 days).~~ Entertainment will be involved at one event only. The sales by the nonprofit organization would qualify as exempt occasional sales, except for the involvement of entertainment at the one event. The nonprofit organization may obtain a ~~temporary~~ seller's permit for the one event involving entertainment and request inactivation of its seller's permit after the event; thus allowing the other 4 events to qualify as exempt occasional sales.

2) A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a ~~temporary~~ seller's permit because entertainment is involved, ~~and~~ collects sales tax on its receipts of \$5,000 from that event and requests inactivation of its

seller's permit after the event. Taxable receipts from its other events must be combined with the \$5,000 of receipts from the event for which it held a ~~temporary~~ seller's permit for purposes of determining whether the \$25,000 taxable receipts test is met.

(7) (a) A nonprofit organization is not required to hold a seller's permit if its sales are exempt from sales and use taxation by meeting the provisions of sub. (4) (a) and (b). However, an organization required to hold a seller's permit solely for the purpose of conducting bingo games may still qualify for ~~exempt~~ the occasional sales exemption on nonbingo sales if it otherwise qualifies under the provisions of sub. (4) (a) and (b).

(b) If a nonprofit organization holds a seller's permit in the current year, but intends or believes in good faith that its activities in the following year would qualify as exempt occasional sales except for its holding of a seller's permit, it may ~~deliver that seller's permit to the department for cancellation~~ request inactivation of its seller's permit and have its sales in the following year will qualify as exempt occasional sales provided it meets the standards in sub. (4) (a) and (b) in that following year.

Note to LRB: Amend the example at the end of Tax 11.35 (7) (b) as follows:

Example: A nonprofit organization has held seven 3-day events for a total of 21 days each year for the past 5 years. Receipts were always over \$25,000, and there were no admissions to entertainment events. One event has lost money for the past 2 years. The organization intends to discontinue that event for the following year; thus, it may anticipate coming under the 20-day standard and request inactivation of its seller's permit in good faith. ~~Its seller's permit may be delivered to the department for cancellation in good faith.~~

(c) If a nonprofit organization did not hold or was not required to hold a seller's permit or ~~delivered its seller's permit to the department for cancellation~~ requested inactivation of its seller's permit in good faith but later, due to unforeseen circumstances, exceeds the standards, only the sales occurring after the standards are exceeded do not qualify as exempt occasional sales and are subject to tax.

Note to LRB: Amend the first example at the end of Tax 11.35 (7) (c) as follows:

1) A church held 18 days of events or sales in the current year. Receipts for the events equaled \$30,000 and no entertainment was involved. The church expects to hold the same 18 days of events in the following year. It ~~delivers requests inactivation of its seller's permit to the department for cancellation.~~ However, in the middle of the following year, the church garage is destroyed by fire. An additional 4-day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22, the days exceeding the standard, are subject to sales tax.

(d) If a nonprofit organization has sales in the current year and then ~~surrenders requests inactivation of its seller's permit to the department for cancellation,~~ sales made in the current year before ~~surrendering it~~ requesting inactivation of the seller's permit do not qualify as exempt occasional sales, even if the standards for exempt occasional sales in sub. (4) (a) and (b) are met.

SECTION 28. Tax 11.40 (4) is amended to read:

Tax 11.40 (4) REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT. The sales price from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are is exempt.

Note to LRB: Amend the second note at the end of Tax 11.40 as follows:

Note: The interpretations in s. Tax 11.40 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Mobile mixing units are exempt effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Vehicles and machines used in waste reduction and recycling are exempt effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) Motor vehicles or trailers upon which mobile mixing units are mounted are exempt effective July 20, 1985, pursuant to 1985 Wis. Act. 29; (d) Safety attachments became exempt effective June 1, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption in s. 77.54 (6), Stats., shall be strictly construed effective October 1, 1989, pursuant to 1989 Wis. Act 31; (f) The definition of “manufacturing” and what is included in the scope of manufacturing is effective October 1, 2009, pursuant to 2009 Wis. Act 28; and (g) The change of the term “gross receipts” to “sales price” and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 29. Tax 11.41 (2) (a) (intro.) is amended to read:

Tax 11.41 (2) (a) (intro.) The following property and items are within the exemption provided by s. 77.54 (2), Stats., if the property or item is used exclusively and directly by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., destined for sale and is consumed, destroyed, or loses its identity in manufacturing the property or item that is destined for sale:

Note to LRB: Remove the note at the end of Tax 11.41 (2) (a) 4. a.

