

Clearinghouse Rule 19-112

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 11.26 (2) (i); **amend** Tax 11.05 (2) (gm), (4) (f), and (4) (Note 1), 11.08 (6) (Note 2), 11.13 (6) (b) 2., 11.14 (2) (b) and (16), 11.26 (2) (q) and (3) (Note 2), 11.33 (4) (a) (intro) and (a) 3. and (5) (c), 11.34 (3) (bg), 11.35 (2) (b), (5) (a) and (a) (Example), (5) (b) and (b) (Example 1) and (Example 2), (6) (a) (Example 1), (Example 2), (Example 3), and (Example 5), (6) (b) and (b) (Example 2), (7) (b) (Example), (7) (c) (Example 1) and (Example 2), (7) (d) (Example), and (8) (Note 2), 11.41 (4) (a), 11.50 (4) (a) 1. a. and (5) (title), 11.52 (7) (Note 1) and (Note 2), 11.55 (2) (a) and (4) (Note 1) and (Note 2), 11.68 (13) (Note 1) and (Note 2), 11.72 (1) (b) 2. and (3) (Note 2), 11.83 (1) (b), 11.97 (3) (b), (c), (d), (e), (f), and (g) and (8) (Note 2); and **create** Tax 11.01 (1) (gm), 11.26 (3) (i) and (j), 11.50 (5) (a) 9., 11.52 (7) (d), 11.68 (4) (a) (title), (4) (b) (title), (4) (c) (title), (4) (d) (title), (4) (e) (title), (4) (f) (title), (4) (fm), (4) (g) (title), (4) (h) (title), and (4) (i); **relating to** sales and use tax provisions.

The scope statement for this rule, SS 083-16, was approved by the Governor on September 13, 2016, published in Register No. 729B on September 26, 2016, and approved by the Secretary of Revenue on October 14, 2016.

Analysis by the Department of Revenue

Statutes interpreted: Sections 77.51 (3pb), (12m), (13b), (13g), and (15b); 77.52 (2) (a) 6. and (13); 77.53 (10); and 77.54 (1), (7m), (9m), (22b), (28), (30) (a) 6., (62m), and (63), Stats.

Statutory authority: Sections 77.65 (3) and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 77.65 (3), Stats., provides “[t]he department may promulgate rules to administer this subsection...”

Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, 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: The rule (1) reflects various law changes, and (2) clarifies multiple rules.

- a. **Building Materials for Local Government or Nonprofit Facility.** Create sec. Tax 11.68 (4) (i) to explain the new exemption provided in 2015 Wis. Act 126 for building materials that become a part of a facility for a local unit of government or nonprofit organization.
- b. **Coin-Operated Laundry.** Amend s. Tax 11.72 (1) (b) 2., to state that all receipts from self-service laundry machines are exempt, not just coin-operated, pursuant to 2013 Wis. Act 20.
- c. **Distribution Facilities.** Amend s. Tax 11.55 to reflect the changes made to sec. 77.51 (13b) under 2015 Wis. Act 55, which amends the definition of "retailer" to, under certain conditions, allow a person to operate a distribution facility and make sales of taxable property on behalf of third-party sellers without becoming liable for the tax on such sales.
- d. **Diplomatic Exemption.** Amend sec. Tax 11.05 (4) (f) to state that purchases by diplomats from American Institute in Taiwan are now exempt from tax consistent with sec. 77.54 (1).
- e. **Exemption Certificate Requirements.** Amend s. Tax 11.14 (2) (b) to remove the phrase "the name and address of the seller" from the required list of data elements needed on an exemption certificate, to be consistent with the provision of the Streamlined Sales and Use Tax Agreement.
- f. **Exemptions Requiring an Exemption Certificate.** Add s. 77.54 (5) (a) 3. to the list of exemptions that do not require an exemption certificate in s. Tax 11.14 (16), to be consistent with the list provided in s. 77.52 (13), pursuant to 2013 Wis. Act 185
- g. **Federal Excise Tax on Heavy Trucks.** Amend sec. Tax 11.26 to provide that the taxable sales price and purchase price does not include the federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the Internal Revenue Code, pursuant to the changes made to s. 77.51 (15b) (b) 3s. under 2015 Wis. Act 361.
- h. **Fuel and Electricity Used in Manufacturing.** Amend sec. Tax 11.41 (4) to define the phrase "fuel and electricity consumed in manufacturing" consistent with the definition in s. 77.51 (7h) and s. Tax 2.11. The income tax credit was replaced with a sales tax exemption in 2003 Wis. Act 99.
- i. **Insulin Injection Equipment.** Amend second note following s. Tax 11.08 to state that apparatus and equipment for the injection of insulin or the treatment of diabetes qualify for exemption under s. 77.54 (22b), Stats., if they meet the definition of "durable medical equipment" in s. 77.51 (3pm), Stats., and are for use in a person's home, pursuant to 2009 Wis. Act 2.

