

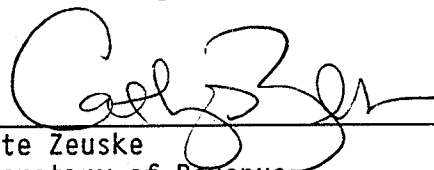
CERTIFICATE

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 August 29, 1997.

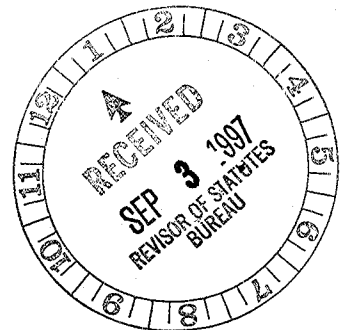
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 29 day of August, 1997.



Cate Zeuske  
Secretary of Revenue

CKRUL/527



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

The Wisconsin Department of Revenue adopts an order to: repeal Tax 11.001(5) and 11.97(6)(b); renumber Tax 11.001(4) and 11.35(2); renumber and amend Tax 11.35(1) and 11.97(6)(a); amend Tax 11.001(intro.), 11.002(title), (1), (2)(c), (3) and (4)(a) and (b), 11.01(1)(b), 11.35(title), (3), (5)(b) and (6)(a) and 11.97(1); and create Tax 11.001(4) and (6), 11.002(2)(d) and 11.01(1)(i), (j) and (k), relating to registering for and reporting Wisconsin sales and use taxes.

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Analysis by the Department of Revenue

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

Statutes interpreted: ss. 66.75(1m)(f)5., 73.03(50), 77.52(9) and (12), 77.53(9) and (9m), 77.54(7m), 77.705, 77.982(4) and 77.991(4), Stats.

SECTIONS 1, 2 AND 3. Tax 11.001(intro.) is amended to add a reference to the stadium tax which was created effective January 1, 1996, by 1995 Wisconsin Act 56.

Tax 11.001(4) is renumbered Tax 11.001(5) and new Tax 11.001(4) is created to set forth that the common use of the term stadium tax means the Local Professional Baseball Park District Tax created effective January 1, 1996, by 1995 Wisconsin Act 56.

SECTIONS 4 AND 5. Tax 11.001(5) is repealed and Tax 11.001(6) is created to reflect the insertion of the definition of stadium tax and improve language and style per Legislative Council Rules Clearinghouse standards. Note that Tax 11.001(6) as created is similar to what was provided by sub. (5) prior to its repeal.

SECTION 6. Tax 11.002(title), relating to registration for Wisconsin sales and use and local exposition district taxes, is amended to make clear the subject of this section.

Tax 11.002(1) and (2)(c) are amended to reflect correct punctuation.

SECTION 7. Tax 11.002(2)(d), relating to registering for local exposition district taxes, is created due to the creation of ss. 66.75(1m)(f)5., 77.982(4) and 77.991(4), Stats., by 1993 Wisconsin Act 263.

SECTION 8. Tax 11.002(3), relating to application for permits or certificates, is amended to reflect the change in title to Form A-101.

Tax 11.002(4)(a) and (b) are amended to conform style to Legislative Council Rules Clearinghouse standards.

The note at the end of Tax 11.002 is revised for the following reasons:

- a. To reflect the repeal of s. 77.52(7) and (8), Stats., by 1995 Wisconsin Act 27.

b. To give the statutory reference for use tax registration not previously mentioned.

c. To reflect the creation of ss. 66.75(1m)(f)5., 77.982(4) and 77.991(4), Stats., by 1993 Wisconsin Act 263.

SECTION 9. Tax 11.01(1)(b), relating to forms for reporting sales and use taxes, is amended to reflect stadium taxes pursuant to 1995 Wisconsin Act 56.

SECTION 10. Tax 11.01(1)(i), (j) and (k), relating to forms for reporting sales and use taxes, are created to describe Department of Natural Resources forms that are used for reporting sales or use tax on the sales of boats, snowmobiles and all-terrain vehicles.

SECTION 11. Tax 11.35(title), relating to the occasional sales for nonprofit organizations, is amended to remove reference to an effective date. Since this date is prior to any period open to adjustment under the statute of limitations, it is no longer necessary to mention it in the title.

SECTION 12. Tax 11.35(1) and (2) are renumbered Tax 11.35(2) and (1) to conform to Legislative Council Rules Clearinghouse standards, and Tax 11.35(2)(b), as renumbered, is amended to correct an error regarding the \$300 limit for entertainment as provided in s. 77.54(7m), Stats.

SECTION 13. Tax 11.35(3) and (5)(b) are amended to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.35(6)(a) is amended to clarify that the occasional sales exemption may apply to a nonprofit organization's sales at an admission event where that nonprofit organization is not sponsoring the event.

SECTION 14. Tax 11.97(1) is amended to conform punctuation and style to Legislative Council Rules Clearinghouse standards.

