

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 the Wisconsin sales and use tax treatment of motor vehicles, was duly approved and adopted by this department on December 12, 1996.

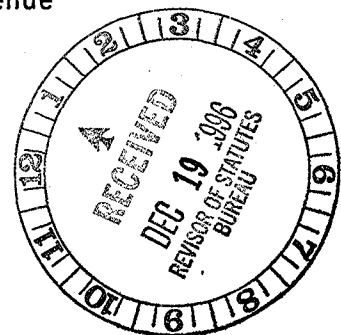
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 12th day of December, 1996.

Cate Zeuske

Cate Zeuske
Secretary of Revenue

CKRUL/352



ORDER OF THE DEPARTMENT OF REVENUE
AMENDING AND REPEALING AND RECREATING
RULES

The Wisconsin Department of Revenue adopts an order to: amend Tax 11.83(1), (2), (3)(d), (4)(b), (5), (6), (7)(a), (11)(c) and (12); and repeal and recreate Tax 11.83(8), relating to the Wisconsin sales and use tax treatment of motor vehicles.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.53(1), (1m) and (17), 77.54(5)(a), 77.56(2) and 77.71(2), Stats., as affected by 1995 Wisconsin Act 27.

SECTION 1. Tax 11.83(1), relating to definitions, is amended to correct language as required by Legislative Council Rules Clearinghouse standards.

Tax 11.83(2), (3)(d) and (4)(b), relating to taxable gross receipts and occasional sales, are amended to improve language as required by Legislative Council Rules Clearinghouse standards.

Tax 11.83(5), relating to the temporary use of motor vehicles in Wisconsin, is amended to clarify the language in s. 77.53(17), Stats.

Tax 11.83(6) and (7)(a), relating to tax credits and transfers by inheritance, are amended to improve language as required by Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 11.83(8), relating to the use of motor vehicles by dealers, is repealed and recreated to reflect the amendment to ss. 77.53(1), 77.56(2) and 77.71(2), Stats., and the creation of s. 77.53(1m), Stats., by 1995 Wisconsin Act 27.

SECTION 3. Tax 11.83(11)(c) and (12), relating to resale certificates and mixing and processing units, are amended to improve language and to reflect proper format, as required by Legislative Council Rules Clearinghouse standards.

SECTION 1. Tax 11.83(1), (2), (3)(d) and (4)(b) are amended to read:

Tax 11.83 (1) DEFINITION. In this section, "motor vehicle" means a self-propelled vehicle, such as an automobile, truck, truck-tractor and or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, "motor vehicle" does not include a self-propelled

vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck and or road machinery as defined in s. 340.01(52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.

(2) RETAILERS' TAXABLE GROSS RECEIPTS. Gross receipts from the following sales in Wisconsin are taxable:

(a) ~~Gross receipts from the~~ The sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value, called a "trade-down," unless cash or services are received by the dealer.

Note to Revisor: Insert the following examples after sub. (2)(a):

Examples: 1) Dealer A sells a motor vehicle to Individual B and accepts the trade-in of two motor vehicles owned by Individual B. The selling price of the new vehicle is \$20,000. The values of the two motor vehicles traded in by Individual B are \$8,000 and \$9,000. Gross receipts subject to sales tax are \$3,000, the \$20,000 selling price less \$8,000 and \$9,000 trade-ins.

2) Dealer A sells two motor vehicles to Individual C and accepts the trade-in of a motor vehicle owned by Individual C. The selling prices of the new vehicles are \$10,000 and \$12,000. The value of the motor vehicle traded in is \$15,000. Gross receipts subject to sales tax are \$7,000, the \$22,000 selling price less \$15,000 trade-in.

(b) ~~Gross receipts from charges for~~ The delivery, handling, and preparation of a motor vehicle being sold and any the sale of a warranty, relating to the sale of a motor vehicle that is taxable.

Note to Revisor: Insert the following note after sub. (2)(b):

Note: See s. Tax 11.27 for information regarding the sales and use tax treatment of warranties.

(c) ~~Gross receipts from~~ The sale of equipment and accessories sold with a motor vehicle. However, adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as defined in s. 27.01(7)(a)2, Stats., is exempt from sales and use tax if the equipment is purchased by the handicapped person, a person acting on behalf of the handicapped person or a nonprofit organization.

(d) ~~Gross receipts from charges for all~~ Sales of parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments, except charges for adaptive equipment, including parts and accessories, that makes it possible for handicapped persons to enter, operate or leave a vehicle as described in par. (c).

Note to Revisor: Insert the following note after sub. (2)(d):

Note: Under s. 77.51(14r), Stats., a sale takes place in Wisconsin if possession of the tangible personal property is transferred by the seller or the seller's agent to the buyer or the buyer's agent in Wisconsin. A common carrier or U.S. Postal Service is always an agent of the seller.