- j. Music Sold for Jukeboxes.** Create s. Tax 11.52 (7) (d), to explain the new exemption for music sold for use in jukeboxes, provided in s. 77.54 (63), as created by 2015 Wis. Act 251.
- k. Nexus Provisions.** Amend s. Tax 11.97 to reflect 2015 Wis. Act 55, relating to nexus provisions.
- l. Occasional Sale Exemption for Nonprofits.** Amend s. Tax 11.35 to explain the changes to the occasional sale exemption, provided in s. 77.54 (7m), as amended by 2015 Wis. Act 364.
- m. Off-Highway Motorcycles.** Update Chapter Tax 11 to reflect 2015 Wis. Act 170, which relates to the registration and operation of off-highway motorcycles.
- n. Sports and Entertainment Arena Facilities.** Create sec. Tax 11.68 (4) (fm) to explain the new exemption provided in s. 77.54 (62m), as created by 2015 Wis. Act 60, for building materials, supplies, and equipment used in the construction or development of sports and entertainment arena facilities.
- o. Video Service Franchise Fees.** Amend s. Tax 11.26 to state that the annual video service provider fee imposed under s. 66.0420 (3) (k), Stats., is included in sales price and purchase price and that the percentage-based state-issued video service provider fee imposed under s. 66.0420 (7), Stats., is not included in sales price and purchase price.

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 the rule.

Comparison with rules in adjacent states: The department has not found a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 99, 2009 Wisconsin Act 2, 2013 Wisconsin Act 20, and 2015 Wisconsin Acts 55, 60, 126, 170, 251, 361, and 364 have made numerous changes to Wisconsin's sales and use tax laws. The department has created this proposed rule order to reflect these statutory changes, as well as provide needed clarification and correction as described above. No other data was used in the preparation of this proposed rule order or this analysis.

Analysis and supporting documents used to determine effect on small business: This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

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

Effect on small business: This proposed rule does not affect small business.

Agency contact person: Please contact Jen Chadwick at (608) 266-8253 or jennifer.chadwick@wisconsin.gov, if you have any questions regarding this proposed rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule 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 11.01 (1) (gm) is created to read:

Tax 11.01 (1) (gm) Form 9400-609. A department of natural resources form for occasional and dealer sales of off-highway motorcycles.

SECTION 2. Tax 11.05 (2) (gm) and (4) (f) and (f) (Note 1) are amended to read:

Tax 11.05 (2) (gm) Sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, and aircraft. Governmental units must collect the sales tax on its sales of these items. If the governmental unit does not collect the tax from the purchaser, the purchaser shall file a sales tax return and pay the tax prior to titling or registering the property in this state.

(4) (f) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United

States government providing for sales and use tax exemptions are exempt provided the personnel present their tax exemption card issued by the United States department of state or the American Institute in Taiwan showing their tax exemption number.

(f) (Note 1) **Note:** Section Tax 11.05 interprets ss. 77.52 (1), (2), (13), and (14) and 77.54 (1), (9a), (10), (15), (17), (20n), (30), (32), (37), (42), (44), and (55), Stats.

