

Clearinghouse Rule 20-018

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 11.26 (3) (g), 11.39 (4) (b), and 11.68 (9) (a) (Example 2); **amend** Tax 11.04 (1), (2), (4), and (5) (Note 1) and (Note 2), 11.05 (3) (u) and (Note) and (4) (a) and (f) (Note 2), 11.12 (1), (2) (f), (4) (a) (intro), (b) (intro) and 6. (title) and a., (c), and (d), and (7) (Note 1) and (Note 2), 11.14 (12) (d) and (16) and (Note 1) and (Note 2), 11.16 (1) (h) and (3) (c) (Note 1) and (Note 2), 11.17 (4) (b) 6. and (5) (Note 1) and (Note 4), 11.19 (6), 11.26 (3) (h) (Note 1), 11.33 (4) (f), (Example 1), and (Example 2) and (5) (f) (Note 2), 11.48 (3) (Note 1) and (Note 2), 11.49 (2) (b) and (3) (b) (Note 1) and (Note 2), 11.52 (7) (a) and (Note 1) and (Note 2), 11.53 (3) and (7) (Note 1) and (Note 2), 11.55 (1) and (2) (a), 11.57 (2) (i) and (6) (Note 1) and (Note 2), 11.62 (2) (b) and (3) (d) (Note 1) and (Note 2), 11.65 (1) (c), (3), and (5) (Note 1) and (Note 2), 11.66 (4) (b) and (6) (Note 1) and (Note 3), 11.68 (7) (b) 1., 2., and 3. (intro.) and (Example 1) and (Example 2), (9) (a) and (Example 1), and (13) (Note 1) and (Note 2), 11.83 (4) (c), 11.86 (6) (Note 1) and (Note 2), 11.87 (4) (Note 2), 11.92 (1) (b) and (7) (b) (Note 1), and 11.985 (3) (b) and (Note 1); **repeal and recreate** Tax 11.68 (4) (i); **create** Tax 11.04 (1) (a) 9., 11.05 (4) (a) 8. and (bg), 11.12 (1) (am), 11.17 (4) (a) 4., 11.48 (2) (f), 11.49 (2) (bg), 11.52 (5m) and (7) (e), 11.57 (2) (r), 11.66 (2) (c) (Note), 11.68 (4) (j) and (7) (b) 2g., 2h., 2r., and 3. a. and b. and (Example), 11.86 (5) (d), 11.87 (3) (h), and 11.92 (1) (bg), **relating** to sales and use tax provisions and affecting small business.

The scope statement for this rule, SS 102-18, was approved by the Governor on August 27, 2018, published in Register No. 753A1 on September 4, 2018, and approved by the Secretary of Revenue on September 20, 2018.

Analysis by the Department of Revenue

Statutes interpreted: Tax 11.04 – ss. 77.51 (2) and (14), 77.54 (9a), (9m), (26), (41), (62m), and (65), and 77.55 (1), Stats.

Tax 11.05 – ss. 77.52 (1), (2), (13), and (14) and 77.54 (9a), (9g), (10), (15), (17), (20n), (30), (32), (37), (42), (44), and (55), Stats.

Tax 11.12 – ss. 77.51 (1bm) and (2d), 77.52 (1) and (2) (a) 10., and 77.54 (3) (3m), (27), (30), and (33), Stats.

Tax 11.14 – ss. 77.52 (13) to (17), 77.53 (10) to (13), 77.54 (9a) and (9g), 77.60 (13), and 77.77 (3), Stats.

Tax 11.16 - ss. 77.51 (9), 77.54 (5) (b), (7) (a), (12), and (13), 77.55 (2m), and 77.57, Stats.

Tax 11.17 – ss. 77.51 (3pj), (3pm), (7m), (9), and (11m), 77.52 (1) and (2) (a) 1. and 9., and 77.54 (9a), (14), (14m), (14r), (20n), (22b), (28), and (64), Stats.

Tax 11.19 – ss. 77.51 (1fr), (8), and (13h), 77.52 (1) and (2) (a) 11., 77.54 (2m), (9a), (9g), (15), (25), (25m), (43), and (59), and 77.55 (1), Stats.

Tax 11.26 – ss. 77.51 (12m) and (15b) and 77.54 (37), Stats.

Tax 11.33 - ss. 77.51 (9), 77.52 (1) and (2) (a) 2. and 77.54 (7) and (7m), Stats.

Tax 11.39 – ss. 77.51 (7h), (10b), and (10c) and 77.54 (2) and (6) (am) 1., Stats.

Tax 11.48 – ss. 77.51 (13) (fm) and (n), 77.52 (1), (2) (a) 1., 2., 5., and 9., (2m), and (21), and 77.54 (36), Stats.

Tax 11.49 – ss. 77.52 (2) (a) 8m., 9., and 10. and (2m) (b) and 77.54 (3), (5), (9a), (9g), (11), and (30), Stats.

Tax 11.52 – 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), (63), and (65m), Stats.

Tax 11.53 - ss. 73.03 (38) and (50), 77.51 (9), 77.52 (1), (7), (9), (11), (12), and (19), 77.54 (7), 77.58, and 77.61 (2), Stats.

Tax 11.55 – s. 77.51 (1fd), (13), and (14g) (f), Stats.

Tax 11.57 – ss. 77.51 (14g) (fm), 77.52 (1) and (2) (a) 10., and 77.54 (3), (6) (am) 1. and 3., (17), (26m), (30), (44), and (68), Stats.

Tax 11.62 - ss. 77.51 (9) and (13) (i), 77.52 (2) (a) 10., 77.54 (7), and 77.57, Stats.

Tax 11.65 – ss. 77.52 (1) and (2) (a) 2. and 77.54 (7m), (10), (35), and (65m), Stats.

Tax 11.66 – ss. 77.51 (1ba), (1r), (3c), (3pe), (3pn), (3rn), (5d), (5f), (5n), (5r), (7k), (8m), (9s), (10d), (10f), (11c), (13rn), (17m), (21n), (24), (25), and (26), 77.52 (2) (a) 5. and 5m., 77.522 (4), 77.525, and 77.54 (37), Stats.

Tax 11.68 – ss. 77.51 (2), (12m) (b) 7., (12t), (14) (intro.), (15a) (b) 1. and 4., (15b) (b) 7., 77.52 (2) (a) 10., 11., and 20. and (2m), 77.53 (1), 77.54 (5) (d), (6) (am) 1., 4., and 5., (9m), (26), (26m), (31), (41), (60), (62m), and (65), 77.71 (3), and 77.77 (3), Stats.

Tax 11.83 – ss. 77.51 (7m), (13) (am), (14) (j), and (15b) (b) 6., 77.52 (1), (2) (a) 10. and 13m., and (15), 77.53 (1), (1m), (16), (17), and (18), 77.54 (5) (a), (c), and (d), (7) and (22b), 77.56 (2) and (3), 77.61 (1), 77.71 (2) and (4), and 77.73, Stats.

Tax 11.86 – ss. 77.51 (20), 77.52 (2) (a) 10., 11., and 20., 77.54 (68), 86.16 and 182.017, Stats.

Tax 11.87 – ss. 77.51 (10m), (12m), (14) (b) and (f), and (15b), and 77.54 (20n) and (20r), Stats.

Tax 11.92 – ss. 77.52 (13), 77.54 (9a) and (9q), 77.58 (6m), 77.60 (8), 77.61 (4) (a) and (9), and 77.75, Stats.

Tax 11.985 – ss. 77.51 (1f), (3pf), and (9p), 77.52 (1), (2), (20), (21), (22), and (23), and 77.54 (51) and (52), 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 section..."

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..."

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule: The department estimates it will take approximately 100 hours to develop the rule.

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

Plain language analysis: The rule (1) reflects various law changes, and (2) corrects technical issues.

- a. **Bundled Transactions.** Repeal and recreate s. Tax 11.68 (4) (i) and amend s. Tax 11.985 (3) (b) to correct a technical error.
- b. **Butcher Shops Listed as Nonmanufacturers.** Repeal s. Tax 11.39 (4) (b) which states that butcher shops are nonmanufacturers, since the processes performed by some butcher shops may qualify as manufacturing and improve readability.
- c. **Contractor's Exemption for Building Materials for Certain Exempt Entities.** Amend ss. Tax 11.04 and 11.68 to reflect 2015 Wis. Act 126 and the subsequent amendments in 2017 Wis. Acts 59, 190, and 231.
- d. **Custom Farming.** Amend s. Tax 11.57 (2) (i) to include a missing reference to custom farming.
- e. **Electronics and Information Technology Manufacturing Zone Facilities.** Create s. Tax 11.68 (4) (j) to explain the new exemption provided in 2017 Wis. Act 59 for building materials, supplies, and equipment used in the construction or development of facilities located in an electronics and information technology manufacturing zone.
- f. **Exemption Expanded for Construction Contracts.** Amend s. Tax 11.68 and create s. Tax 11.68 (7) (b) 2g., 2h., and 2r. to reflect the changes in 2017 Wis. Act 59 expanding the exemption for construction contracts.
- g. **Exemption for Holding Companies.** Amend ss. Tax 11.05 (4), 11.14, 11.19 (6), 11.49, and 11.92 and create ss. Tax 11.04 (1) (a) 9. and 11.05 (4) (a) 8., to reflect the

exemption created in 2017 Wis. Act 231 for certain holding companies that are exempt under s. 501 (c) (2) of the Internal Revenue Code.