(3)(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of such the interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

(4)(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle or truck body ~~is~~ are subject to ~~the~~ tax.

(5) TEMPORARY USE IN WISCONSIN. Motor vehicles purchased outside Wisconsin, which are not registered or titled or required to be registered or titled in Wisconsin, brought into Wisconsin by a nondomiciliary for that person's own storage, use or other consumption while temporarily in Wisconsin are not subject to use tax when the motor vehicle is not stored, used or

otherwise consumed in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(6) TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN. A motor vehicle purchased outside ~~this state~~ Wisconsin and registered in ~~this state~~ generally Wisconsin is subject to the Wisconsin use tax, except as noted in sub. (4)(c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made, sales or use tax paid to the other state or the District of Columbia ~~shall~~ may be applied as a credit against and deducted from the Wisconsin use tax. This credit ~~shall~~ does not apply to taxes paid to another country, or to municipalities in other states, or to motor vehicle registration fees.

(7)(a) The distribution of a motor vehicle to the heir or heirs of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser ~~is required to~~ shall pay the tax to the department of transportation at the time of registration.

SECTION 2. Tax 11.83(8) is repealed and recreated to read:

Tax 11.83(8) VEHICLES USED BY LICENSED WISCONSIN MOTOR VEHICLE DEALERS.

(a) General. Motor vehicles purchased without tax for resale by a Wisconsin motor vehicle dealer licensed under s. 218.01, Stats., and used for a purpose in addition to retention, demonstration or display, except motor vehicles loaned to any school or school district for a driver training educational program conducted by the school or school district, are subject to Wisconsin use tax. Motor vehicles used by the dealership solely for retention, demonstration and display, while holding them for sale in the regular course of business, or solely for leasing to others, such as customers and employes, are not subject to Wisconsin use tax.

(b) Amount subject to use tax. The amount subject to use tax on a motor vehicle used by a licensed motor vehicle dealer for a purpose in addition to retention, demonstration or display is one of the following:

1. Motor vehicles held for sale which are assigned to a specific dealer employe subject to withholding from federal income tax on wages are subject to Wisconsin use tax on \$96 per motor vehicle registration plate per month.

Note: As provided in sec. 77.53(1m), Stats., the department annually, beginning January 1, 1997, will adjust the \$96 amount to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the Wisconsin Tax Bulletin prior to the January 1, that the change becomes effective.

2. Motor vehicles held for sale and not assigned to a specific dealer employe subject to federal withholding on wages are subject to Wisconsin use tax on the lease value of the motor vehicle computed on a calendar month basis. If a motor vehicle is used by the dealer for a period of less than one calendar month, the amount subject to use tax is the daily lease value calculated by multiplying the applicable monthly lease value by a fraction, the numerator of which is the number of days used by the dealer for a purpose in addition to retention, demonstration or display and the denominator of which is the number of days in the calendar month. Lease value is computed using the internal revenue service lease value table contained in internal revenue service regulation s. 1.61-21(d)(2). In the lease value table, the "automobile fair market value" is one of the following:

a. The amount an individual would have to pay in an arm's length transaction to purchase the motor vehicle. The amount includes all amounts attributable to the purchase of the automobile such as sales tax and title fees.

b. The motor vehicle dealer's cost of purchasing the automobile, including all expenses attributable to that purchase, provided the automobile is owned by the dealer and the purchase was made at arm's length.

3. Motor vehicles not held for sale, including motor vehicles properly capitalized for Wisconsin income or franchise tax purposes, are subject to use tax based on the sales price of the motor vehicle as defined in s. 77.51(15), Stats. However, if the motor vehicles were purchased without tax using a resale or other exemption certificate and the first use, in addition to retention, demonstration or display, occurs more than 6 months after the purchase by the dealer, the dealer may use the fair market value of the motor vehicle at the time of first use as the amount subject to tax.

(c) Recordkeeping. It is presumed that all dealer plates issued by the department of transportation to a licensed motor vehicle dealer are used each month on motor vehicles assigned to employees subject to withholding for federal income tax purposes for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par (b)1, unless one of the following applies:

1. The motor vehicle dealer keeps adequate records showing that the dealer plates were not used during the month on motor vehicles for a purpose in addition to retention, demonstration or display.

2. The motor vehicle to which the dealer plate is assigned is subject to use tax as computed in par. (b)2 or 3.

(d) Transitional provision. For motor vehicles, not assigned to employees or salespersons subject to federal withholding on wages, that are used by the dealer for a purpose in addition to retention, demonstration and display both prior to September 1, 1995, and on and after September 1, 1995, upon which a sales or use tax was paid on the purchase price of the motor vehicle by the dealer, the imposition of use tax as described in par. (b)2 does not apply.