SECTION 3. Tax 11.08 (6) (Note 2) is amended to read:

Tax 11.08 (6) (Note 2) **Note:** The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a handicapped person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; (f) The exemption for parts and accessories became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemptions provided in s. 77.54 (14s) and (22), Stats., were repealed effective October 1, 2009, and replaced with the exemptions provided under s. 77.54 (22b), Stats., pursuant to 2009 Wis. Act 2; (h) The exemption in s. 77.54 (28), Stats., was amended to remove the exemption for apparatus and equipment for the injection of insulin or the treatment of diabetes. These items will still qualify for exemption under s. 77.54 (22b), Stats., if they are for home use meet the definition of "durable medical equipment" in s. 77.51 (3pm), Stats., and are for use in a person's home, pursuant to 2009 Wis. Act 2; and (i) The clarification that a "prosthetic device" must be a replacement, corrective, or supportive device became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 4. Tax 11.13 (6) (b) 2. and 11.14 (2) (b) and (16) are amended to read:

Tax 11.13 (6) (b) 2. Motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Stats., trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, or aircraft.

Tax 11.14 (2) (b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. Paper exemption certificates must be signed by and bear the name and address of the purchaser, ~~the name and address of the seller,~~ a general description of the purchaser's business and the reason for the claimed exemption. An electronic exemption certificate shall contain the same information as a paper exemption certificate, except that a signature is not required.

(16) EXEMPTION CERTIFICATE NOT NEEDED FOR CERTAIN SALES. No exemption certificate is required for sales of property, items, goods, or services that are exempt from Wisconsin sales and use tax under s. 77.54 (5) (a) 3., (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), and (52), Stats.

SECTION 5. Tax 11.26 (2) (i) is repealed.

SECTION 6. Tax 11.26 (2) (q) is amended to read:

Tax 11.26 (2) (q) The state-issued video service franchise fee imposed under s. 66.0420 ~~(7)~~ (3), Stats.

SECTION 7. Tax 11.26 (3) (i) and (j) are created to read:

Tax 11.26 (3) (i) The percentage-based state-issued video service provider fee imposed under s. 66.0420 (7), Stats.

(j) The federal excise tax imposed on the first retail sale of heavy trucks and trailers under section 4051 of the Internal Revenue Code.

SECTION 8. Tax 11.26 (3) (Note 2) is amended to read:

Tax 11.26 (3) (Note 2) **Note:** The interpretations in s. Tax 11.26 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exclusion for federal and Wisconsin motor vehicle excise taxes refunded became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (b) 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; (c) ~~the~~ The regional transit authority taxes were authorized by 2009 Wis. Act 28 and repealed by 2011 Wis. Act 32; ~~and~~ (d) The definitions of "purchase price" and "sales price" were

amended to provide when taxes are not included in the "purchase price" or "sales price," pursuant to 2013 Wis. Act 20-; and (e) The definitions of "purchase price" and "sales price" were amended retroactively to September 1, 2014 to exclude the federal excise tax on heavy trucks and trailers, pursuant to 2015 Wis. Act 361.

SECTION 9. Tax 11.33 (4) (a) (intro.) and (a) 3. and (5) (c), 11.34 (3) (bg), 11.35 (2) (b), (5) (a) and (a) (Example), (5) (b) and (b) (Example 1) and (Example 2), (6) (a) and (a) (Example 1), (Example 2), (Example 3), and (Example 5), (6) (b) and (b) (Example 2), (7) (b) (Example), (7) (c) (Example 1) and (Example 2), (7) (d) (Example), and (8) (Note 2) are amended to read:

Tax 11.33 (4) (a) (intro.) The sale of a motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, or aircraft that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin is an exempt occasional sale only if one of the following applies:

3. The motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, or aircraft is sold by a nonprofit organization meeting the requirements in s. Tax 11.35 (4).

(5) (c) Sales of motor vehicles, aircraft, boats, recreational vehicles as defined in s. 340.01 (48r), Stats., snowmobiles, trailers, semitrailers, all-terrain vehicles, ~~and utility terrain vehicles,~~ and off-highway motorcycles. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, recreational vehicle as defined in s. 340.01 (48r), Stats., snowmobile, trailer, semitrailer, all-terrain vehicle, ~~or utility terrain vehicle,~~ or off-highway motorcycle is registered or titled within Wisconsin.

Tax 11.34 (3) (bg) A sale of a motor vehicle, snowmobile, recreational vehicle as defined in s. 340.01 (48r), Stats., trailer, semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, or aircraft that is registered or titled in Wisconsin or required to be registered or titled in Wisconsin, is subject to tax unless s. Tax 11.33 (4) (a) 1. or 2. apply.

Tax 11.35 (2) (b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than ~~\$500~~ \$10,000 per event by all persons for performing, for reimbursement of expenses or for prize money.

