

Clearinghouse Rule 97-056

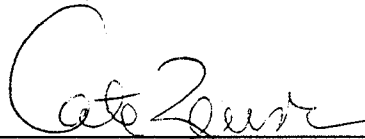
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Cate Zeuske, Secretary of the Department of Revenue and custodian of the official records, certify that the annexed rule, relating to sales and use taxes, was duly approved and adopted by this department on September 23, 1997.

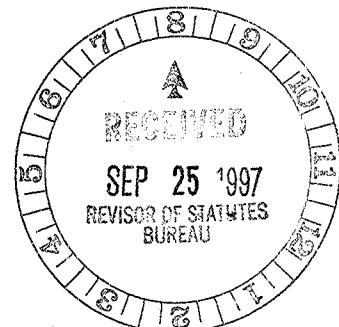
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 23 day of September, 1997.



Cate Zeuske
Secretary of Revenue

CKRUL/542



11-1-97
97-056

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

The Wisconsin Department of Revenue adopts an order to: renumber Tax 11.32(6) and (7); renumber and amend Tax 11.32(4)(a); amend Tax 11.32(4)(b) and (c) and 11.68(4)(a)2., (5)(L) and (10)(c); repeal and recreate Tax 11.32(5); and create Tax 11.32(4)(a)l., 2. and 3. and (6) and 11.68(6)(a)15., relating to Wisconsin sales and use taxes.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.51(2), (4)(a)4. and (14)(intro.), 77.52(2)(a) and 77.61(3), Stats.

SECTIONS 1 AND 2. Tax 11.32(4)(a), relating to sales tax collected from customers, is renumbered Tax 11.32(4)(a)(intro.) and amended, and Tax 11.32(4)(a)l. to 3. are created, to clarify the methods which a retailer may use to notify its customers of the amount of sales tax collected.

SECTION 3. Tax 11.32(4)(b) and (c) are amended to replace the term "vending machine operator" with "vending machine retailer" to provide consistency with other terminology in Tax 11.32, and to conform language and style to Legislative Council Rules Clearinghouse standards.

SECTION 4. Tax 11.32(5) is repealed and recreated to:

Conform to Legislative Council Rules Clearinghouse standards.

Provide consistency within the bracket charts and create two new bracket charts, a 5.1% state and stadium tax chart and a 5.6% state, county and stadium tax chart.

Reference all applicable statutes relating to sales and use tax rates.

Remove Tax 11.32(5)(d), relating to posting bracket system cards showing the tax collectible on a sales transaction, because it is unnecessary due to the amendment to sub. (4)(a).

SECTIONS 5 AND 6. Tax 11.32(6) and (7) are renumbered Tax 11.32(7) and (8) and new Tax 11.32(6) is created, to provide an alternative bracket system (a mathematical computation) for retailers to use in determining the amount of tax collectible from customers.

SECTION 7. Tax 11.68(4)(a)2. is amended to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.68(5)(L), relating to personal property which becomes a part of realty upon installation, is amended to remove traffic signals from this classification. This is to conform to the decision of the Wisconsin Court of Appeals, District IV, in *Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue*, October 29, 1987. In this case, highway signs, sign bridges, delineator posts

and guardrails were found to remain tangible personal property after installation. Although traffic signals were not specifically mentioned in the case, the conclusion that the signing and marking of highways must be flexible and impermanent requires a tangible personal property classification for traffic signals.

SECTION 8. Tax 11.68(6)(a)15., relating to property provided under a construction contract which remains personal property, is created to add stop and go lights, railroad signs and signals and street identification signs to this classification.

SECTION 9. Tax 11.68(10)(c) is amended to correct punctuation in a direct statutory quote.

SECTION 1. Tax 11.32(4)(a) is renumbered Tax 11.32(4)(a)(intro.) and amended to read:

Tax 11.32(4)(a)(intro.) Section 77.51(4)(a)4., Stats., provides in part that "if a retailer establishes to the satisfaction of the department that the sales tax... has been added to the total amount of the sales price and has not been absorbed by the retailer, the total amount of the sales price shall be the amount received exclusive of the sales tax imposed." Therefore, when the tax is collected from customers who are notified of that fact, the amount of the tax collected is not included in the base to which the tax applies. The notification may be by any one of the following methods:

SECTION 2. Tax 11.32(4)(a)l., 2. and 3. are created to read:

Tax 11.32(4)(a)l. Providing the customer a receipt which separately itemizes the tax or states "Prices Include Sales Tax."