- h. Exemptions for Beekeeping.** Amend ss. Tax 11.12 and 11.57, to reflect the changes in 2017 Wis. Act 59 expanding the definition of farming to include beekeeping.
- i. Exemptions Requiring an Exemption Certificate.** Amend s. Tax 11.14 (16) to add s. 77.54 (66), Stats., to the list of exemptions that do not require an exemption certificate to be consistent with the list provided in s. 77.52 (13), Stats., pursuant to 2017 Wis. Act 59.
- j. Exemption for Services Performed During a Disaster Period.** Create ss. Tax 11.57 (2) (r) and 11.86 (5) (d) and amend s. Tax 11.57 to reflect the exemption created in 2017 Wis. Act 290 for services performed during a disaster period by electric cooperatives or telecommunications utilities.
- k. Expand List of Qualifying Exempt Entities for Building Materials Exemption.** Amend ss. Tax 11.04 (2) and Tax 11.68 (4) (i) to reflect the changes in 2017 Wis. Acts 59, 190, and 231 to expand the list of qualifying exempt entities to include technical colleges and the UW System, state veterans organizations, and certain title holding companies.
- l. Hotels, Motels, and Other Lodging Providers Deemed Consumers.** Create s. Tax 11.48 (2) (f) to state that hotels, motels, and other lodging providers are deemed the consumers of telecommunications, ancillary, internet access and cable TV services used in providing lodging services, pursuant to 2017 Wis. Act 17.
- m. Increase in Occasional Sale Exemption Threshold.** Amend ss. Tax 11.16 (1) (h) and (3) (c) (Note 2), 11.17 (4) (b) 6., 11.33 (4) (f) and (Example 1) and (Example 2), 11.53 (3) and (7) (Note 2), and 11.62 (2) (b) and (3) (d) (Note 2) to reflect the threshold provided in 2017 Wis. Act 59.
- n. Internet Access Services.** Amend s. Tax 11.66 (2) (c) to create a note that reflects internet access services are no longer taxable effective June 30, 2020, as provided in 2017 Wis. Act 59.
- o. Medical Records.** Create s. Tax 11.17 (4) (a) 4. to reflect the exemption for medical records, as created by 2017 Wis. Act 17.
- p. Off-Highway Motorcycles.** Amend s. Tax 11.83 (4) (c) to reflect 2017 Wis. Act 59, which relates to provisions previously overlooked in 2015 Wis. Act 170 for the registration and operation of off-highway motorcycles.
- q. Prepared Food.** Amend s. Tax 11.87 (3) (h) to state that prepared foods are taxable unless the exemption created in 2017 Wis. Act 59 applies.
- r. Prizes Awarded Through Amusement Devices.** Create s. Tax 11.52 (5m) to explain the exemption for prizes purchased by an amusement device operation, as created in 2017 Wis. Act 59, and clarify property that does not qualify for the exemption.

- s. **Exemption for Public Service Surcharge Repealed.** Amend ss. Tax 11.05 (3) (u) and 11.66 (4) (b) and repeal s. Tax 11.26 (3) (g) to reflect 2017 Wis. Act 59, which repealed the surcharge established by the Public Service Commission under s. 256.35 (3m) (f), Stats.
- t. **State Veterans Association Exemption.** Amend s. Tax 11.49 and create ss. Tax 11.05 (4) (bg), 11.49 (2) (bg), and 11.92 (1) (bg) to include information about the exemption created in 2017 Wis. Act 190 for certain purchases made by a state veterans organization.
- u. **Tournament and League Entry Fees.** Amend s. Tax 11.65 to reflect the exemption for tournament and league entry fees used as prize money, as created in 2017 Wis. Act 59.
- v. **Undisclosed and Disclosed Principals.** Amend s. Tax 11.55 (1) and (2) to clarify that provisions relating to principals apply to services and property.
- w. **Video and Electronic Games Sold to Amusement Device Operators.** Amend s. Tax 11.52 (7) (a) and create s. Tax 11.52 (7) (e) to reflect the exemption for a video or electronic game sold to a person who provides a taxable service through an amusement device, as created by 2017 Wis. Act 59.

Summary of, and comparison with, existing or proposed federal regulation: The passage of the permanent Internet Tax Freedom Act, as part of Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125) on February 24, 2016, prohibited states like Wisconsin, that were grandfathered in temporary versions, from imposing sales tax on internet access services by July 1, 2020. Wisconsin law was revised to reflect this federal preemption effective July 1, 2020. There is no other 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 is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2015 Wisconsin Act 126, 2015 Wisconsin Act 170, 2017 Wisconsin Act 17, 2017 Wisconsin Act 59, 2017 Wisconsin Act 190, 2017 Wisconsin Act 231, and 2017 Wisconsin Act 290 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.

Analysis and supporting documents used to determine effect on small business: This rule makes changes to reflect current law and current department policy. This proposed rule order makes no policy or other changes having an effect on small business except for the removal of butcher shops from the list of non-manufacturers. The department recognizes that some butcher shops could qualify as manufacturers and take advantage of various sales and use tax exemptions.

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 order may have an effect on small business, as described above.

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. 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 11.04 (1) is amended to read:

Tax 11.04 (1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats.

(a) Section 77.54 (9a), Stats., provides an exemption for sales to ~~this state~~ all the following:

1. The state of Wisconsin or any agency thereof of the state of Wisconsin, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority any;

2. Any county, city, village, town or school district in this state; a Wisconsin.

3. A county-city hospital established under s. 66.0927, Stats.; a

4. A sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any

5. Any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any Wisconsin.

6. Any federally recognized American Indian tribe or band in this state; any Wisconsin.

7. Any joint local water authority created under s. 66.0823, Stats.; any

8. Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a

10. A local exposition district under subch. II of ch. 229, Stats.; a

11. A local cultural arts district under subch. V of ch. 229, Stats.; a

12. A cemetery company or corporation described under section 501 (c) 13 of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

(b) Section 77.55 (1), Stats., provides an exemption for sales to ~~the~~ all the following:

1. ~~The United States, its unincorporated agencies and instrumentalities, and any unincorporated~~.

2. ~~Any incorporated~~ agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

SECTION 2. Tax 11.04 (1) (a) 9. is created to read:

Tax 11.04 (1) (a) 9. An entity described under section 501 (c) (2) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code and that is organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to an entity described in s. 77.54 (9a) (f), Stats.

SECTION 3. Tax 11.04 (2), (4), and (5) (Note 1) and (Note 2) are amended to read:

Tax 11.04 (2) TAXABLE SALES. ~~Sales~~ Except as provided in s. 77.54 (9m), (26), (41), (62m) and (65), Stats., or if prohibited by federal law, sales of building materials to contractors or subcontractors used in the construction of buildings or structures, or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(4) SUPPLIER IS CONTRACTOR. A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. ~~The~~ Except as provided in s. 77.54 (9m), (26), (41), (62m), and (65), Stats., or if prohibited by federal law, the sale of building materials to the consumer is subject to the tax.

(5) **Note:** Section Tax 11.04 interprets ss. 77.51 (2) and (14), 77.54 (9a), ~~(9m), (26), (41), (62m), and (65)~~ and 77.55 (1), Stats.

Note: The interpretations in s. Tax 11.04 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The building materials exemption for certain sports stadiums became effective October 1, 1991, pursuant to 1991 Act 37; (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 building materials exemption for a facility in an electronics and information technology manufacturing zone became effective September 20, 2017 pursuant to 2017 Act 58; (d) The building materials exemption for contracts with certain exempt entities became effective January 1, 2016, pursuant to 2015 Wis. Act 126; and (e) A missing reference was added to the list of exempt entities for a local exposition district and certain title holding companies were also added to the list of exempt entities, effective September 1, 2017, pursuant to 2017 Wis. Act 231.

SECTION 4. Tax 11.05 (3) (u) and (Note) and (4) (a) are amended to read:

Tax 11.05 (3) (u) Revenues collected under s. 256.35 (3), Stats., ~~and the surcharge established by rule by the public service commission under s. 256.35 (3m) (f), Stats., for customers of wireless providers, as defined in s. 256.35 (3m) (a) 6., Stats.~~

Note: Section 256.35 (3m), Stats., regarding the surcharge for customers of wireless providers was repealed by 2017 Wis. Act 59.