(5) (a) Its sales of otherwise taxable tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or

services or its events occur on ~~20~~ 75 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

(Example) **Example:** A boy scout troop takes orders for Christmas wreaths from ~~October~~ August 1 through November 1. The wreaths are delivered by the troop on December 15 and 16. For purposes of determining whether its events meet the ~~20~~ 75-day test, the troop should use the days of delivery rather than days orders are taken.

(b) Its taxable sales price for tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services for the calendar year are ~~\$25,000~~ \$50,000 or less, regardless of the number of days on which its sales or events occur. Sales that are nontaxable are not included for purposes of the ~~\$25,000~~ \$50,000 sales price test.

(Example 1) **Examples: 1)** A church sells frozen pizzas. Since sales of frozen pizzas are exempt from sales tax, the sales of the frozen pizzas are not counted as part of the sales price for purposes of the ~~\$25,000~~ \$50,000 receipts test.

(Example 2) **2)** A nonprofit organization, which sells hundreds of Christmas trees, sells 5 Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as part of the sales price for purposes of the ~~\$25,000~~ \$50,000 receipts test.

(6) (a) (Example 1) **Examples: 1)** Four different bands are paid ~~\$200~~ \$3,000 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (~~\$800~~ \$12,000) exceeds the ~~\$500~~ \$10,000 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

(Example 2) **2)** Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band ~~\$300~~ \$5,500. Since the total payment for entertainment (~~\$600~~ \$11,000) exceeds the ~~\$500~~ \$10,000 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

(Example 3) **3)** A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of the ~~\$500~~ \$10,000 limit in sub. (2) (b). There is no separate admission charge. However, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the nonprofit organization at this event are taxable.

(Example 5) **5)** Nonprofit Organization A sponsors an admission event at which a band is hired to perform. The band is paid more than ~~\$500~~ \$10,000. Nonprofit Organization A allows Nonprofit Organization B, a separate entity, to sell soft drinks and food at the event for consumption on the premises of the event. Although Nonprofit Organization A's sales at the event do not qualify for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

(b) A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may obtain a 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 seller's permit. Days and receipts from events involving admissions to entertainment for which a seller's permit was obtained are included with all other sales in determining the ~~20~~ 75-day test and the ~~\$25,000~~ \$50,000 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.

(Example 2) **2)** A nonprofit organization holds several events during the year. For one of the events, the nonprofit organization obtains a seller's permit because entertainment is involved, 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 seller's permit for purposes of determining whether the ~~\$25,000~~ \$50,000 taxable receipts test is met.

(7) (b) (Example) **Example:** A nonprofit organization has held ~~seven~~ nineteen ~~3~~ 4-day events for a total of ~~24~~ 76 days each year for the past 5 years. Receipts were always over ~~\$25,000~~ \$50,000, 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~~ 75-day standard and request inactivation of its seller's permit in good faith.

(c) (Example 1) **Examples: 1)** A church held ~~48~~ 73 days of events or sales in the current year. Receipts for the events equaled ~~\$30,000~~ \$70,000 and no entertainment was involved. The church expects to hold the same ~~48~~ 73 days of events in the following year. It requests inactivation of its seller's permit. 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 ~~24~~ 76 and ~~22~~ 77, the days exceeding the standard, are subject to sales tax.

(Example 2) **2)** A garden club is organized in the current year. The garden club is not required to hold a seller's permit and does not apply for one. In the following year, the garden club holds ~~22~~ 77 days of events with taxable receipts from the events of ~~\$30,000~~ \$70,000. Only receipts from days ~~24~~ 76 and ~~22~~ 77, the days exceeding the standard, are subject to sales tax.

(d) (Example) **Example:** A nonprofit organization holds ~~45~~ 70 days of sales in the current year. The organization holds a seller's permit, files sales and use tax returns and pays sales tax on all its receipts in the current year. At the end of the current year, the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. The organization may not claim a refund of taxes paid while it held a seller's permit.

(8) (Note 2) **Note:** The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to 1987 Wis. Act 399, except: (a) the \$25,000 receipts standard, and the \$500 entertainment standard became effective January 1, 2006, pursuant to 2005 Wis. Act 25; (b) 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 (c) the 75 day standard, the \$50,000 receipts standard, and the \$10,000 entertainment standard became effective January 1, 2017, pursuant to 2015 Wis. Act 364.

