

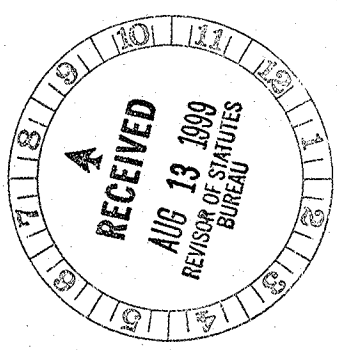
99-054

**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: governmental units; meals, food, food products and beverages; and Wisconsin sales and taxable transportation charges, was duly approved and adopted by this department on August 10, 1999.

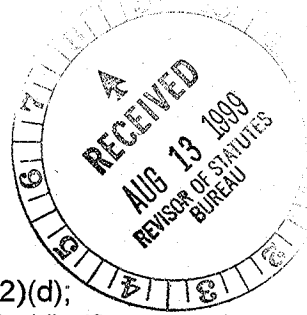
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and the whole of the original.



IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 10 day of August, 1999.

Cate Zeuske  
Cate Zeuske  
Secretary of Revenue

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



The Wisconsin Department of Revenue adopts an order to: repeal Tax 11.94(2)(d); renumber Tax 11.05(3)(m) to (u) and Tax 11.87(1)(e) and (f); amend Tax 11.05(2)(a), (d), (f) and (i), (3)(d) and (L) and (4)(a) and (b)2., Tax 11.87(1)(b), (2)(c) and (3)(a) and Tax 11.94(1)(d) and (2)(a) and (c); repeal and recreate Tax 11.87(3)(c); and create Tax 11.05(3)(m), (w) and (x) and (4)(b)3., relating to governmental units; meals, food, food products and beverages; and Wisconsin sales and taxable transportation charges.

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**Analysis by the Department of Revenue**

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

Statutes interpreted: ss. 77.51(4)(a)3., (14r) and (15)(a)3., 77.52(2)(a) and 77.54(9a), (20)(c) and (20m), Stats.

SECTION 1. Tax 11.05(2)(a) and the example following, sub. (2)(d) and sub. (3)(d) are revised, to provide additional information regarding the facilities to which admissions are taxable.

A note is added at the end of Tax 11.05(2)(b), to reference Tax 11.51 for a list of taxable food products.

Tax 11.05(2)(d) is further revised, to update style per Legislative Council Rules Clearinghouse (Clearinghouse) standards.

Tax 11.05(2)(f) is revised, to reflect the renumbering of sub. (3)(p) as explained in section 2.

Tax 11.05(2)(i) is revised, to clarify that the paragraph applies to the rental of lodging facilities that are available to the public.

Tax 11.05(3)(L) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 2 AND 3. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v) and new Tax 11.05(3)(m) is created, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

Tax 11.05(3)(w) and (x) are created, to list additional items which are not taxable.

SECTION 4. Tax 11.05(4)(a) is revised, to reflect the exemption for purchases of joint local water authorities, as a result of the creation of s. 77.54(9a)(em), Stats., by 1997 Wis. Act 184.

Tax 11.05(4)(b)2. and the note following are revised, to reflect the creation of a new multipurpose exemption certificate, Form S-211, which replaces various other exemption

certificates.

SECTION 5. Tax 11.05(4)(b)3. is created, to reflect that a Wisconsin governmental unit may provide its certificate of exempt status number to a retailer to document that its purchases are exempt.

SECTION 6. Tax 11.87(1)(b) is revised, to include a reference to s. 77.54(20m), Stats., as created by 1997 Wis. Act 237.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e), to alphabetize definitions per Clearinghouse standards.

A note is added at the end of Tax 11.87(1)(h), to reference Tax 11.51 for lists of taxable and exempt items.

SECTION 8. Tax 11.87(2)(c) and the example are revised and a note is added, to clarify the taxability of meals.

Tax 11.87(3)(a) is revised, to clarify the exemption for food and beverages sold by health care facilities.

SECTION 9. Tax 11.87(3)(c) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 10 AND 11. Tax 11.94(1)(d) and (2)(a) are revised, to update style per Clearinghouse standards.

Tax 11.94(2)(c) is revised, to reflect two Circuit Court decisions, *Rhineland Paper Company, Inc. vs. Wisconsin Department of Revenue* (97CV 1051, December 18, 1997) and *Trierweiler Construction and Supply Co., Inc. vs. Wisconsin Department of Revenue* (97CV 1444, December 12, 1997). The Circuit Court held that sales price does not include transportation costs separately incurred by the buyer from a carrier independent of the retailer.