(4) PURCHASES. (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., and services by any of the following:

1. Wisconsin or by any agency of Wisconsin, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority;~~any.~~

2. Any county, city, village, town or school district in ~~this state;~~ a Wisconsin.

3. A county-city hospital established under s. 66.0927, Stats.;~~a~~

4. A sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.;~~any~~

5. Any other unit of government in this state or any agency or instrumentality of one or more units of government in ~~this state;~~ any Wisconsin.

6. Any federally recognized American Indian tribe or band in ~~this state;~~ any Wisconsin.

7. Any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation;~~a~~

9. A local exposition district under subch. II of ch. 229, Stats.;~~a~~

10. A local cultural arts district under subch. V of ch. 229, Stats.;~~and a~~

11. A cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

SECTION 5. Tax 11.05 (4) (a) 8. and (bg) are created to read:

Tax 11.05 (4) (a) 8. An entity described under section 501 (c) (2) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code and is organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to an entity described under s. 77.54 (9a) (f), Stats.

Tax 11.05 (4) (bg) Purchases by a state veterans organization, as defined in s. 45.41 (1) (b), Stats., are exempt except purchases of property and services used primarily in preparing, storing, serving, selling, or delivering food and beverages, including products and services for cleaning machinery and equipment used for the food and beverages that are sold by the veterans organization. A state veterans organization does not qualify for a certificate of exempt status, CES, number. The organization should provide a fully completed Wisconsin sales and use tax exemption certificate, Form S-211 or S-211E, to claim exemption on their qualifying purchases.

SECTION 6. Tax 11.05 (4) (f) (Note 2) is amended to read:

Tax 11.05 (4) (f) **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 Quality Home Health Care Authority became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (ze) The exemption for federally recognized American Indian tribes or bands in Wisconsin became effective August 1, 2009, pursuant to 2009 Act 28; (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; (zL) The exemption for low-income assistance fees became effective July 1, 2005, pursuant to 2005 Wis. Act 141; (zp) The exemption for certain admissions to sports activities by governmental units became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (zr) The exemption for the police and fire protection fee became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (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; (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; and (zz) The exemption for regional transit authorities was repealed effective September 28, 2011, pursuant to 2011 Wis. Act 32 and the exemption for the Wisconsin Quality Home Care Authority was repealed effective June 29, 2011, pursuant to 2011 Wis. Act 10; (zza) The exemption for certain title holding entities described under s. 501 (c) (2) of the Internal Revenue Code was effective retroactively to September 1, 2017, pursuant to 2017 Wis. Act 231; and (zzb) The exemption for state veterans organizations was effective July 1, 2018, pursuant to 2017 Wis. Act 190.

SECTION 7. Tax 11.12 (1) is amended to read:

Tax 11.12 (1) STATUTES. Section 77.54 (3) and (3m), Stats., provides exemptions for certain sales of tangible personal property, or items or property under s. 77.52 (1) (b) or (c), Stats., to persons who are engaged in farming as a business enterprise, including dairy farming, agriculture, horticulture, floriculture, silviculture, beekeeping, and custom farming services.

SECTION 8. Tax 11.12 (1) (am) is created to read:

Tax 11.12 (1) (am) "Beekeeping" has the meaning given in s. 77.51 (1bm), Stats.

SECTION 9. Tax 11.12 (2) (f), (4) (a) (intro), (b) (intro.) and 6. (title) and a., (c), and (d), and (7) (Note 1) and (Note 2) are amended to read:

Tax 11.12 (2) (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 rabbits, 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, caracul, 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, mushrooms, 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, slaughterhouses, or feed lots as described in par. (g); pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices, or syrup.

(4) (a) Section 77.54 (3) (a), Stats., exempts the sales price from the sales of and the storage, use, 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, beekeeping, 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:

(b) Section 77.54 (3m), Stats., exempts: *"The sales price from the sale of and the storage, use or other consumption of the following items if they are used exclusively by the purchaser or user in the business of farming; including dairy farming, agriculture, horticulture, floriculture, silviculture, beekeeping, and custom farming services:*

(a) Seeds for planting.

(b) Plants.

(c) Feed.

(d) Fertilizer.

(e) Soil conditioners.

(f) Animal bedding.

(g) Sprays, pesticides and fungicides.

(h) Breeding and other livestock.

(hm) Bees, beehives, and bee combs.

(i) Poultry.

(j) Farm work stock.

(k) Baling twine and baling wire.

(L) Containers for fruits, vegetables, grain, hay, silage and animal wastes.

(m) Plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage."

"Exclusively" as used in s. 77.54 (3m), Stats., and in this section means that the items mentioned in s. 77.54 (3m), Stats., are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for those items will not be invalidated by an infrequent and sporadic use other than in farming. For purposes of this section:

6. `Containers for fruits, vegetables, bee products, grain, hay, silage and animal wastes and plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage.' a. "Containers for fruits, vegetables, bee products, grain, hay, silage and animal wastes and plastic

bags, plastic sleeves and plastic sheeting used to store or cover hay or silage" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, bee products, grains, hay, silage or animal wastes. The phrase includes feeders and feed carts if used to hold hay, silage or feed which contains grain.

(c) Section 77.54 (30) (a) 3., Stats., exempts the sales price from the sale of electricity sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, beekeeping, and horticulture. Section 77.54 (30) (a) 5., Stats., exempts the sales price from the sale of fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, silviculture, beekeeping, and horticulture.

(d) Section 77.54 (33), Stats., exempts the sales price from sales of and the storage, use or other consumption of drugs used on farm livestock, not including workstock, or on bees.

(7) **Note:** Section Tax 11.12 interprets ss. 77.51 (1bm) and (2d), 77.52 (1) and (2) (a) 10., and 77.54 (3), (3m), (27), (30), and (33), Stats.

Note: The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Semen became exempt effective July 22, 1971, pursuant to Chapter 64, Laws of 1971; (b) Baling wire and twine became exempt effective December 24, 1975, pursuant to Chapter 146, Laws of 1975; (c) The exemption for electricity for residential use and use in farming and for fuel oil, propane, coal, steam or wood for residential use became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (d) The definition of "feed lot" became effective December 1, 1981; (e) Farm livestock medicine, milk house supplies and animal bedding became exempt effective July 1, 1986, pursuant to 1985 Wis. Act 29; (f) The definition of "exclusively used" became effective October 1, 1989, pursuant to 1989 Wis. Act 31; (g) The farm machinery exemption was revised effective October 1, 1989, pursuant to 1989 Wis. Act 31; (h) The exemption for farm fuel for items other than machines became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (i) 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; (j) The expansion of the exemption for tangible personal property consumed in farming and the addition of "silviculture" to the definition of farming became effective July 1, 2007, pursuant to 2005 Wis. Act 366; (k) 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~~ (L) The clarification that "custom farming services" includes services performed by veterinarians to farm livestock or work stock used exclusively in the business of farming became effective July 2, 2013, pursuant to 2013 Wis. Act 20; and (m) The addition of "beekeeping" to the definition of farming and various farming exemptions became effective December 1, 2017, pursuant to 2017 Wis. Act 59.

SECTION 10. Tax 11.14 (12) (d) and (16) and (Note 1) and (Note 2) are amended to read:

Tax 11.14 (12) (d) Property, items, goods, or services purchased directly by and used by a religious, charitable, educational, scientific, or other organization; title holding entity described under section 501 (c) (2) of the Internal Revenue Code; or governmental unit holding a Certificate of Exempt Status, "CES." Sales to organizations holding a CES also can be ~~shown to be documented as~~ exempt by a retailer's recording the certificate number on its bill of sale. A

corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, which is located out-of-state, may use the Wisconsin sales and use tax exemption certificate, form S-211, or the Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003, to purchase without tax even though it has not been issued a Wisconsin CES number.

(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), (66) and (67), Stats.

Note: Section Tax 11.14 interprets ss. 77.52 (13) to (17), 77.53 (10) to (13), 77.54 (9a) and (9g), 77.60 (13), and 77.77 (3), Stats.

Note: The interpretations in s. Tax 11.14 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for railroad lubricants became effective July 1, 1978, pursuant to Chapter 418, Laws of 1977; (b) The use of direct pay permits in Wisconsin became effective for taxable years beginning on or after January 1, 1995, pursuant to 1993 Wis. Act 437; (c) The elimination of the exemption certificate requirement for sales of certain consigned commodities became effective December 1, 1997 as it relates to sales taxes on commodities consigned for resale, pursuant to 1997 Wis. Act 27, and June 17, 1998 as it relates to sales and use taxes on commodities consigned for sale, pursuant to 1997 Wis. Act 237; (d) The multipurpose exemption certificate, form S-211, was created in November 1998 to replace various types of exemption certificates; (e) The removal of the good faith requirement if a fully completed exemption certificate is obtained by the seller from the purchaser within 90 days of the date of sale became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (f) The requirement that a seller is allowed 120 days after the Department of Revenue requests that they obtain an exemption certificate or otherwise prove that a transaction is exempt became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (g) The exemption from sales and use tax for federally recognized American Indian bands or tribes in Wisconsin became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (h) The acceptance of the Streamlined Sales and Use Tax Exemption Certificate to prove a transaction is exempt became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (i) The penalty for prohibited or inconsistent use of an exemption certificate or direct pay permit became effective October 1, 2009 pursuant to 2009 Wis. Act 2; (j) The identification of the specific exemptions for which an exemption certificate is not required became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (k) 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 (L) The exemption for certain title holding entities described under section 501 (c) (2) of the Internal Revenue Code was effective retroactively to September 1, 2017, pursuant to 2017 Wis. Act 231.