SECTION 10. Tax 11.41 (4) (a) is amended to read:

Tax 11.41 (4) (a) Fuel and electricity are specifically excluded from the exemption provided by s. 77.54 (2), Stats. However, an exemption is provided in s. 77.54 (30) (a) 6., Stats., for fuel and electricity consumed in

manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., in this state. Consistent with s. 77.51(7h), Stats., "fuel and electricity consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process and does not include fuel and electricity consumed in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, storing raw materials or finished units of tangible personal property or items or property under s. 77.52(1)(b) or (c), Stats., research and product development, delivery to or from the plant, repairing or maintaining plant facilities, or shipping, advertising, distribution, sales, or administrative department activities.

SECTION 11. Tax 11.50 (4) (a) 1. a. and (5) (title) are amended to read:

Tax 11.50 (4) (a) 1. a. Highway motor vehicles or trailers, snowmobiles, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, mini bikes, aircraft, and boats.

(5) (title) AUCTION SALES OF MOTOR VEHICLES, BOATS, SNOWMOBILES, RECREATIONAL VEHICLES AS DEFINED IN S. 340.01 (48R), STATS., TRAILERS, SEMI-TRAILERS, ALL-TERRAIN VEHICLES, UTILITY TERRAIN VEHICLES, OFF-HIGHWAY MOTORCYCLES, AND AIRCRAFT.

SECTION 12. Tax 11.50 (5) (a) 9. is created to read:

Tax 11.50 (5) (a) 9. Off-highway motorcycles

SECTION 13. Tax 11.52 (7) (d) is created to read:

Tax 11.52 (7) (d) Music sold in a tangible or digital form to a person described in 77.54 (63), Stats., for use in a jukebox is exempt from sales and use tax if the music is used exclusively for the jukebox. When the music is sold with a jukebox, the music is exempt as a separate sale from the jukebox if the sales price of the music is stated separately from the sales price of the jukebox on the invoice or bill of sale the seller gives to the purchaser.

SECTION 14. Tax 11.52 (7) (Note 1) and (Note 2) are amended to read:

Tax 11.52 (7) (Note 1) **Note:** Section Tax 11.52 interprets ss. 77.51 (1fm), (3n), (3t), (13), and (17w), 77.52 (1), (1m), (2) (a) 2., 6., 7., 10., and 11., and (2m), and 77.54 (20n) and (63), Stats.

(Note 2) **Note:** The interpretations in s. Tax 11.52 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The definitions of "candy," "dietary supplement," "food and food ingredient," and "soft drink," the exemption for food and food ingredients, 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 (b) Receipts from all self-service laundry, dry cleaning, pressing, and dyeing machines, including those that are not coin-operated, are not taxable effective October 1, 2013, pursuant to 2013 Wis. Act 20; and (c) The exemption for music in s. 77.54 (63), Stats., became effective June 1, 2016, pursuant to 2015 Wis. Act 251.

SECTION 15. Tax 11.55 (2) (a) and (4) (Note 1) and (Note 2) are amended to read:

Tax 11.55 (2) (a) The sales price received from the sale of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., made by a person with possession of the property, item, or good who is acting for a known or disclosed principal, is taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats. If the principal fails to pay the tax, the agent may be liable for it, except as provided ins. 77.51(13b), Stats.

(4) (Note 1) **Note:** Section Tax 11.55 interprets s. 77.51 (1fd), (13), (13b), and (14g) (f), Stats.

(Note 2) **Note:** The interpretations in s. Tax 11.55 are effective under the general sales and use tax law on and after September 1, 1969, except: ~~that the~~ (a) 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 (b) The exclusion from the definition of "retailer" for certain persons who operate a distribution facility and makes sales of tangible personal property and items under s. 77.52 (1) (b), Stats., on behalf of third-party sellers became effective July 14, 2015, pursuant to 2015 Wis. Act 55.