SECTION 30. Tax 11.41 (2) (a) 4. is repealed and recreated to read:

Tax 11.41 (2) (a) 4. Cleaning compounds and solvents for maintaining exempt manufacturing machinery whether used while the machinery is operating or while the machinery is idle.

SECTION 31. Tax 11.41 (2) (a) 15. is amended to read:

Tax 11.41 (2) (a) 15. Gloves and other wearing apparel, including hair nets, beard nets and facemasks used by employees working on the production line to prevent contamination of the manufactured product while it is being manufactured.

Note to LRB: Insert the following examples at the end of Tax 11.41 (2) (a) 15.:

Examples: 1) Employees of Manufacturer A wear gloves and aprons while grading, weighing, and slicing meat products within the scope of manufacturing as defined in s. Tax 11.39 (2). The gloves and aprons are used only in this manner and prevent the meat products being manufactured from being contaminated. The gloves and aprons worn by the employees to protect the meat products from contamination are used directly in manufacturing and qualify for exemption from Wisconsin sales and use tax under s. 77.54 (2), Stats.

2) Employees of Manufacturer B wear gloves and aprons while they are working on the production line. The gloves and aprons are used only in this manner. The gloves and aprons are worn to protect the employees' clothing rather than to prevent contamination of the product while it is being manufactured. Although the gloves and aprons are used exclusively in

manufacturing, the gloves and aprons are not used directly in manufacturing and do not qualify for exemption from Wisconsin sales and use tax under s. 77.54 (2), Stats.

SECTION 32. Tax 11.41 (3) (a) (intro.) is amended to read:

Tax 11.41 (3) (a) (intro.) An exemption under sub. (1) (a) is not allowed for property or items consumed or destroyed or losing their identity in manufacturing if any of the following apply:

SECTION 33. Tax 11.41 (3) (a) 3. is created to read:

Tax 11.41 (3) (a) 3. The property or item is not used exclusively and directly by a manufacturer in manufacturing.

Note to LRB: Insert the following example at the end of Tax 11.41 (3) (b) 8.:

Example: Employees of Manufacturer C wear hard hats, as required by federal regulations, while working within the scope of manufacturing as defined in s. Tax 11.39 (2). The hard hats are worn to protect the employees. The hard hats are not used directly in manufacturing and do not qualify for exemption from Wisconsin sales and use tax under s. 77.54 (2), Stats.

SECTION 34. Tax 11.41 (3) (b) 9. is created to read:

Tax 11.41 (3) (b) 9. Chemicals and cleaning agents used to clean the room where manufacturing takes place, including walls, ceilings, floors, drains, windows, and doors, even if the cleaning is required in order to meet sanitation standards required by state and federal regulatory agencies.

SECTION 35. Tax 11.46 (1) (a) and (2) (intro.) are amended to read:

Tax 11.46 (1) (a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable, or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual.

(2) (intro.) Receipts from the following are taxable, ~~unless sub. (4) applies~~ except as provided in subs. (4) or (5):

SECTION 36. Tax 11.46 (2) (c) is created to read:

Tax 11.46 (2) (c) Taxable services under s. 77.52 (2), Stats.

SECTION 37. Tax 11.46 (3) (intro.) is amended to read:

Tax 11.46 (3) (intro.) Receipts from the following are exempt, except as provided in sub. (5):

SECTION 38. Tax 11.46 (5) is repealed and recreated to read:

Tax 11.46 (5) COMBINED CHARGE. (a) A summer camp's charge for meals, lodging, and program access for one nonitemized price is not subject to tax. The exemption in s. 77.54 (51), Stats., applies.