SECTION 11. Tax 11.16 (1) (h) and (3) (c) (Note 1) and (Note 2) are amended to read:

Tax 11.16 (1) (h) *Occasional sales.* Motor carriers are not required to register as retailers with the department if the sales price from their sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services are ~~\$1,000~~

or less than \$2,000 within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services for resale without paying tax by issuing to their supplier a properly completed exemption certificate claiming resale or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

(3) (c) **Note:** Section Tax 11.16 interprets ss. 77.51 (9), 77.54 (5) (b), (7) (a), (12), and (13), 77.55 (2m), and 77.57, Stats.

Note: The interpretations in s. Tax 11.16 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The sale of packing materials to a service provider became taxable effective September 1, 1983, pursuant to 1983 Wis. Act 27; (b) The exemption for certain railroad crossties became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) Section 340.01 (61), Stats., which defined "station wagon" was repealed pursuant to 1999 Wis. Act 80; (d) In *Freight Lime and Sand Hauling, Inc. v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, November 20, 2002 (CCH 400-646), trucks hauling property of others for hire were found to qualify for exemption, even though the property being hauled had no value; (e) Section 77.57, Stats., was amended to remove the portion of the statute that allowed a purchaser to use the lesser of the cost or fair market value of an item that was purchased exempt and whose first taxable use occurred more than 6 months after it was purchased, pursuant to 2009 Wis. Act 2; (f) 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 (g) The definition of "common motor carrier" was amended, pursuant to 2013 Wis. Act 364, which first applies to motor carrier operations occurring on April 25, 2014; and (h) The threshold for exempt occasional sales was changed to less than \$2,000 in annual sales, effective for sales beginning January 1, 2018, pursuant to 2017 Wis. Act 59.

SECTION 12. Tax 11.17 (4) (a) 4. is created to read:

Tax 11.17 (4) (a) 4. Patient health records sold to a patient or to a person authorized by the patient to receive such medical records.

SECTION 13. Tax 11.17 (4) (b) 6. and (5) (Note 1) and (Note 4) are amended to read:

Tax 11.17 (4) (b) 6. An optometrist's sales of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., including nonprescription sun glasses, contact lens solution, and other types of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., ordinarily taxable when sold at retail, unless the sales price from those sales are less than ~~\$1,000~~ \$2,000 during the calendar year. Optometrists whose receipts from taxable property, items, and goods equal or exceed ~~\$1,000~~ \$2,000 in a calendar year shall register with the department and obtain a seller's permit. Those whose receipts from taxable property, items, and goods are less than ~~\$1,000~~ \$2,000 shall be

exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable property, items, or goods.

(5) **Note:** Section Tax 11.17 interprets ss. 77.51 (3pj), (3pm), (7m), (9), and (11m), 77.52 (1) and (2) (a) 1. and 9., and 77.54 (9a), (14), (14m), (14r), (20n), (22b), ~~and (28)~~, and (64), Stats.

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; (k) The exemption for patient health records under s. 77.54 (64), Stats., became effective June 23, 2017, pursuant to 2017 Wis. Act 17; and (L) The threshold for exempt occasional sales was changed to less than \$2,000 in annual sales, effective for sales beginning January 1, 2018, pursuant to 2017 Wis. Act 59.

SECTION 14. Tax 11.19 (6) is amended to read:

Tax 11.19 (6) Sales of printed material to federal and Wisconsin governmental units, ~~any~~ federally recognized American Indian tribes or bands in Wisconsin, Wisconsin public schools, and certain nonprofit religious, charitable, educational, or scientific organizations, and certain title holding entities described under section 501 (c) (2) of the Internal Revenue Code holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to federal and Wisconsin governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained or the governmental unit's certificate of exempt status number is recorded on the bill of sale. Sales to nonprofit organizations holding a certificate of exempt status can be ~~shown to be~~ documented as exempt by recording the certificate of exempt status number on the bill of sale.

SECTION 15. Tax 11.26 (3) (g) is repealed.

SECTION 16. Tax 11.26 (3) (h) (Note 2) is amended to read:

Tax 11.26 (3) (h) **Note:** Section Tax 11.26 interprets s. 77.51 (12m) and (15b) and 77.54 (37), Stats.

SECTION 17. Tax 11.33 (4) (f), (Example 1), (Example 2), and (5) (f) (Note 2) are amended to read:

Tax 11.33 (4) (f) Except as provided in pars. (a) and (b), sale of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services by a person who does not hold and is not required to hold a seller's permit, if the total taxable sales price from sales of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., and taxable services are less than ~~\$1,000~~ \$2,000 during the calendar year. However, purchases of tangible personal property, items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person. This paragraph does not apply to nonprofit organizations.

Examples: 1) If the sales price from a person's garage and rummage sales, lawn maintenance services, bait sales to fishermen, sales of books, charges for parking and other normally taxable receipts are less than ~~\$1,000~~ \$2,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (f). However, purchases by the seller of the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., which are sold are taxable.

2) Sales of soft drinks by employee groups are not taxable if the sales price from soft drink sales ~~does not exceed \$1,000~~ are less than \$2,000 per year. These groups are deemed consumers and the supplier's sales to them are taxable retail sales.

(5) (f) **Note:** The interpretations in s. Tax 11.33 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption in sub. (3) (b) became effective March 1, 1979; (b) Non-retailer sales of all-terrain vehicles as described in sub. (4) (c) became taxable and the sale of an all-terrain vehicle as described in sub. (3) (c) and (d) became exempt effective September 1, 1987, pursuant to 1987 Wis. Act 27; (c) The exemption for the sale of a business or business assets in sub. (3) (e) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; (d) The exemption for transfers of motor vehicles, boats, etc., to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (e) The occasional sales exemption for 5 or fewer auctions became effective January 1, 2000, pursuant to 1999 Wis. Act 9; (f) The term "mobile home" was changed to "recreational vehicle, as defined in s. 340.01 (48r), Stats." effective January 1, 2008, pursuant to 2007 Wis. Act 11; ~~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; and (h) The threshold for exempt occasional sales was changed to less than \$2,000 in annual sales, effective for sales beginning January 1, 2018, pursuant to 2017 Wis. Act 59.

SECTION 18. Tax 11.39 (4) (b) is repealed.

SECTION 19. Tax 11.48 (2) (f) is created to read:

Tax 11.48 (2) (f) 1. Hotels, motels, and other lodging providers are deemed the consumers of telecommunications, ancillary, internet access, and cable TV services used in providing lodging services, even if the service provider charges its customer separately for such services.

2. The tax treatment of telecommunications, ancillary, internet access, and cable TV services is as follows:

- a. Charges by a lodging provider for these services are not taxable.
- b. The lodging provider's purchases of these services are subject to tax, except internet access services are not taxable beginning July 1, 2020.

SECTION 20. Tax 11.48 (3) (Note 1) and (Note 2) are amended to read:

Tax 11.48 (3) **Note:** Section Tax 11.48 interprets ss. 77.51 (13) (fm) and (n), 77.52 (1), (2) (a) 1., 2., 5., and 9., (2m), and (21), and 77.54 (36), Stats.

Note: The interpretations in s. Tax 11.48 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The provisions of sub. (1) (c) 1. are effective on or after August 9, 1989, pursuant to 1989 Wis. Act 31; (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 clarification that a service provider who transfers tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., incidentally with a taxable service is the consumer of such property, items, or goods became effective July 2, 2013, pursuant to 2013 Wis. Act 20; (d) Clarification that a service provider who transfers tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., incidentally with a taxable service is the consumer of such property, items, or goods became effective July 2, 2013, pursuant to 2013 Wis. Act 20; (e) Clarification that a lodging provider is the consumer of telecommunication, internet, and cable TV services became effective June 23, 2017, pursuant to 2017 Wis. Act 17, and (e) Internet access services became nontaxable effective July 1, 2020, pursuant to 2017 Wis. Act 59.