SECTION 17. Tax 11.68 (4) (a) (title), (b) (title), (c) (title), (d) (title), (e) (title), (f) (title), (fm), (g) (title), (h) (title), and (i), are created to read (**Note:** This section will be subsequently amended by SS 102-18):

Tax 11.68 (4) (a) (title) *Materials used in real property.*

(b) (title) *Materials sold as personal property.*

(c) (title) *Machinery and tools purchased by contractors.*

(d) (title) *Waste treatment facilities.*

(e) (title) *Waste reduction and recycling.*

(f) (title) *Sports and entertainment home stadiums.*

(fm) *Sports and entertainment arena facilities.* Under s. 77.54 (62m), Stats., owners, lessees, contractors, subcontractors, or builders, may purchase without sales or use tax building materials, supplies, equipment, and landscaping services acquired solely for or used solely in, the construction or development of sports and entertainment arena facilities, as defined in s. 229.41 (11g), Stats., but not later than one year after certification of completion is issued under s. 229.42 (4e) (d), Stats.

(g) (title) *Modular and manufactured homes used outside Wisconsin.*

(h) (title) *Fertilizer blending, feed milling, and grain drying operations.*

(i) *Building materials for facilities owned by local governmental units and certain nonprofit organizations.* Under s. 77.54 (9m), Stats., contractors may purchase without sales or use tax building materials that the contractor, in fulfillment of a real property construction activity, transfers to an entity described in s. 77.54 (9a) (b), (c), (d), (em), and (f), Stats., if the materials become part of a facility in Wisconsin that is owned by the entity.

1. A Wisconsin organization described under s. 77.54 (9a) (f), Stats., must hold a Wisconsin Certificate of Exempt Status number for the exemption in s. 77.54 (9m), Stats., to apply. A non-Wisconsin organization described under s. 77.54 (9a) (f), Stats., is not required to hold a Wisconsin Certificate of Exempt Status number for the exemption in s. 77.54 (9m), Stats., to apply.

2. For purposes of the exemption in s. 77.54 (9m), Stats., "facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste

water treatment facility. Facility does not include highways, streets, roads, sidewalks or paths, regardless of whether located within a facility.

Example: Materials that become a component part of the road, curb, gutters, or sidewalk are not part of a facility, such as black top, cement, and road base materials.

Example: Materials that become a component part of a storm sewer facility and the materials necessary to stabilize those items are part of the storm sewer facility, such as piping, fittings, gravel and other fill necessary to bury the storm sewer piping to protect it from the road. Any road base material used to bring the road to elevation, and the road surface itself is not part of a facility.

Example: Pipes, pipe liner material, manhole structures, manhole covers, manhole liners, and manhole coatings become a component part of the storm sewer facility.

3. The exemption in s. 77.54 (9m), Stats., does not apply to a contractor's purchase of building materials transferred to a county, city, village or town, a state governmental unit, or a federal governmental unit outside this state.

4. The exemption in s. 77.54 (9m), Stats., applies to a contractor's purchase of building materials transferred to a person other than an entity described in s. 77.54 (9a) (b), (c), (d), (em), and (f), Stats., if the person does not use the facility for any purpose other than to transfer it to the entity.

Example: Building materials for the construction of a parking ramp that will be owned and operated by a developer prior to transfer to a municipality, does not qualify for the exemption.

5. The exemption in s. 77.54 (9m), Stats., applies to a subcontractor's purchase of building materials if the materials are transferred to an entity described in s. 77.54 (9a) (b), (c), (d), (em), and (f), Stats., and, upon completion of the facility, the materials become a part of the facility in Wisconsin that is owned by the entity, pursuant to a contract between a general contractor and the entity, and the general contractor does not use the facility for any purpose other than to transfer it to the entity.

6. The exemption in s. 77.54 (9m), Stats., applies to contracts entered into on or after January 1, 2016. The exemption does not apply to purchases of building materials after January 1, 2016, for a contract that was entered into prior to January 1, 2016, even if the change order relating to those materials was executed after January 1, 2016.

SECTION 18. Tax 11.68 (13) (Note 1) and (Note 2) are amended to read:

Tax 11.68 (13) (Note 1) **Note:** Section Tax 11.68 interprets ss. 77.51 (2), (12m) (b) 7., (14) (intro.), (15a) (b) 1. and 4., (15b) (b) 7., 77.52

(2) (a) 10., 11., and 20., 77.53 (1), 77.54 (5) (d), (6) (am) 1., 4. and 5., (9m), (26), (26m), (31), (41), ~~and (60), and (62m)~~, 77.71 (3), and 77.77 (3), Stats.