(b) It is presumed that the price for the lodging, meals, and other taxable products provided by the summer camp is 10 percent or less of the total price of all the products in the transaction. It is also presumed that true object of the transaction is not just one of the items provided. Therefore, the transaction is not a bundled transaction as defined in s. 77.51(1f), Stats.

Note: See s. Tax 11.985 for more information on bundled transactions.

(c) Summer camps are the consumers of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services provided as part of the combined charge. As consumers, summer camps are subject to Wisconsin sales or use tax on their purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or taxable services.

Notes to LRB: 1) Insert the following example at the end of Tax 11.46 (5) (c):

Example: Summer Camp A provides a 4-week long summer program. The camp costs each participant \$4,000. The \$4,000 charge is one nonitemized price that includes all camp activities, lessons, meals, lodging, and a tee shirt. The taxable products included in the transaction are the lodging services, the meals and the tee shirt. Summer Camp A may presume that the taxable products included in the transaction are less than 10 percent of the total sales price or purchase price of all the products included in the transaction and therefore the transaction is not a bundled transaction. Summer Camp A's \$4,000 charge is not subject to Wisconsin sales or use tax, but Summer Camp A is the consumer of the items it purchases and uses or provides to each person attending the camp and is required to pay Wisconsin sales or use tax on its purchases of these items.

2) Amend the first note at the end of Tax 11.46 as follows:

Note: Section Tax 11.46 interprets ss. 77.51 (1f), (1fm), (3n), (3t), (10m), and (17w), 77.52 (1), (2) (a) 1., and (20), and 77.54 (7m) and (51), Stats.

SECTION 39. Tax 11.51 (3) (a) 2., (d) 3., and (e) 2. and (5) are amended to read:

Tax 11.51 (3) (a) 2. A product is considered to require refrigeration if either it must be refrigerated at all times or only after being opened. Items that otherwise meet the definition of candy ~~and do not require refrigeration~~ but which are sold frozen or refrigerated for the convenience or preference of the customer, retailer, or manufacturer, are still "candy."

(d) 3. Natural and artificial sweeteners include corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, ~~and~~ aspartame, stevia, maltitol, molasses, evaporated cane juice, rice syrup, barley malt, and honey.

(e) 2. ~~Deli sales of items~~ foods sold in a heated state are prepared foods.

(5) ~~FEDERAL FOOD STAMPS~~ SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP). A grocer's receipts from SNAP, formerly known as the federal food stamps stamp program, are not subject to sales tax even if the items purchased by the consumer are not exempt food or food ingredients under s. 77.54 (20n), Stats.

SECTION 40. Tax 11.535 (2) (c) is amended to read:

Tax 11.535 (2) (c) "Selling merchandise" means the sale, rental, license, lease, exchange, trade or barter of, or taking orders for, merchandise, goods, or products for money or other consideration, or both.

SECTION 41. Tax 11.61 (1) (a) (intro.) is amended to read:

Tax 11.61 (1) (a) (intro.) Charges made by veterinarians which ~~shall be~~ are exempt from the sales tax include charges for the following:

SECTION 42. Tax 11.61 (1) (a) 4. is created to read:

Tax 11.61 (1) (a) 4. Services performed to animals which are livestock or poultry as defined in s. Tax 11.12 (2) (j), or farm workstock as defined in s. Tax 11.12 (4) (e), regardless of whether the service is a veterinary service.

SECTION 43. Tax 11.61 (1) (b) (intro.) and (c) 1. and (2) (a) and (b) 1. are amended to read:

Tax 11.61 (1) (b) (intro.) Charges made by veterinarians which ~~shall be~~ are subject to the sales tax include charges for the following activities for animals:

(c) 1. Leashes, collars, and other pet equipment.

(2) (a) Sales to veterinarians of drugs for animals and sales to veterinarians of other tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax, except as provided in par. (b) 4.

(b) 1. Veterinarians' purchases of drugs used on farm livestock, ~~not including~~ and farm workstock, are exempt from tax.

SECTION 44. Tax 11.61 (2) (b) 3. is created to read:

Tax 11.61 (2) (b) 3. Veterinarians' purchases of property used by the veterinarian in performing custom farming services as defined in s. Tax 11.12 (2) (b), and that qualify for exemption under s. 77.54 (3) (a) or (c), or (3m), Stats., are exempt from tax.