SECTION 21. Tax 11.49 (2) (b) is amended to read:

Tax 11.49 (2) (b) Sales made directly to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority; any county, city, village, town, or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation; certain title holding entities described under section 501 (c) (2) of the Internal Revenue Code that are exempt from federal income tax under section 501 (a) of the Internal Revenue Code and organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to an entity described under s. 77.54 (9a) (f), Stats.; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats. Sales to a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, are exempt from sales and use tax if the cemetery company or corporation uses the items exclusively for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United

States, its unincorporated agencies and instrumentalities, and any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States. Sales to employees of these entities are not exempt, even though the entity may reimburse the employee for the expenditure.

SECTION 22. Tax 11.49 (2) (bg) is created to read:

Tax 11.49 (2) (bg) Sales made to a state veterans organization, as defined in s. 45.41 (1) (b), Stats., except property and services used primarily in preparing, storing, serving, selling, or delivering food and beverages, including products and services for cleaning machinery and equipment used for the food and beverages that are sold by the veterans organization.

SECTION 23. Tax 11.49 (3) (b) (Note 1) and (Note 2) are amended to read:

Tax 11.49 (3) (b) **Note:** Section Tax 11.49 interprets ss. 77.52 (2) (a) 8m., 9., and 10. and (2m) (b) and 77.54 (3), (5), (9a), (9g), (11), and (30), Stats.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1, 1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985; (d) The repair of motor vehicles used in waste reduction or recycling processes is exempt pursuant to 1983 Wis. Act 426, effective July 1, 1984; (e) The repair of mobile mixing and processing units and the vehicle or trailer on which mounted, as well as parts, accessories, attachments, supplies and materials are exempt pursuant to 1985 Wis. Act 29, effective July 20, 1985; (f) Peat and solid waste fuel cubes sold for residential use are exempt pursuant to 1985 Wis. Act 149, effective April 2, 1986; (g) Wood residue sold for fuel use in a business activity is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (h) Repair to nonresident vehicles not otherwise exempt is exempt pursuant to 1987 Wis. Act 27, effective September 1, 1987; (i) The exemption for fuel used in farming, other than in machines, became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (j) All towing services became taxable effective May 1, 1993; (k) Fuel consumed in manufacturing became exempt effective January 1, 2006, pursuant to 2003 Wis. Act 99; (L) Towing by a tow truck as defined in s. 340.01 (67n), Stats., became taxable effective July 1, 2009, pursuant to 2009 Wis. Act 28; and (m) 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; (n) The exemption for certain title holding entities described under section 501 (c) (2) of the Internal Revenue Code was effective retroactively to September 1, 2017, pursuant to 2017 Wis. Act 231; and (o) The exemption for certain sales by a state veterans organization was effective July 1, 2018 pursuant to 2017 Wisconsin Act 190.

SECTION 24. Tax 11.52 (5m) is created to read:

Tax 11.52 (5m) (title) PRIZES AWARDED THROUGH AMUSEMENT DEVICES. (a) Tangible personal property sold to a person who provides a taxable service through an amusement device,

as defined in s. 77.54 (65m) (b), Stats., is exempt from sales and use tax if the property is used exclusively as a prize awarded or transferred through the use of the amusement device.

(b) An amusement device operator shall pay sales or use tax on purchases of tangible personal property that is used to play an amusement device but not awarded as a prize. Examples include tokens used to play the amusement device and paper tickets dispensed from the amusement device and redeemed for prizes.

SECTION 25. Tax 11.52 (7) (a) is amended to read:

Tax 11.52 (7) (a) Except as provided in ~~par-~~pars. (b), (c), (d) and (e), receipts from the sale, lease, rental, or license to use coin-operated machines and attachments, parts and supplies for the machines are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

SECTION 26. Section 11.52 (7) (e) is created to read:

Tax 11.52 (7) (e) 1. A video or electronic game sold in a tangible or digital form to a person in the business of providing a taxable service through an amusement device, as defined in s. 77.54 (65m) (b), Stats., is exempt from sales and use tax if the video or electronic game is used exclusively for the amusement device. For exemption, the sales price of the video or electronic game shall be stated separately from the amusement device on the invoice, bill of sale, or similar document the seller gives to the purchaser.

2. Persons that are not in the business of providing taxable services through amusement devices are required to pay sales or use tax on purchases of video or electronic games used for amusement devices.

3. The operator of any device, machine, or game that is illegal to operate in Wisconsin, is required to pay sales or use tax on the purchase of the video or electronic game that is used for such device, machine, or game.

Examples: **1)** Distributor is in the business of providing taxable admission services through amusement devices. Distributor owns an arcade game console that is an amusement device. The arcade game console is placed in a tavern. The tavern owner gives the receipts from customers playing arcade games on the console to Distributor, less a commission. Distributor purchases a software upgrade that is an electronic game played on the console, but does not replace the arcade game console. Distributor's purchase of the software upgrade is exempt.

2) Arcade purchases a pinball machine it used in providing taxable admission services. The invoice to Arcade separately states the purchase price of the pinball machine from the video game component of the pinball machine. Arcade's purchase of the video game that is used in the pinball machine is exempt from tax because it is separately stated on the invoice. Arcade's purchase of the pinball machine is taxable.

3) Tavern purchases a dart board that is an amusement device. Customers insert \$1 to use the dart board.. Although Tavern's primary business is selling food and drinks, its business also includes taxable admission services. Tavern's purchase of the dart board is taxable. Tavern's purchase of the dart board's game component is not taxable if separately stated on the invoice.

4) Distributor is in the business of providing taxable admission services through amusement devices. Distributor purchases a video gambling machine that will be placed in a

tavern. A commission will be paid to the tavern based on receipts from the video gambling machine. Distributor's invoice for the video gambling machine separately states the purchase price of the video gambling machine from the electronic game that is a component of the video gambling machine. Distributor's purchase of the video gambling machine and the electronic game is taxable, even though the electronic game is separately stated. The video gambling machine is not an amusement device because it is a device, machine, or game that is illegal to operate in Wisconsin. The operation of video gambling machines is in violation of Wisconsin law, as provided in ss. 945.03 and 945.04, Stats.

SECTION 27. Tax 11.52 (7) (Note 1) and (Note 2) are amended to read:

Tax 11.52 (7) **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), and (65m)~~, Stats.

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; (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 sold to a jukebox operator for use in jukeboxes in s. 77.54 (63), Stats., became effective June 1, 2016, pursuant to 2015 Wis. Act 251; and (d) The exemptions for a video or electronic game sold to an amusement device operator for use in the amusement device and prizes awarded or transferred through the use of the amusement device under s. 77.54 (65m) became effective December 1, 2017, pursuant to 2017 Wis. Act 59.~~

SECTION 28. Tax 11.53 (3) and (7) (Note 1) and (Note 2) are amended to read:

Tax 11.53 (3) EXCEPTION. Persons, other than nonprofit organizations, who do not hold and are not otherwise required to hold a seller's permit who have total taxable sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or taxable services of less than ~~\$4,000~~ \$2,000 during the calendar year are not required to hold a seller's permit. Sales by such persons are exempt occasional sales. However, a person's purchases of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services which when resold are exempt occasional sales under this section, are taxable purchases by that person.

(7) **Note:** Section Tax 11.53 interprets ss. 73.03 (38) and (50), 77.51 (9), 77.52 (1), (7), (9), (11), (12), and (19), 77.54 (7), 77.58, and 77.61 (2), Stats.

Note: The interpretations in s. Tax 11.53 are effective under the general sales and use tax law effective on and after September 1, 1969, except: (a) The security amounts given in sub. (4) became effective February 1, 1982; (b) The provisions of sub. (7) became effective May 17, 1988, pursuant to 1987 Wis. Act 399; ~~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 threshold for exempt occasional sales was changed to less than \$2,000 in annual sales, effective for sales beginning January 1, 2018, pursuant to 2017 Wis. Act 59.

SECTION 29. Tax 11.55 (1) and (2) (a) are amended to read:

Tax 11.55 (1) **UNDISCLOSED PRINCIPAL.** A person who has possession of tangible personal property or items, property, or goods under s. 77.52 (1), (b), (c), or (d), Stats., or the right to transfer taxable services owned by an unknown or undisclosed principal and has the power to transfer title to that property, item, or good, or the right to transfer the taxable service to a third person, and who exercises that power, is a retailer whose receipts are subject to the tax.

(2) **DISCLOSED PRINCIPAL.** (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., or taxable services made by a person with possession of the property, item, or good, or the right to transfer a taxable service 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., or taxable services. If the principal fails to pay the tax, the agent may be liable for it, except as provided in s. 77.51 (13b), Stats.

SECTION 30. Tax 11.57 (2) (i) is amended to read:

Tax 11.57 (2) (i) Sales of fuel and electricity for use in farming, including agriculture, dairy farming, horticulture, floriculture, silviculture, beekeeping, and horticulture custom farming services.

SECTION 31. Tax 11.57 (2) (r) is created to read:

Tax 11.57 (2) (r) 1. Service provided by an electric cooperative to another electric cooperative, or by a telecommunications utility to another telecommunications utility, for disaster relief work performed during a disaster period.