SECTIONS 15 AND 16. Tax 11.97(6)(a), relating to out-of-state companies engaged in business in Wisconsin, is renumbered Tax 11.97(6) to reflect the repeal of Tax 11.97(6)(b), and it is amended to reflect the change in title of Form A-101 and to remove the statement that there is no fee since a fee may apply under the business tax registration provisions that were adopted as part of 1995 Wisconsin Act 27.

Tax 11.97(6)(b) is repealed and set forth in a Note, since the material is informational rather than substantive.

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SECTION 1. Tax 11.001(intro.) is amended to read:

Tax 11.001(intro.) Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch.77, Stats., and is also applicable to the county and stadium sales and use

taxes authorized under subch. V of ch. 77, Stats. In this chapter, unless otherwise specified:

SECTION 2. Tax 11.001(4) is renumbered Tax 11.001(5).

SECTION 3. Tax 11.001(4) is created to read:

Tax 11.001(4) "Stadium tax" means the local professional baseball park district sales or use tax authorized under subch. V of ch. 77, Stats.

SECTION 4. Tax 11.001(5) is repealed.

SECTION 5. Tax 11.001(6) is created to read:

Tax 11.001(6) "Taxable" and similar terms including "subject to the tax" and "tax applies" mean either of the following:

(a) The sales tax applies to a sale of tangible personal property or services, measured by the gross receipts from the sale.

(b) The use tax applies to the storage, use or other consumption of tangible personal property or services sold, measured by the sales price.

SECTION 6. Tax 11.002(title), (1) and (2)(c) are amended to read:

Tax 11.002(title) REGISTRATION. (1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate or ~~consumers~~ consumer's use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department will act on the application.

(2)(c)(title) Consumer's use tax registration certificate. Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a ~~consumers~~ consumer's use tax registration certificate.

SECTION 7. Tax 11.002(2)(d) is created to read:

Tax 11.002(2)(d) Local exposition registration. Every person selling lodging, food, beverages and other items described in s. 77.54(20)(c)2. or renting automobiles subject to local exposition district taxes shall register with the department. Upon registration for local exposition district taxes, a separate seller's permit or use tax registration certificate only for local exposition district taxes will not be issued. The seller's permit or use tax registration certificate, as described in pars. (a) and (b), issued for sales and use tax purposes will apply for local exposition district tax purposes.

SECTION 8. Tax 11.002(3) and (4)(a) and (b) are amended to read:

Tax 11.002(3) APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES.

A person required to have a seller's permit or one of the use tax certificates described in sub. (2) or required to register for local exposition district taxes shall file an "Application for Permit"/Certificate," form A-101, with the department at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required.

Note to Revisor: Revise the note after sub. (3) to read as follows:

Note: Form A-101 may be obtained from any department of revenue office, or by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

(4)(a) The approved permit is mailed by the department to the applicant, ~~or~~.

(b) The department mails notification to the applicant that security is required or that the application is incomplete, or incorrect, or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department, ~~or~~.

Note to Revisor: Revise the note at the end of Tax 11.1002 to read as follows:

Note: Section Tax 11.002 interprets ss. 66.75(1m)(f)5., 77.52(9) and (12), 77.53(9) and

(9m), 77.61(2), 77.982(4), 77.991(4) and 227.116, Stats.

SECTION 9. Tax 11.01(1)(b) is amended to read:

Tax 11.01(1)(b) Form S-012. Also called form ST-12. The monthly, quarterly or annual return ~~for each person~~ used to report state, county and stadium taxes by persons holding a Wisconsin seller's permit, use tax registration certificate or consumer's use tax registration certificate.

SECTION 10. Tax 11.01(1)(i), (j) and (k) are created to read:

Tax 11.01(1)(i) Form 9400-193. A department of natural resources form for occasional and dealer sales of boats.

(j) Form 9400-210. A department of natural resources form for occasional and dealer sales of snowmobiles.

(k) Form 9400-376. A department of natural resources form for occasional and dealer sales of all-terrain vehicles.

Note to Revisor: Revise the first note at the end of Tax 11.01 to read as follows:

Note: Forms may be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

SECTION 11. Tax 11.35(title) is amended to read:

Tax 11.35(title) OCCASIONAL SALES BY NONPROFIT ORGANIZATIONS.

SECTION 12. Tax 11.35(1) and (2) are renumbered Tax 11.35(2) and (1) and, as renumbered, Tax 11.35(2)(b) is amended to read:

Tax 11.35(2)(b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than \$300 ~~or more~~ per event by all persons for performing, for reimbursement of expenses or for prize money.

SECTION 13. Tax 11.35(3), (5)(b) and (6)(a) are amended to read:

Tax 11.35(3) GENERAL. A nonprofit organization ~~is required to~~ shall charge Wisconsin sales tax on sales of tangible personal property and taxable services, unless the sales qualify as exempt occasional sales or are otherwise exempt. The occasional sales exemption does not apply to gross receipts from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.

(5)(b) Its taxable gross receipts for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur. Nontaxable gross receipts ~~shall~~ may not be included for purposes of the \$15,000 gross receipts test.