(Note 2) **Note:** The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption of 35% of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16; (n) In *Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue*, Wisconsin Court of Appeals, District IV, No. 86-1813, October 29, 1987 (CCH 202-919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation; (o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997

Wis. Act 27; (q) The clarification of the tax treatment of the original installation or complete replacement of certain deemed items became effective on October 1, 2001, pursuant to 2001 Wis. Act 16; (r) The changes in the use of the terms mobile homes and manufactured homes became effective January 1, 2008, pursuant to 2007 Wis. Act 11; (s) 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; (t) The exemption for modular homes and manufactured homes used in real property construction activities outside Wisconsin became effective September 1, 2011 pursuant to 2011 Wis. Act 32; and (u) The exemption for lump sum contracts first applied to contracts entered into on or after October 1, 2013, pursuant to 2013 Wis. Act 20; (v) The exemption for building materials acquired solely for holding structures used in a fertilizer blending, feed milling, or grain drying operation became effective April 19, 2014, pursuant to 2013 Wis. Act 324; (w) The exemption for building materials, supplies, and equipment used in the construction or development of sports and entertainment arena facilities became effective August 14, 2015, pursuant to 2015 Wis. Act 60; and (x) The exemption for building materials that become a part of a facility owned by a local government or exempt nonprofit organization first applies to contracts entered into January 1, 2016, pursuant to 2015 Wis. Act 126.

SECTION 19. Tax 11.72 (1) (b) 2. and (3) (Note 2) are amended to read:

Tax 11.72 (1) (b) 2. The services are performed by the customer through the use of ~~coin-operated, self-service machines. Coin-operated, self-service machines do not include machines activated by tokens or magnetic cards.~~

(3) (Note 2) **Note:** The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Laundries and dry cleaners became the consumers of, and pay tax on the purchases of, items transferred to customers effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) The exemption for diaper services and cloth diapers became effective July 1, 1990, pursuant to 1989 Wis. Act 335; (c) The repeal of the exemption for cloth diapers became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (d) The change of the term "gross receipts" to "sales price" became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (e) The exemption for coin-operated, self-service laundry machines was expanded to include all self-service machines effective October 1, 2013, pursuant to 2013 Wis. Act 20.

SECTION 20. Tax 11.83 (1) (b) is amended to read:

Tax 11.83 (1) (b) “Motor vehicle” means a self-propelled vehicle, such as an automobile, truck, truck-tractor, or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, “motor vehicle” does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, all-terrain vehicle, utility terrain vehicle, off-highway motorcycle, fork lift truck, or road machinery as defined in s. 340.01 (52), Stats. “Motor vehicle” does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

SECTION 21. Note: Tax 11.97 will be repealed via CR 19-072. Tax 11.97 (3) (b), (c), (d), (e), (f), and (g) and (8) (Note 2) are amended to read:

Tax 11.97 (3) (b) Any retailer leasing or renting out any tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., located in or sourced to this state under s. 77.522, Stats.

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

(d) Any retailer having any representative, including a manufacturer's representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services or performing any of the other activities described in s. 77.51 (13g), Stats., in Wisconsin.

(e) Any person or that person's representative servicing, repairing, or installing equipment or other tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., in Wisconsin.

(f) Any person delivering property, items, or goods into this state in ~~company-operated vehicles~~ a vehicle operated by the person that sells the property or items that are delivered.

(g) Any person or that person's representative performing construction activities in this state.

(8) (Note 2) **Note:** The interpretations in s. Tax 11.97 are effective under the general sales tax law on and after September 1, 1969, except: (a) The provision in sub. (5) is effective January 1, 1980, for foreign publishers of books and/or periodicals other than catalogs and January 1, 1990, for all other foreign publishers, pursuant to 1989 Wis. Act 336; (b) The provisions in pars. (3) (h) and (i) became effective October 1, 2009, pursuant to 2009 Wis. Acts 2 and 28; and (c) 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 (d) The criteria for which activities in themselves create nexus in sub. (3) were amended to reflect the change in the definition of "retailer engaged in business in this state" effective July 14, 2015, pursuant to 2015 Wis. Act 55.

SECTION 22. EFFECTIVE DATE. This rule 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.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Peter W. Barca
Secretary of Revenue