2. In this paragraph:

- a. "Disaster period" has the meaning given in s. 77.54 (68) (b) 2., Stats.
- b. "Disaster relief work" has the meaning given in s. 77.54 (68) (b) 3., Stats.
- c. "Electric cooperative" has the meaning given in s. 76.48 (1g) (c), Stats.
- d. "State of emergency" has the meaning given in s. 77.54 (68) (b) 4m., Stats.
- e. "Telecommunications utility" has the meaning given in s. 196.01 (10), Stats.

3. The exemption in this paragraph does not apply to materials and supplies used in performing exempt disaster relief services.

SECTION 32. Tax 11.57 (6) (Note 1) and (Note 2) are amended to read:

Tax 11.57 (6) **Note:** Section Tax 11.57 interprets ss. 77.51 (14g) (fm), 77.52 (1) and (2) (a) 10., and 77.54 (3), (6) (am) 1. and 3., (17), (26m), (30), ~~and (44)~~, and (68), Stats.

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for sales of coal, fuel oil, propane, steam and wood became effective July 1, 1979, pursuant to Chapter 1, Laws of 1979; (b) The six-month exemption for electricity and gas became effective November 1, 1979, pursuant

to Chapter 1, Laws of 1979; (c) The exemption for fuel converted to electrical energy, gas or steam by utilities became effective October 1, 1981, pursuant to Chapter 20, Laws of 1981; (d) The exemption for peat and fuel cubes produced from solid waste became effective April 2, 1986, pursuant to 1985 Wis. Act 149; (e) The exemption for wood residue became effective September 1, 1987, pursuant to 1987 Wis. Act 27; (f) The exemption for component parts of an industrial waste treatment facility became effective July 1, 1989, pursuant to 1983 Wis. Act 426, later clarified effective May 17, 1988, pursuant to 1987 Wis. Act 399; (g) The sale of gas or other fuel used to heat farm buildings, including greenhouses, that are not exempt machinery under s. Tax 11.12 became taxable July 1, 1991; (h) All fuel used in farming became exempt October 1, 1991, pursuant to 1991 Wis. Act 39; (i) The exemption for electricity sold for use in farming became effective May 1, 2000, pursuant to 1999 Wis. Act 9; (j) The exclusion from the definition of sale for certain sales of transmission facilities became effective October 29, 1999, pursuant to 1999 Wis. Act 9; (k) The exemption for fuel and electricity consumed in manufacturing became exempt January 1, 2006, pursuant to 2003 Wis. Act 99; (L) The exemption for certain low-income assistance fees became effective July 1, 2007, pursuant to 2005 Wis. Act 141; (m) The exemption for biomass sold for residential use became effective December 1, 2007, pursuant to 2007 Wis. Act 20; and (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; (o) The exemption for services performed during a disaster period became effective January 1, 2017, pursuant to 2017 Wis. Act 290; and (p) The exemption for fuel and electricity used in "beekeeping" became effective December 1, 2017, pursuant to 2017 Wis. Act 59.

SECTION 33. Tax 11.62 (2) (b) and (3) (d) (Note 1) and (Note 2) are amended to read:

Tax 11.62 (2) (b) A barber or beauty shop operator's sales are not subject to Wisconsin sales tax if the barber or beauty shop operator does not hold and is not required to hold a Wisconsin seller's permit. A barber or beauty shop operator is not required to hold a seller's permit and register as a retailer to collect Wisconsin sales tax if the barber or beauty shop operator's total taxable receipts from sales of tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., and taxable services are less than ~~\$4,000~~ \$2,000 during the calendar year.

(3) (d) **Note:** Section Tax 11.62 interprets ss. 77.51 (9) and (13) (i), 77.52 (2) (a) 10., 77.54 (7), and 77.57, Stats.

Note: The interpretations in s. Tax 11.62 are effective under the general sales and use tax law on and after September 1, 1969; ~~except that (a)~~ 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 threshold for exempt occasional sales was changed to less than \$2,000 in annual sales, effective for sales beginning January 1, 2018, pursuant to 2017 Wis. Act 59.

SECTION 34. Tax 11.65 (1) (c), (3), and (5) (Note 1) and (Note 2) are amended to read:

Tax 11.65 (1) (c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing, card playing, hayrides, hunting, fishing, and

horseback or pony riding, including entry fees for leagues, tournaments, and contests, are taxable.

(3) PRIZE MONEY. ~~Bowling center proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of~~ The amounts of taxable tournament and league entrance fees, the proprietor may subtract from its taxable receipts the amount advertised and set aside for prize money are exempt from tax.

(5) **Note:** Section Tax 11.65 interprets ss. 77.52 (1) and (2) (a) 2. and 77.54 (7m), (10), and (35), and (65m), Stats.

Note: The interpretations in s. Tax 11.65 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Bingo receipts became taxable December 30, 1973, pursuant to Chapter 156, Laws of 1973; (b) The exemption for admissions to museums operated under a lease with the State Historical Society became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (c) The exemption for admissions to American Legion baseball became effective September 1, 1985, pursuant to 1985 Wis. Act 29; (d) Recreational facilities and rights sold in connection with the sale of time-share property became taxable May 17, 1988, pursuant to 1987 Wis. Act 399; (e) The exemption for state park campground fees became effective September 1, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for admissions to certain gun clubs became effective July 1, 2007, pursuant to 2005 Wis. Act 327; (g) The exemption for sales of admissions by nonprofit organizations to certain youth sports activities became effective July 1, 2009, pursuant to 2009 Wis. Act 28; 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; and (i) The exemption for tournament or league entrance fees advertised and set aside as prize money in s. 77.54 (65m) (a) 3., Stats., became effective December 1, 2017, pursuant to 2017 Wis. Act 59.

SECTION 35. Tax 11.66 (2) (c) (Note) is created to read:

Tax 11.66 (2) (c) **Note:** Sales of internet access services are not subject to Wisconsin sales or use tax after June 30, 2020.

SECTION 36. Tax 11.66 (4) (b) and (6) (Note 1) and (Note 3) are amended to read:

Tax 11.66 (4) (b) Revenues collected under s. 256.35 (3), Stats., ~~the surcharge established by the public service commission under s. 256.35 (3m) (f), Stats., for customers of wireless providers as defined in s. 256.35 (3m) (a) 6., Stats., and the police and fire protection fees under s. 196.025 (6), Stats.~~

(6) **Note:** Section Tax 11.66 interprets ss. 77.51 (1ba), (1r), (3c), (3pe), (3pn), (3rn), (5d), (5f), (5n), (5r), (7k), (8m), (9s), (10d), (10f), (11c), (13rn), (17m), (21n), (24), (25), and (26), 77.52 (2) (a) 5. and 5m., 77.522 (4), ~~and 77.525, and 77.54 (37),~~ Stats.

Note: The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of

whatever nature"; (b) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (c) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; (d) Telecommunications services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31; (e) Telecommunications services originating in Wisconsin and charged to a service address in Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 31; (f) The repeal of the exemption for equipment in central offices of telephone companies became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (g) Telecommunications services paid for by the insertion of coins in a coin-operated telephone became taxable August 1, 1996, pursuant to 1995 Wis. Act 351; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin, terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll-free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237; (L) The exemption for interstate private line services no longer applies, effective December 1, 2002; (m) The definitions of air-to-ground radio telephone service, ancillary services, call-by-call basis, communications channel, conference bridging service, customer, customer channel termination point, detailed telecommunications billing services, directory assistance, eight hundred service, end user, fixed wireless service, home service provider, international telecommunications services, internet access services, interstate telecommunications services, intrastate telecommunications services, mobile telecommunications service, nine hundred service, paging service, place of primary use, postpaid calling service, prepaid calling service, prepaid wireless calling service, private communications service, radio service, radiotelegraph service, radiotelephone service, service address, telecommunications service, value-added nonvoice data service, vertical service, and voice mail service became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (n) The specific imposition of tax on ancillary services and interstate, intrastate, and international telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (o) The sourcing provisions related to telecommunications services became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (p) 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 (q) The definition of "primary place of use" was amended to replace the reference to federal law with specific language, and the definition of "prepaid wireless calling service" was amended, pursuant to 2013 Wis. Act 20; and (r) The imposition of tax on internet access services under s. 77.52 (2) (a) 5. a., Stats., is repealed effective July 1, 2020, pursuant to 2017 Wis. Act 59.

SECTION 37. Tax 11.68 (4) (i) is repealed and recreated to read:

Tax 11.68 (4) (i) *Building materials for facilities owned by local governmental units and certain nonprofit organizations.* 1. 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 a qualifying exempt entity if the materials become part of a facility in Wisconsin that is owned by the entity.