Notes to LRB: 1) Insert the following note at the end of Tax 11.61 (2) (b) 3.:

Note: See Publication 224, *Veterinarians: How Do Wisconsin Sales and Use Taxes Affect Your Business?*, for additional information on performing custom farming services by veterinarians.

2) Insert the following note after the existing note at the end of Tax 11.62 (2) (b):

Note: Refer to s. Tax 11.33 for additional information relating to occasional sales.

SECTION 45. Tax 11.65 (5) is amended to read:

Tax 11.65 (5) LOCATION OF EVENT. The receipts from sales of ~~tickets of~~ admissions to places of amusement or athletic events which that are located or take place in Wisconsin are taxable, even though some of the ~~tickets sales~~ may be sold made out-of-state. ~~For example, all sales of university of Wisconsin football tickets for games played in Wisconsin are taxable.~~

~~However, if the university of Wisconsin, as agent, sells tickets for the university of Michigan for a game to be played in Michigan, the receipts are not subject to the Wisconsin sales tax. The receipts from sales of admissions to places of amusement or athletic events that are located or take place out-of-state are not subject to Wisconsin sales tax, even though some of the sales may be made in Wisconsin.~~

Note to LRB: Insert the following example at the end of Tax 11.65 (5):

Example: Sales by the University of Wisconsin of football tickets for games played in Wisconsin are taxable. However, if the University of Wisconsin, as agent, sells tickets for the University of Michigan for a game played in Michigan, the receipts are not subject to the Wisconsin sales tax.

SECTION 46. Tax 11.66 (2) (intro.) is amended to read:

Tax 11.66 (2) (intro.) Receipts that are subject to Wisconsin sales ~~or~~ and use tax include receipts from the following services, if the services are sourced to Wisconsin as provided in sub. (3):

SECTION 47. Tax 11.67 (1), (2) (b), and (3) (d) (title), 1., and 2. are amended to read:

Tax 11.67 (1) GENERAL. When a transaction involves the transfer of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., along with the performance of a service, and the transaction is neither a bundled transaction, as defined in s. Tax 11.985, nor a transaction to which s. 77.52 (2m) (b) 2., Stats., applies, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or the performance of a service with the transfer of the property, item, or good being incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, item, or good, a taxable sale of that property, item, or good is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., may be transferred.

(2) (b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property ~~and or~~ items, property, ~~and or~~ goods under s. 77.52 (1) (b), (c), ~~and or~~ (d), Stats., is a retailer with respect to the sale, and the tax applies to the total sales price from the sale without any deduction for the work, labor, skill, time spent, or other expense of producing the property, item, or good.

(3) (d) (title) *Interior ~~decorator's~~ designer's fee.*

1. An interior ~~decorator's~~ designer's fee is taxable when the ~~decorator's~~ designer's services are part of a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. If a ~~decorator~~ designer bills a client only for the full list price of the property, item, or good sold and then receives the equivalent of a fee through the ~~decorator's~~ designer's supplier in the form of a trade discount, the ~~decorator~~ designer shall pay a tax on the full amount billed the client without any deduction for services performed.

Note to LRB: Amend the example at the end of Tax 11.67 (3) (d) 1. as follows:

Example: A ~~decorator's~~ designer's fee is taxable when it is added to the bill for tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., on a cost-plus arrangement.

2. A ~~decorator's~~ designer's fee is not taxable if the fee is solely for services rendered and there is no sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., involved with the transaction.

SECTION 48. Tax 11.67 (3) (d) 3. is created to read:

Tax 11.67 (3) (d) 3. If there is a separate charge for the designer's fee in addition to a separate and optional charge for any tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., the designer sells to the client, the designer's fee is not part of the sales price of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., if the client had all of the following choices:

a. Purchasing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., from the designer for an additional, optional, fee.

b. Purchasing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., from another party.

c. Not purchasing the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

SECTION 49. Tax 11.68 (6) (f) and (7) (b) are amended to read:

Tax 11.68 (6) (f) Personal property that is used to construct improvements to land, ~~including such as~~ retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems except systems sold to and for use by farmers, drainage, storm, and sanitary sewers, and water supply lines for drinking water, sanitary purposes, and fire protection.