SECTION 3. Tax 11.83(11)(c) and (12) are amended to read:

Tax 11.83(11)(c) A supplier ~~cannot~~ may not accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, except when the purchaser does all of the following:

1. Inventories the property;
2. Certifies that the purchaser sells ~~significant amounts of the property over-the-counter-to-walk-in-trade;~~ and in the regular course of business.
3. ~~The purchaser specifies~~ Specifies on the resale certificate each type of item the purchaser sells ~~over-the-counter~~ in the regular course of business.

(12) EXEMPTION FOR MIXING AND PROCESSING UNITS. Sales, leases and rentals of mobile mixing units used for mixing and processing, and the motor ~~vehicle or trailer~~ vehicles or trailers on which the ~~unit is~~ units are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units, are exempt from ~~the~~ sales and use tax.

Note to Revisor: Replace the notes at the end of Tax 11.83 with the following:

Note: Section Tax 11.83 interprets ss. 77.51(13)(am) and (14)(j), 77.52(1) and (15), 77.53(1), (1m), (16), (17) and (18), 77.54(5)(a), (c) and (d), (7) and (22)(g), 77.56(2) and (3), 77.61(1) and 77.71(2) and (4), Stats.

Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for adaptive equipment for handicapped persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemption for parts and accessories for adaptive equipment for motor vehicles of handicapped persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; and (h) The measure of use tax on motor vehicles

as described in sub. (8)(b) became effective September 1, 1995, pursuant to 1995 Wis. Act 27.

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

Final Regulatory Flexibility Analysis

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

Dated:

Dec 12, 1996

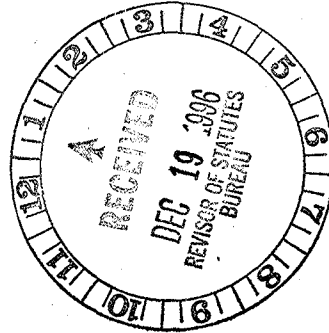
By:

DEPARTMENT OF REVENUE

Cate Zeuske

Cate Zeuske
Secretary of Revenue

CKRUL/116



LRB or Bill No./Adm. Rule No.

Tax 11.83

Amendment No. if Applicable

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

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Sales and Use Tax Treatment of Motor Vehicles

Fiscal Effect

State: No State Fiscal Effect

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

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

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

Local: No Local Government Costs

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

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

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

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

Section 7 of the rule repeals and recreates Tax 11.83 (8), relating to taxes on motor vehicles used by licensed motor vehicle dealers. It changes the formula for calculating use tax on vehicles operated by an employee of the dealer to: sales and use tax rate (5% for the state, 0.5% for counties with a sales tax) multiplied by \$96 per month per dealer license plate held by the dealership. Further, it changes the formula for calculating use tax on other vehicles operated by the dealer to: sales and use tax rate multiplied by the monthly lease value of the motor vehicle, as shown in the lease value tables compiled by the Internal Revenue Service. Section 7 reflects statutory changes made in 1995 Wisconsin Act 27 and does not have a fiscal effect.

Other rule sections reflect additional statutory changes in Act 27, clarify existing language, reflect a recent decision by the Wisconsin Tax Appeals Commission, and change style and format to conform with Legislative Council Rules Clearinghouse standards. These changes do not have a fiscal effect.

Long-Range Fiscal Implications

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

Wisconsin Department of Revenue
Paul Neumann, (608)-266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun
(608)-266-2700 *Yeang Eng Braun*

Date

11/1/95



State of Wisconsin • DEPARTMENT OF REVENUE

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

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

December 16, 1996

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

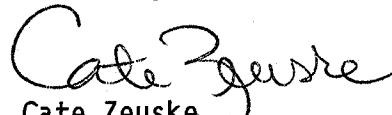
Re: Clearinghouse Rule 96-075

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to the Wisconsin sales and use tax treatment of motor vehicles.

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

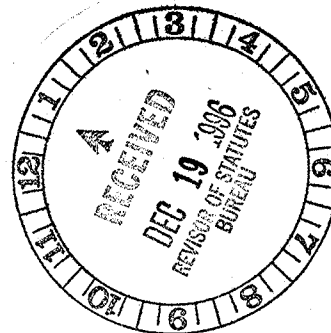
Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:c11
CKRUL/363

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

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

December 16, 1996

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

Dear Secretary La Follette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 96-075.

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

Sincerely,

Cate Zeuske
Secretary of Revenue

CZ:MPW:c11
CKRUL/362

Enclosure

cc: Deputy Revisor