2. The following provisions apply to the exemption under s. 77.54 (9m), Stats.:

a. "Qualifying exempt entity" means an entity described in s. 77.54 (9a) (b), (c), (d), (em), and (f), and (fc), and (9g), Stats., a technical college district, the Board of Regents of the University of Wisconsin System, an institution, as defined in s. 36.05 (9), Stats., a college campus, as defined in s. 36.05 (6m), Stats., or the University of Wisconsin-Extension.

b. "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.

Examples: 1) 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.

2) 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.

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

c. A Wisconsin organization described under s. 77.54 (9a) (f), Stats., shall hold a Wisconsin Certificate of Exempt Status number. A non-Wisconsin organization described under s. 77.54 (9a) (f), Stats., and a state veterans organization described in s. 77.54 (9g), Stats., are not required to hold a Wisconsin Certificate of Exempt Status number.

d. 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 Wisconsin are not exempt.

e. A contractor's purchase of building materials transferred to a person other than a qualifying entity is exempt if the person does not use the facility for any purpose other than to transfer it to the qualifying 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.

f. A subcontractor's purchase of building materials is exempt if the materials are transferred to a qualifying entity and, upon completion of the facility, the materials become a part of the facility in Wisconsin that is owned by the qualifying entity, pursuant to a contract between a general contractor and the qualifying entity, and the general contractor does not use the facility for any purpose other than to transfer it to the entity.

g. The exemption 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.

Note: The effective date is different for contracts with certain exempt qualifying entities. Contracts with certain title holding companies became effective September 1, 2017. Contracts with technical colleges, the UW System, and state veterans organization became effective July 1, 2018.

SECTION 38. Tax 11.68 (4) (j) is created to read:

Tax 11.68 (4) (j) *Electronics and Information Technology Manufacturing Zone Facilities.* Under s. 77.54 (65), Stats., owners, lessees, contractors, subcontractors, or builders may

purchase without sales or use tax building materials, supplies, equipment, and landscaping services if both of the following apply:

1. The property or landscaping service is acquired solely for or used solely in, the construction or development of a facility located in an electronics and information technology manufacturing zone designated under s. 238.396 (1m), Stats.

2. The capital expenditures for the construction or development of the facility may be claimed as a credit under s. 71.07 (3wm) (bm) or 71.28 (3wm) (bm), Stats., as certified by the Wisconsin Economic Development Corporation.

SECTION 39. Tax 11.68 (7) (b) 1. and 2. are amended to read:

Tax 11.68 (7) (b) 1. In this paragraph, ~~"lump sum contract" means a contract to perform real property construction activities and to provide tangible personal property, items or property under s. 77.52 (1) (b) or (c), Stats., or taxable services and for which the contractor quotes the charge for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), Stats., and taxable services as one price, including a contract for which the contractor itemizes the charges for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), Stats., and taxable services as part of a schedule of values or similar document.~~

a. "Construction contract" has the meaning in s. 77.54 (60) (d) 1., Stats., and includes both fixed price contracts and time and materials contracts.

b. "Prime contractor" has the meaning given in s. 77.54 (60) (d) 2., Stats.

c. "Subcontractor" has the meaning given in s. 77.54 (60) (d) 3., Stats.

2. A contractor's sales price of a lump sum contract is exempt from tax if the total sales price of all taxable products and services sold by the contractor as a part of the lump sum contract is less than 10 percent of the total amount of the lump sum contract. The sales price of products sold by a prime contractor as a part of a construction contract is not taxable if 90 percent or more of the total amount of the construction contract relates to real property construction activities. The calculation is made without regard for exemptions that may be claimed by the customer (e.g., manufacturing, farming). Change orders and additional work billed are included in this calculation. Except as provided in subd. 3., the prime contractor is the consumer of such products and shall pay tax on its purchase of the taxable products.

SECTION 40. Tax 11.68 (7) (b) 2g., 2h., and 2r. are created to read:

Tax 11.68 (7) (b) 2g. The sales price of products sold by a subcontractor to a prime contractor, or to another subcontractor for eventual sale to the prime contractor, as part of a construction contract is not taxable if any of the following apply:

a. The total sales price related to real property construction activities is 90 percent or more of the total amount of the construction contract.

b. The subcontractor received a fully completed exemption certificate from the prime contractor, or the subcontractor, claiming that the products are sold by the prime contractor as part of a construction contract that is exempt under s. 77.54 (60), Stats.

2h. Except as provided in subd. 3, the subcontractor is the consumer of the products sold as part of a construction contract described in subds. 2g. or 2r. (c) and shall pay tax on its purchase of the taxable products, as provided in s. 77.54 (60) (bm), Stats.

2r. The prime contractor shall make a determination at the start of the construction contract whether it provides the subcontractor with an exemption certificate claiming resale or the

construction contract exemption in s. 77.54 (60), Stats., but not both. The liability for tax depends, in part, on whether the prime contractor gives an exemption certificate for its purchases.

a. If the prime contractor gives the subcontractor an exemption certificate claiming resale, and the contract qualifies for exemption under s. 77.54 (60), Stats., the prime contractor is liable for tax on its purchase price of the products and services purchased from the subcontractor.

b. If the prime contractor gives the subcontractor an exemption certificate claiming the exemption under s. 77.54 (60), Stats., and the contract does not qualify for the exemption, the prime contractor is liable for sales or use tax on the sales price of the taxable products and services sold. The prime contractor may collect the tax from its customer.

c. If the subcontractor receives an exemption certificate from the prime contractor claiming resale, and the prime contractor's contract qualifies for exemption under s. 77.54 (60), Stats., the subcontractor is not liable for tax on the purchase price of the materials sold as products and services to the prime contractor as a part of the construction contract. Rather, the prime contractor is liable for the tax on its purchase price of the taxable products and services purchased from the subcontractor. The subcontractor is liable for tax on its purchase of materials used in real property construction activities.

d. If the subcontractor receives an exemption certificate from the prime contractor claiming the exemption under s. 77.54 (60), Stats., and the contract does not qualify for the exemption, the subcontractor may claim a refund of any tax paid on the purchase of materials sold as products and services to the prime contractor as a part of the construction contract. The claim for refund shall substantiate that the prime contractor's contract did not qualify for the construction contract exemption, that the tax on sales to the prime contractor were reported to the department by the subcontractor or the prime contractor, and that the prime contractor's purchases qualified for the resale exemption. The subcontractor may not claim a refund of tax on its purchase of materials used in real property construction activities.

SECTION 41. Tax 11.68 (7) (b) 3. (intro) and (Example 1) and (Example 2) are amended to read:

Tax 11.68 (7) (b) 3. If the lump sum construction contract is entered into with an entity that is exempt from taxation under s. 77.54 (9a), Stats., ~~the contractor is the consumer of all taxable products used by the contractor in real property construction activities, but the contractor may purchase without tax, for resale, tangible personal property, items and property under s. 77.52 (1) (b) and (c), Stats., and taxable services that are sold by the contractor as part of the lump sum contract with the entity and that are not consumed by the contractor in real property construction activities.~~ subd. pars. a. and b. apply.

Examples: 1) A refrigerator and drapes are included in the construction contract to ~~construct~~ build a new house. No separate charge is made for the refrigerator and drapes, ~~but, based~~ which are taxable products. Based on a reasonable allocation, the sales price of the refrigerator and drapes is less than 10 percent of the total contract amount real property construction activities is 90 percent or more of the total amount of the construction contract. Therefore, ~~the cost of the refrigerator and drapes to the construction contractor is the construction contractor's measure subject to sales tax~~ the prime contractor's sale to its customer of the refrigerator and drapes is not subject to tax and the prime contractor shall pay sales or use tax on its purchase of the refrigerator and drapes in addition to the products consumed in the real property construction activities.

2) Landscaping services are included in a construction contract to build a building. Based on a reasonable allocation, the sales price ~~of the landscape services is more than 10 percent of the total contract amount~~ of the real property construction activities is less than 90 percent of the total amount of the construction contract. Since the total sales price of related to the landscaping services, based on a reasonable allocation, real property construction activities is more than 10 less than 90 percent of the contract amount, the ~~construction-prime~~ 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 42. Tax 11.68 (7) (b) 3. a. and b. and (Example) are created to read:

Tax 11.68 (7) (b) 3. a. The prime contractor is the consumer of all products used by the prime contractor in real property construction activities, but the prime contractor may purchase without tax, for resale, products that are sold by the prime contractor to the entity as part of the construction contract and that are not consumed by the prime contractor in real property construction activities.

b. A subcontractor of the prime contractor is the consumer of all products used by the subcontractor in real property construction activities, but the subcontractor may purchase without tax, for resale, products that are sold by the subcontractor to the prime contractor or another subcontractor, as part of the subcontractor's construction contract under subd. 2g., for resale to the entity and that are not consumed by the subcontractor in real property construction activities.