(7) (b) If a few items of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services, are minor in relation to the total amount of a contract, and are sold as part of a contract which includes construction of a building or other ~~structure~~ real property improvement and no separate charge is made ~~for the personal property, item, good, or taxable service in any document provided to the customer for the taxable property, items, goods, and services,~~ the cost of ~~the all such~~ all such property, ~~item, good, or service~~ items, goods, and services to the construction contractor shall be used as the measure subject to sales tax. The tangible personal property, property, items, and goods under s. 77.52(1) (b), (c), and (d), Stats., and taxable services are "minor in relation to the total amount of a contract" if, based on a reasonable allocation, the sales price of the taxable property, items, goods, and services included in the contract is 10 percent or less of the total contract amount. If a separate charge is made in any document provided to the customer, including a contract, contract addendum, appendix, or payment request, for any of the taxable property, items, goods, or services, ~~they are the separate charge~~ is subject to the tax.

Note to LRB: Replace the examples at the end of Tax 11.68 (7) (b) with the following:

Examples: 1) A refrigerator and drapes are included in the contract to construct a new house. No separate charge is made for the refrigerator and drapes, but, based on a reasonable allocation, the sales price of the refrigerator and drapes is less than 10 percent of the total

contract amount. Therefore, the cost of the refrigerator and drapes to the construction contractor is the construction contractor's measure subject to sales tax.

2) Landscaping services are included in a contract to build a building. No separate charge is made for the landscaping services, but, based on a reasonable allocation, the sales price of the landscape services is more than 10 percent of the total contract amount. Since the sales price of the landscaping services, based on a reasonable allocation, is more than 10 percent of the contract amount, the construction contractor is required to make an allocation between the taxable landscaping services and the other nontaxable charges included in the contract and charge Wisconsin sales tax on the sales price of those landscaping services.

SECTION 50. Tax 11.70 (2) (c) and (e) are amended to read:

Tax 11.70 (2) (c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, advertising and promotional direct mail ~~advertising~~, brochures, commercials, tapes, or other items of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats.

(e) Producing, fabricating, processing, printing, or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing, or imprinting of the property, items, or goods. However, the tax does not apply to the printing or imprinting ~~the~~ of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

Note to LRB: Amend the third note at the end of Tax 11.70 as follows:

Note: The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; (c) The exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983; (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (e) The exemption for catalogs and their mailing envelopes became effective April 1, 2009, pursuant to 2007 Wis. Act 20; (f) The ~~clarification~~ provision that items must be consumed exclusively and directly by a manufacturer in manufacturing property or items destined for sale became effective August 1, 2009, pursuant to 2009 Wis. Act 28; (g) The definitions of bundled transaction and finished artwork became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (h) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 51. Tax 11.78 (title) and (1) (g) are amended to read:

Tax 11.78 (title) **Stamps, coins, and bullion.**

(1) (g) Silver bullion and gold bullion if the sale is sourced to a location in Wisconsin under s. 77.522, Stats., ~~is subject to the sales tax~~ whether the sales contract is entered into in or

outside of Wisconsin. Sales of silver and gold bullion sourced to a location outside Wisconsin are subject to the use tax when the bullion is brought into Wisconsin.

SECTION 52. Tax 11.80 (2) (b) and (3) (a) are amended to read:

Tax 11.80 (2) (b) Sales of ice blocks and ice cubes to restaurants, taverns, grocery stores, and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(3) (a) Sales of ice cubes to be used in drinks, including sales to restaurants, taverns, and soda fountains, and individuals to be used in drinks. ~~The sales are exempt as sales for resale.~~

Note to LRB: Insert the following note at the end of Tax 11.80 (3) (a):

Note: Ice sold by a food retailer in cubes or crushed form can be ingested for taste. Therefore, a seller may exempt the sale of such ice. If the purchaser uses the ice to keep food or beverages cold rather than ingesting or chewing it, the purchaser is subject to tax on the purchase of the ice.