2. Conspicuously posting the bracket system card, form S-213 or S-218, issued by the department.

3. Conspicuously posting a sign which states "Prices Include Sales Tax."

Note to Revisor: Replace the example after sub. (4)(a) with the following:

Example: A tavern, located in a county which has a combined 5.5% Wisconsin state and county sales and use tax rate in effect, conspicuously posts a sign stating "Prices Include Sales Tax." The tavern's gross receipts from sales of food and beverages are \$10,000 for the month. When filing its sales and use tax return, form ST-12, the tavern may deduct \$521.33 of sales tax to arrive at taxable receipts of \$9,478.67 ($\$10,000 \div 1.055 = \$9,478.67$). The tax payable by the tavern is determined by multiplying its taxable receipts times the tax rate ($\$9,478.67 \times .055 = \521.33 tax payable).

SECTION 3. Tax 11.32(4)(b) and (c) are amended to read:

Tax 11.32(4)(b) If a retailer cannot collect any tax because all sales are below the minimum price on which tax is collectible under the bracket ~~system~~ systems set forth in subs. (5) and (6), no part of the retailer's gross receipts shall ~~may~~ be treated as tax collected from customers.

Note to Revisor: Replace the example after sub. (4)(b) with the following:

Example: A vending machine retailer whose only receipts are from sales of 5¢ items is unable to collect any sales tax from customers, and the tax applies to the total gross receipts.

(c) If a vending machine ~~operator~~ retailer sells taxable property at a price such that a sales tax is collectible under the bracket ~~system~~ systems set forth in subs. (5) and (6), part of the gross receipts from these sales shall include sales tax if customers are advised that the vending machine prices include sales tax.

SECTION 4. Tax 11.32(5) is repealed and recreated to read:

Tax 11.32(5) BRACKET SYSTEM. (a) The following bracket system may be used by retailers in computing the amount of the state tax which may be collected from the retailer's customers.

<u>Amount of Taxable Sale</u>	<u>5% Tax Collectible</u>
\$.01 to \$.09	0¢
.10 to .29	1¢
.30 to .49	2¢
.50 to .69	3¢
.70 to .89	4¢
.90 to 1 .09	5¢

On sales exceeding \$1.00, the state tax equals 5¢ for each full dollar of sales, plus the tax shown above for the applicable fractional part of a dollar.

(b) In counties having a county tax, but no stadium tax, the following bracket system may be used.

<u>Amount of Taxable Sale</u>	<u>Combined State and County Tax of 5.5%</u>
\$.01 to \$.09	0¢
.10 to .27	1¢
.28 to .45	2¢
.46 to .63	3¢
.64 to .81	4¢
.82 to .99	5¢
1.00 to 1.18	6¢
1.19 to 1.36	7¢
1.37 to 1.54	8¢
1.55 to 1.72	9¢
1.73 to 1.90	10¢
1.91 to 2.09	11¢

The state and county tax equals 11¢ for each \$2.00 of sales, plus the tax shown above for the fractional part of \$2.00.

Example: For a sale of \$11.50, the 5.5% tax is 63¢, consisting of 55¢ for \$10.00 of sales plus 8¢ for \$1.50 of sales.

(c) In counties having a stadium tax, but no county tax, the following bracket system may be used.

<u>Amount of Taxable Sale</u>	<u>Combined State and Stadium Tax of 5.1%</u>
\$.01 to \$.09	0¢
.10 to .29	1¢
.30 to .49	2¢
.50 to .68	3¢

.69 to .88	4¢
.89 to 1.07	5¢
1.08 to 1.27	6¢
1.28 to 1.47	7¢
1.48 to 1.66	8¢
1.67 to 1.86	9¢
1.87 to 2.05	10¢
2.06 to 2.25	11¢
2.26 to 2.45	12¢
2.46 to 2.64	13¢
2.65 to 2.84	14¢
2.85 to 3.03	15¢
3.04 to 3.23	16¢
3.24 to 3.43	17¢
3.44 to 3.62	18¢
3.63 to 3.82	19¢
3.83 to 4.01	20¢
4.02 to 4.21	21¢
4.22 to 4.41	22¢
4.42 to 4.60	23¢
4.61 to 4.80	24¢
4.81 to 4.99	25¢
5.00 to 5.19	26¢
5.20 to 5.39	27¢