Example: A prime contractor has a construction contract to build a home and provide landscaping services. The prime contractor hires a subcontractor to provide the landscaping services. The total sales price of the construction contract that is related to the real property construction activities is 90 percent or more of the total amount of the prime contractor's construction contract. The prime contractor's sale is not taxable. The prime contractor may provide its subcontractor with a fully completed exemption certificate claiming the exemption under s. 77.54 (60), Stats. The landscaping subcontractor should not charge the prime contractor tax on its sale. The landscaping subcontractor is deemed the consumer of the products consumed in the landscaping service and shall pay sales or use tax on its purchases of the products.

SECTION 43. Tax 11.68 (9) (a) and (Example 1) are amended to read:

Tax 11.68 (9) (a) Except as provided in s. 77.54 (9m), Stats., ~~The~~ the sales tax exemption provided to governmental units and other exempt entities, such as churches and nonprofit hospitals, does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair, or improve real property for the exempt entity. The sales price received from sales of these building materials to a contractor is subject to the tax if the building materials become part of real property after construction or installation.

Examples Example: 1) A contractor shall pay the tax to its supplier of tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., purchased to construct a bridge, or road, ~~or governmental building~~, since the property, item, or good becomes a part of realty after installation.

SECTION 44. Tax 11.68 (9) (a) (Example 2) is repealed.

SECTION 45. Tax 11.68 (13) (Note 1) and (Note 2) are amended to read:

Tax 11.68 (13) **Note:** Section Tax 11.68 interprets ss. 77.51 (2), (12m) (b) 7., ~~(12t)~~, (14) (intro.), (15a) (b) 1. and 4., (15b) (b) 7., 77.52 (2) (a) 10., 11., and 20. and (2m), 77.53 (1), 77.54 (5) (d), (6) (am) 1., 4., and 5., (9m), (26), (26m), (31), (41), (60), ~~and (62m)~~, and (65), 77.71 (3), and 77.77 (3), Stats.

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 20; ~~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; (y) The exemption for products used in constructing or developing a facility in the electronics and information technology manufacturing zone became effective September 20, 2017, pursuant to 2017 Wis. Act 58; (z) The exemption for building materials that become a part of a facility owned by certain title holding companies described in s. 501 (c) (2) of the Internal Revenue Code became effective for contracts entered into on or after September 1, 2017, pursuant to 2017 Wis. Act 231, and to technical colleges and the UW System, and state veterans organization for contracts entered into on or after July 1, 2018, pursuant to 2017 Wis. Acts 59 and 190, respectively; and (za) The exemption for lump sum contracts was amended to apply to time and materials construction contracts and to subcontractors for construction contracts entered into or extended, modified, or renewed on or after December 1, 2017.

SECTION 46. Tax 11.83 (4) (c) is amended to read:

Tax 11.83 (4) (c) A motor vehicle, trailer, semi-trailer, all-terrain vehicle, off-highway motorcycle, or recreational vehicle as defined in s. 340.01 (48r), Stats., purchased outside Wisconsin by a nonresident of Wisconsin 90 days or more before bringing the unit into Wisconsin, in connection with a change of residence to Wisconsin by the individual, is not subject to the Wisconsin use tax.

SECTION 47. Tax 11.86 (5) (d) is created to read:

Tax 11.86 (5) (d) 1. The sales price received for a service provided by an electric cooperative to another electric cooperative, or by a telecommunications utility to another telecommunications utility, for disaster relief work performed during a disaster period.

2. In this paragraph:

a. "Disaster period" has the meaning given in s. 77.54 (68) (b) 2., Stats.

b. "Disaster relief work" has the meaning given in s. 77.54 (68) (b) 3., Stats.

c. "Electric cooperative" has the meaning given in s. 76.48 (1g) (c), Stats.

d. "State of emergency" has the meaning given in s. 77.54 (68) (b) 4m., Stats.

e. "Telecommunications utility" has the meaning given in s. 196.01 (10), Stats.

3. The exemption in this paragraph does not apply to materials and supplies used in performing exempt disaster relief services.

SECTION 48. Tax 11.86 (6) (Note 1) and (Note 2) are amended to read:

Tax 11.86 (6) **Note:** Section Tax 11.86 interprets ss. 77.51 (20), 77.52 (2) (a) 10., 11. and 20., 77.54 (68), 86.16 and 182.017, Stats.

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except: (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (c) The Wisconsin Tax Appeals Commission decision in *Capital City Tree Experts, Inc.*, dated June 19, 1987, later modified by

stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service; ~~and~~ (d) 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 (e) The exemption for services performed during a disaster period became effective January 1, 2017, pursuant to 2017 Wis. Act 290.

SECTION 49. Tax 11.87 (3) (h) is created to read:

Tax 11.87 (3) (h) *Prepared food manufactured by the retailer.* Sales of prepared food that is manufactured at one location and sold by the same retailer at a different location, are exempt if all of the following apply:

1. The prepared food is not candy, a soft drink, or a dietary supplement.
2. The prepared food is manufactured by the retailer at a building assessed as manufacturing property under s. 70.995, Stats., or that would be assessed as manufacturing property under s. 70.995, Stats., if the building was located in Wisconsin.
3. The retailer does not make any retail sales of prepared food at the building described in subd 2.
4. Either of the following apply:
 - a. The prepared food is sold by the retailer in a frozen state without eating utensils (i.e., plates, bowls, knives, forks, spoons, glasses, cups, napkins, straws), or
 - b. The prepared food consists of more than 50% yogurt.

SECTION 50. Tax 11.87 (4) (Note 2) is amended to read:

Tax 11.87 (4) **Note:** The interpretations in s. Tax 11.87 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of meals by retirement homes became exempt April 25, 1978, pursuant to Chapter 250, Laws of 1977; (b) Sales of meals by certain health care facilities off their premises became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (c) Sales of meals by community-based residential facilities on their premises became exempt June 1, 1994, pursuant to 1993 Wis. Act. 332; (d) 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; (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237; (f) The exemption for food and food ingredients was revised to exempt all food and food ingredients except candy, dietary supplements, prepared food and soft drinks effective October 1, 2009, pursuant to 2009 Wis. Act 2; ~~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; and (h) The exemption for prepared food manufactured and sold by the same retailer under s. 77.54 (20n) (d), Stats., became effective September 23, 2017, pursuant to 2017 Wis. Act 59.

SECTION 51. Tax 11.92 (1) (b) is amended to read:

Tax 11.92 (1) (b) The basis for all deductions claimed in filing returns, including exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order and the supplier's invoice or billing document. Sales to organizations holding a certificate of exempt status, CES, including religious or charitable organizations and certain title holding companies described under section 501 (c) (2), can be shown to be documented as exempt by recording the CES number on the seller's copy of the bill of sale. Except as provided in this paragraph and ss. 77.52 (13) and 77.53 (10), Stats., exempt sales shall be supported by an exemption certificate retained by the seller and paper certificates shall also be signed by the purchaser. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, shall be maintained in a manner in which they readily can be related to the transaction for which exemption is sought.

SECTION 52. Tax 11.92 (1) (bg) is created to read:

Tax 11.92 (1) (bg) Sales to state veterans organizations, as defined in s. 45.41 (1) (b), Stats., are exempt, except for property and services used primarily in preparing, storing, serving, selling, or delivering food and beverages, including products and services for cleaning machinery and equipment used for the food and beverages that are sold by the veterans organization. The state veterans organization shall provide a Wisconsin sales and use tax exemption certificate, Form S-211 or S-211E, to claim an exemption on their purchases.

SECTION 53. Tax 11.92 (7) (b) (Note 1) is amended to read:

Tax 11.92 (7) (b) **Note:** Section Tax 11.92 interprets ss. 77.52 (13), 77.54 (9a) and (9g), 77.58 (6m), 77.60 (8), 77.61 (4) (a) and (9), and 77.75, Stats.

SECTION 54. Tax 11.985 (3) (b) and (Note1) are amended to read:

Tax 11.985 (3) (b) If the transaction includes food and food ingredients as defined in s. 77.51 (3t), Stats., drugs as defined in s. 77.51 (3pj), Stats., durable medical equipment as defined in s. 77.51 (3pm), Stats., mobility-enhancing equipment as defined in s. 77.51 (7m), Stats., prosthetic devices as defined in s. 77.51 (11m), Stats., or medical supplies, the sales price received from sales of taxable products sold in what would be a bundled transaction, except that the sales price of the taxable products in the transaction are 50 percent or less of the seller's total sales price of all of the products in the transaction or the seller's total purchase price of the taxable products in the transaction are 50 percent or less of the seller's total purchase price of all of the products in the transaction. This paragraph does not apply if one or more of the products in the transaction is a service.

Note: Section Tax 11.985 interprets ss. 77.51 (1f), (3pf), and (9p) ~~and~~ 77.52 (1), (2), (20), (21), (22), and (23), and 77.54 (51) and (52), Stats.

SECTION 55. 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

E:Rules/165 – Tax 11 Update 2017 Acts – SS 102-18/Tax 11 Update 2017 Acts Proposed Rule Order