SECTION 53. Tax 11.83 (2) (title) is amended to read:

Tax 11.83 (2) (title) RETAILERS' TAXABLE SALES PRICE.

SECTION 54. Tax 11.83 (2) (e) is created to read:

Tax 11.83 (2) (e) Towing or hauling a motor vehicle by a tow truck, as defined in s. 340.01 (67a), Stats.

Note to LRB: Amend the second note at the end of Tax 11.83 as follows:

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for adaptive equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemption for parts and accessories for adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (h) The measure of use tax on motor vehicles as described in sub. (8) (b) 1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (i) The use of the amount per plate rather than the lease value, as described in sub. (8) (b) 2., as the measure of use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (j) The trade-in provisions related to lemon law refunds became effective June 1, 2002, pursuant to 2001 Wis. Act 45; (k) The imposition of tax on towing and hauling motor vehicles by a tow truck became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (L) The exemption for mobility-enhancing equipment became effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~(M)~~ (m) The requirement to collect the tax by persons who are not dealers but who hold a Wisconsin seller's

permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and ~~(m)~~ (n) The change of the term “gross receipts” to “sales price” and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 55. Tax 11.87 (2) (a) and (j) and (3) (a) are amended to read:

Tax 11.87 (2) (a) *General.* Generally, the sales price from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, ~~vending machines~~, drive-ins, mobile sales units, clubs, young men’s christian associations, young women’s christian associations, and similar businesses, organizations or establishments.

(j) *Transportation companies.* The sale of prepared foods, candy, dietary supplements, soft drinks, and ~~liquor~~ alcoholic beverages by transportation companies, such as airlines or railways, to a customer while operating in Wisconsin for a specific charge shall be taxable. These prepared foods, candy, dietary supplements, soft drinks, and alcoholic beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the prepared foods, candy, dietary supplements, soft drinks, or alcoholic beverages is not separately stated to the customer, the tax shall apply to purchases of these prepared foods, candy, dietary supplements, soft drinks, and alcoholic beverages by transportation companies.

(3) (a) *Health care facilities.* Food and food ingredients, except soft drinks, fermented malt beverages, and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., or ~~day care centers registered~~ any facility certified or licensed under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption does not apply.

SECTION 56. Tax 11.92 (7) is renumbered (7) (a).

SECTION 57. Tax 11.92 (7) (b) is created to read:

Tax 11.92 (7) (b) If a person fails to produce records or documents that were requested by the department, as provided under ss. 73.03 (9) and 77.59 (2), Stats., the penalties under s. 77.61 (19), Stats., may be imposed. See s. Tax 11.90 for additional information relating to these penalties.

SECTION 58. Tax 11.94 (3) (a) is amended to read:

Tax 11.94 (3) (a) Delivery charges for advertising and promotional direct mail and other direct mail are not subject to sales or use tax if the delivery charges are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

SECTION 59. Tax 11.945 (1) (a) to (c) are renumbered (c) to (e).

SECTION 60. Tax 11.945 (1) (a) and (b) are created to read:

Tax 11.945 (1) (a) “Advertising and promotional direct mail,” as provided in s. 77.51 (1ag), Stats., means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

(b) 1. "Other direct mail," as provided in s. 77.51 (9r), Stats., means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. "Other direct mail" includes:

a. Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, account statements, and payroll advices.

b. Any legally required mailings, including privacy notices, tax reports, and stockholder reports.

c. Other nonpromotional direct mail, including newsletters and informational pieces, that is delivered to existing or former shareholders, customers, employees, or agents.

2. "Other direct mail" does not include printed materials that result from developing billing information or providing any data processing service that is more than incidental, as defined in s. 77.51 (5), Stats., to producing other direct mail.

SECTION 61. Tax 11.945 (2) (b) is amended to read:

Tax 11.945 (2) (b) If a purchaser does not receive the product at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, receives the product. This would include the location indicated by instructions known to the seller for delivery to the purchaser or the purchaser's designated donee. The delivery may be made by the seller or by a shipping company hired by the seller or purchaser.