5.40 to 5.58	28¢
5.59 to 5.78	29¢
5.79 to 5.98	30¢
5.99 to 6.17	31¢
6.18 to 6.37	32¢
6.38 to 6.56	33¢
6.57 to 6.76	34¢
6.77 to 6.96	35¢
6.97 to 7.15	36¢
7.16 to 7.35	37¢
7.36 to 7.54	38¢
7.55 to 7.74	39¢
7.75 to 7.94	40¢
7.95 to 8.13	41¢
8.14 to 8.33	42¢
8.34 to 8.52	43¢
8.53 to 8.72	44¢
8.73 to 8.92	45¢
8.93 to 9.11	46¢
9.12 to 9.31	47¢
9.32 to 9.50	48¢
9.51 to 9.70	49¢
9.71 to 9.90	50¢
9.91 to 10.09	51¢

The state and stadium tax equals 51¢ for each \$10.00 of sales, plus the tax shown above for the fractional part of \$10.00.

(d) In counties having a county tax and a stadium tax, the following bracket system may be used.

<u>Amount of Taxable Sale</u>	<u>Combined State, County and Stadium Tax of 5.6%</u>
\$.01 to \$.08	0¢
.09 to .26	1¢
.27 to .44	2¢
.45 to .62	3¢
.63 to .80	4¢
.81 to .98	5¢
.99 to 1.16	6¢
1.17 to 1.33	7¢
1.34 to 1.51	8¢
1.52 to 1.69	9¢
1.70 to 1.87	10¢
1.88 to 2.05	11¢
2.06 to 2.23	12¢
2.24 to 2.41	13¢
2.42 to 2.58	14¢
2.59 to 2.76	15¢
2.77 to 2.94	16¢
2.95 to 3.12	17¢
3.13 to 3.30	18¢
3.31 to 3.48	19¢

3.49 to 3.66	20¢
3.67 to 3.83	21¢
3.84 to 4.01	22¢
4.02 to 4.19	23¢
4.20 to 4.37	24¢
4.38 to 4.55	25¢
4.56 to 4.73	26¢
4.74 to 4.91	27¢
4.92 to 5.08	28¢
5.09 to 5.26	29¢
5.27 to 5.44	30¢
5.45 to 5.62	31¢
5.63 to 5.80	32¢
5.81 to 5.98	33¢
5.99 to 6.16	34¢
6.17 to 6.33	35¢
6.34 to 6.51	36¢
6.52 to 6.69	37¢
6.70 to 6.87	38¢
6.88 to 7.05	39¢
7.06 to 7.23	40¢
7.24 to 7.41	41¢
7.42 to 7.58	42¢
7.59 to 7.76	43¢

7.77 to 7.94	44¢
7.95 to 8.12	45¢
8.13 to 8.30	46¢
8.31 to 8.48	47¢
8.49 to 8.66	48¢
8.67 to 8.83	49¢
8.84 to 9.01	50¢
9.02 to 9.19	51¢
9.20 to 9.37	52¢
9.38 to 9.55	53¢
9.56 to 9.73	54¢
9.74 to 9.91	55¢
9.92 to 10.08	56¢

The state, county and stadium tax equals 56¢ for each \$10.00 of sales, plus the tax shown above for the fractional part of \$10.00.

(e) The bracket system method is designed so that the total amount of tax paid by customers approximates the tax payable by the retailer on the retailer's taxable gross receipts, if the retailer's sales fall equally throughout all the brackets. When more than one taxable item is sold in a single transaction, the tax is computed on the aggregate sales price of the taxable items sold.

(f) The gross sales and use tax payable by a retailer on retail sales is the total of the applicable tax rates under ss. 77.52(1) and (2), 77.53(3) and (9m) and 77.71, Stats., times the retailer's taxable gross receipts, regardless of the amount of tax collected from customers.

SECTION 5. Tax 11.32(6) and (7) are renumbered Tax 11.32(7) and (8).

SECTION 6. Tax 11.32(6) is created to read:

Tax 11.32(6) ALTERNATIVE BRACKET SYSTEM - MATHEMATICAL COMPUTATION.

A retailer is not required to compute the tax due on a transaction using the bracket system described in sub. (5). A retailer who does not use the bracket system described in sub. (5) shall determine the amount of tax due on a transaction by multiplying the applicable tax rate times the aggregate sales price of all taxable items sold in a single transaction. The tax rate may not be multiplied times the sales price of each item separately and then summed. The tax collectible from the customer shall be rounded to the nearest \$.01 by using the following rounding procedures:

(a) For amounts less than \$.005, the amount shall be rounded down to the next lowest penny.