(6)(a) ~~To~~ For a nonprofit organization's sales to qualify as an exempt occasional sale sales, entertainment ~~shall~~ may not be involved at an event for which charges by that nonprofit organization constitute admissions.

Note to Revisor: Add the following Example 5) to the examples that follow sub. (6)(a):

5) Nonprofit Organization A sponsors an admission event at which a band is hired to perform. The band is paid more than \$300. Nonprofit Organization A allows Nonprofit Organization B, a separate entity, to sell soft drinks and food at the event for consumption on the premises of the event. Although Nonprofit Organization A's sales at the event do not qualify for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

Note to Revisor: Delete the third note at the end of Tax 11.35 because it is obsolete, and replace the first and second notes with the following:

Note: To obtain a seller's permit, a nonprofit organization shall file Wisconsin form A-101, Application for Permit/Certificate, with the department. Form A-101 may be obtained from any department of revenue office, or by writing or calling Wisconsin Department of Revenue, P.O. box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

Note: The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to 1989 Wis. Act 399.

SECTION 14. Tax 11.97(1) is amended to read:

Tax 11.97(1) GENERAL. (a) Out-of-state retailers ~~are required to~~ shall register and collect

a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the 14th Amendment to the U.S. Constitution. The court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established, the out-of-state seller ~~is required to~~ shall register and collect the state's use tax.

(b) Some United States supreme court decisions concerning nexus include:

1. Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941).
2. Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941).
3. General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944).
4. Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954).
5. Scripto, Inc. vs. Carson, 362 U.S. 207 (1960).
6. National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967).
7. National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977).

SECTION 15. Tax 11.97(6)(a) is renumbered Tax 11.97(6) and amended to read:

Tax 11.97(6) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state, except as provided in sub. (5), shall apply for a use tax registration certificate. The registration form is titled "Application for Permit", ~~Form/Certificate,~~ form A-101. ~~There is no fee for registration.~~

SECTION 16. Tax 11.97(6)(b) is repealed.

Note to Revisor: Replace the note at the end of Tax 11.97(6) with the following notes:

Note: Form A-101 may be obtained from any department of revenue office, or by writing



or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

Note: Refer to s. Tax 11.002 for a description of use tax registration certificate requirements, how to apply for a use tax registration certificate and the 15-day time period within which the department is required to act on certificate applications.

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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:

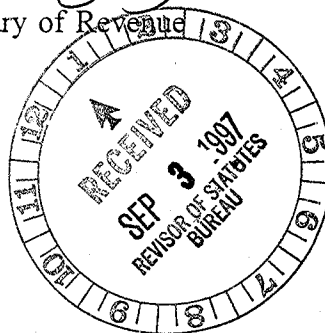
Aug 29, 1997

By:

Cate Zeuske  
Secretary of Revenue

DEPARTMENT OF REVENUE

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LRB or Bill No /Adm Rule No.

TAX 11.002, 11.01, 11.35 and 11.97

Amendment No. if Applicable

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

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

Subject  
**Registering and Reporting Sales and Use Taxes**

**Fiscal Effect**  
State:  No State Fiscal Effect  
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local:  No Local Government Costs

1 <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3 <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5 Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2 <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4 <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Ch. 20 Appropriations</b>
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**Assumptions Used in Arriving at Fiscal Estimate**

The rule order updates the Administrative Code with respect to registering and reporting sales and use taxes.

Section 2 creates Tax 11.002 (2)(d) to reflect 1993 Wisconsin Act 263, which requires individuals who sell lodging, food or beverages, or rent automobiles subject to local exposition taxes to register with the Department of Revenue. Section 4 amends Tax 11.01 (1)(b) by requiring stadium taxes to be reported along with state and county sales and use taxes on Form ST-12. Section 5 creates Tax 11.01 (1)(l), (j) and (k) in order to establish forms to be used by the Department of Natural Resources for occasional sales of boats, snowmobiles and all-terrain vehicles.

Other changes create and amend titles, clarify existing language to reflect the Department's current position, modify punctuation, alter style and format to conform to Legislative Council Clearinghouse standards, and renumber rule sections to accommodate other rule changes.

These rule changes do not have a fiscal effect.

**Long-Range Fiscal Implications**

<b>Agency/Prepared by: (Name &amp; Phone No.)</b> Wisconsin Department of Revenue Craig Kammholz, (608) 261-8984	<b>Authorized Signature/Telephone No.</b> Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i>	<b>Date</b> 7/12/96
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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 2, 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 97-055.

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

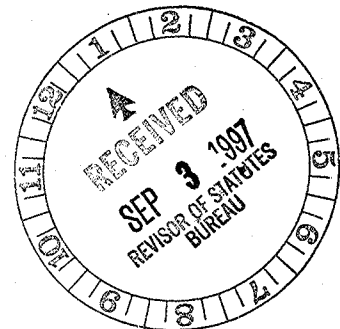
Sincerely,

Cate Zeuske  
Secretary of Revenue

CZ:MPW:c11  
CKRUL/523

Enclosure

cc: Deputy Revisor





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 2, 1997

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


Re: Clearinghouse Rule 97-055

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/524

Enclosure

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