SECTION 62. Tax 11.945 (3) is repealed and recreated to read:

Tax 11.945 (3) DIRECT MAIL. (a) *Advertising and promotional direct mail*. 1. A sale of advertising and promotional direct mail, including a sale of a service that is an integral part of the production and distribution of advertising and promotional direct mail, is sourced to the location from which the advertising and promotional direct mail was shipped if the purchaser does not provide to the seller any of the following:

a. The purchaser's direct pay permit.

b. An exemption certificate claiming direct mail.

c. Other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients.

2. If the purchaser provides one of the items indicated in subd. 1.a. or 1.b., to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients and pay or remit to the department the tax imposed under s. 77.53, Stats., on all its purchases of advertising and promotional direct mail for which the tax is due, and in the absence of bad faith the seller is relieved from liability for collecting the tax.

3. If the purchaser provides delivery information as provided in subd. 1.c., the seller shall collect the tax according to that information, and in the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.

4. An exemption certificate provided by the purchaser under subd. 1.b. remains in effect for all sales by the seller who received the exemption certificate to the purchaser who provided the exemption certificate, in the absence of bad faith.

5. a. Except as provided in subd. 5.b., if a transaction is a bundled transaction that includes “advertising and promotional direct mail,” subds. 1. to 4. only apply if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.

b. If advertising and promotional direct mail and other direct mail are included in a single mailing, the sale of that mailing is sourced the same as “other direct mail” as explained in par. (b).

(b) *Other direct mail.* 1. The sale of “other direct mail,” including a sale characterized under Wisconsin law as the sale of a service when the service is an integral part of the production and distribution of printed material that meets the definition of “other direct mail,” is sourced to the purchaser’s address as indicated by the seller’s business records, if the records are maintained in the ordinary course of the seller’s business and if using that address to establish the location of the sale is not in bad faith, unless the purchaser provides the seller with either of the following:

a. The purchaser’s direct pay permit.

b. An exemption certificate claiming direct mail.

2. If the purchaser provides one of the items indicated in subd. 1.a. or 1.b., to the seller, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall pay or remit to the department the tax imposed under s. 77.53, Stats., on its purchases of other direct mail for which the tax is due, and in the absence of bad faith, the seller is relieved from liability for collecting the tax.

3. If “advertising and promotional direct mail” and “other direct mail” are included in a single mailing, the sale of that mailing is sourced as a sale of “other direct mail.”

(c) *Development of billing information and providing data processing services.* 1. A transaction that includes the development of billing information or the provision of a data processing service that is more than incidental, as defined in s. 77.51 (5), Stats., to producing direct mail is not sourced as a sale of direct mail, but instead is sourced using the general sourcing rules provided in sub. (2).

2. A transaction that includes data processing services that are incidental, as defined in s. 77.51 (5), Stats., to producing direct mail are sourced using the direct mail sourcing rules provided in this subsection.

Note to LRB: Replace the second note at the end of Tax 11.945 with the following:

Note: (a) The interpretations under s. Tax 11.945 are effective beginning October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28 and (b) The definitions of “advertising and promotional direct mail” and “other direct mail” and the provisions relating to the sourcing of transactions that include these types of items are effective May 27, 2010, pursuant to 2009 Wis. Act 330.

SECTION 63. Tax 11.97 (8) is amended to read:

Tax 11.97 (8) ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES. The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a county which has adopted the tax. The activities in sub. (4) which do not create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

SECTION 64. Tax 11.985 (1) (c) 3. is amended to read:

Tax 11.985 (1) (c) 3. If the products in a transaction ~~is~~ are not sold for one nonitemized price as provided in subds. 1. and 2., and the total sales price of the transaction is further discounted, without itemizing the discount for each product, this will not cause the transaction to now be characterized as a bundled transaction. Unless sales related documentation or information is provided to show the allocation of the discount, the discount is to be allocated pro rata among the otherwise separately itemized products.

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.

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Roger M. Ervin
Secretary of Revenue

E:Rules/Chapter 11 2 Proposed Order