Examples: 1) Tax computed at \$.0849999 would be rounded down to \$.08.
2) Tax computed at \$3.2549 would be rounded down to \$3.25.

(b) For amounts equal to or greater than \$.005, the amount shall be rounded up to the next highest penny.

Examples: 1) Tax computed at \$.085000 would be rounded up to \$.09.
2) Tax computed at \$6.455001 would be rounded up to \$6.46.
3) Retailer A sells Customer B three different taxable items in one transaction: Item 1's selling price is \$14.70, item 2's selling price is \$8.30, and item 3's selling price is \$7.10. The aggregate selling price of the taxable items is \$30.10. The Wisconsin sales tax due on this transaction, assuming a 5% tax rate, is \$1.51; $\$30.10 \times 5\% = \1.505 , and that amount is rounded up to \$1.51.

SECTION 7. Tax 11.68(4)(a)2. and (5)(L) are amended to read:

Tax 11.68(4)(a)2. Application or adaptation to the use or purpose to which the real property is devoted; ~~and~~

(5)(L) ~~Traffic signals, and street~~ Street and parking lot lighting.

SECTION 8. Tax 11.68(6)(a)15. is created to read:

Tax 11.68(6)(a)15. Stop and go lights, railroad signs and signals and street identification signs.

SECTION 9. Tax 11.68(10)(c) is amended to read:

Tax 11.68(10)(c) Section 77.52(2)(a)10., Stats., provides in part that "... the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to

which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration; but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustrations; but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

Note to Revisor: Delete the word "and" immediately preceding "(m)," in the second note following Tax 11.68, and add the following to the end of the note: "; and (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."

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

Final Regulatory Flexibility Analysis

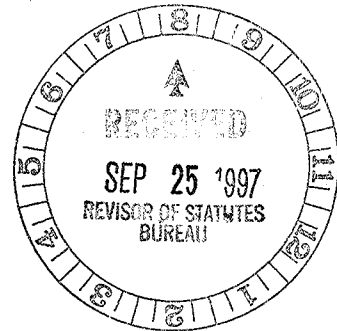
This rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: September 23, 1997

By: Cate Zeuske
Cate Zeuske
Secretary of Revenue

RUL/110.cll.6



FISCAL ESTIMATE
DOA-2048 N(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Sales Tax Notification and Collection; Treatment of Traffic Signals

Fiscal Effect

State: No State Fiscal Effect

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

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

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

Decrease Costs

Local: No Local Government Costs

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

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

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed order updates the Administrative Code with respect to the sales and use tax.

Section 1 clarifies the methods which retailers may use to notify a customer of the amount of sales tax collected, and replaces the term "vending machine operator" with "vending machine retailer" to provide consistent terminology. Sections 2, 3 and 4 create two new bracket charts and an alternative bracket calculation to address changes in the bracket system. Section 6 updates the Department's position with respect to traffic signals and other traffic control equipment that remain personal property. Other rule sections clarify existing language, reflect a 1987 decision by the Wisconsin Court of Appeals, and change style and format to be consistent with Legislative Council Rules Clearinghouse standards.

The changes do not have a fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department Of Revenue Craig Kammholz, (608) 261-8984	Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i>	4/1/97



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

September 23, 1997

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

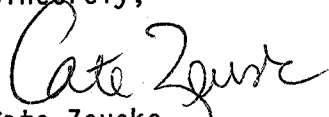
Re: Clearinghouse Rule 97-056

Dear Mr. Poulson:

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

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

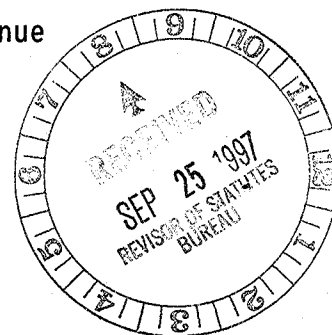
Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:c11
CKRUL/539

Enclosure

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





State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

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September 23, 1997

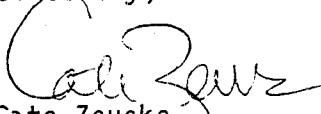
Douglas La Follette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary La Follette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 97-056.

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

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:c11
CKRUL/538

Enclosure

cc: Deputy Revisor