Consequently, Tax 11.94(2)(d) and the example following are repealed, because the answer may vary, depending on the facts. Taxability must be determined on a case-by-case basis.

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SECTION 1. Tax 11.05(2)(a), (d), (f) and (i) and (3)(d) and (L) are amended to read:

Tax 11.05(2)(a) Admissions to recreational facilities if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

**Note to Revisor:** Replace the example at the end of sub. (2)(a) with the following:

**Example:** Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

**Note to Revisor:** Add the following note at the end of Tax 11.05(2)(b):

**Note:** See s. Tax 11.51 for a list of food products subject to tax.

(d) Charges for access to or use of athletic facilities, such as baseball and softball diamonds, stadiums and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature.

(f) Sales of maps, plat books, photocopies or other printed material, except as provided in sub. (3)(p)(q).

(i) Rental of lodging facilities, available to the public, to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges or universities operated by governmental units.

(3)(d) Rental of buildings or space, such as offices, warehouses and meeting rooms, not used for activities which are amusement, athletic, entertainment or recreational in nature.

(L) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employees, residents or guests; ~~meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals;~~ and meals sold to the elderly or handicapped by "mobile meals on wheels."

SECTION 2. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v).

SECTION 3. Tax 11.05(3)(m), (w) and (x) are created to read:

Tax 11.05(3)(m) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages 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, provided the items are consumed by that student.

2. The meals, food, food products or beverages are furnished to a national football league team.

(w) Parking tickets.

(x) Charges for lessons.

SECTION 4. Tax 11.05(4)(a) and (b)2. are amended to read:

Tax 11.05(4)(a) Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof of Wisconsin, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 281.43(4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., local exposition district under subch. II of ch. 229, Stats., joint local water authority created under s. 66.0735, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

(b)2. An A Wisconsin sales and use tax exemption certificate, form ~~S-207~~ or ~~S-209~~

S-211.

**Note to Revisor:** Replace the note at the end of sub. (4)(b)2. with the following:

**Note:** Form S-211 is available from any department of revenue office.

SECTION 5. Tax 11.05(4)(b)3. is created to read:

Tax 11.05(4)(b)3. Its certificate of exempt status number that the retailer should record on the invoice or other document it keeps as part of its records.

**Note to Revisor:** In the second note at the end of Tax 11.05, remove the word "and" before part (t) and add the following at the end of the note:

; and (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.

SECTION 6. Tax 11.87(1)(b) is amended to read:

Tax 11.87(1)(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20) and (20m), Stats.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e).

**Note to Revisor:** Add the following note at the end of Tax 11.87(1)(h):

**Note:** See s. Tax 11.51 to determine which items are exempt food and which items are taxable food.

SECTION 8. Tax 11.87(2)(c) and (3)(a) are amended to read:

Tax 11.87(2)(c)(title) ~~Food components of meals~~ Meals. Food items which comprise or are components of a meal shall be taxable food when sold on a "take-out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere for

consumption either on or off the seller's premises.

**Note to Revisor:** 1) Replace the example at the end of sub. (2)(c) with the following:

**Example:** A basket of chicken with cole slaw and french fries sold "to go" is a taxable meal.

2) Add the following note after the example at the end of sub. (2)(c):

**Note:** See s. Tax 11.51 for a definition of meal.

(3)(a) Meals, food, food products or beverages , except soda water beverages, fermented malt beverages and intoxicating liquor, sold ~~on their premises~~ by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., or day care centers registered under ch. 48, Stats., and served on their premises. However, if an affiliated organization sells the items, the exemption does not apply.

**Note to Revisor:** Do not change the example at the end of sub. (3)(a).

SECTION 9. Tax 11.87(3)(c) is repealed and recreated to read:

Tax 11.87(3)(c) *Institutions of higher education.* Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages 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, provided the items are consumed by that student.

2. The meals, food, food products or beverages are furnished to a national football league team.

**Note to Revisor:** 1) Replace the first note at the end of Tax 11.87 with the following:

**Note:** Section Tax 11.87 interprets ss. 77.51(4)(c)2., (14)(b) and (f) and (15)(c)1. and 77.54(20) and (20m), Stats.

2) In the second note at the end of Tax 11.87, remove the word "on" in parts (a) and (c), remove the word "and" before part (c), and add the following at the end of the note:

; (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; and (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237.

SECTION 10. Tax 11.94(1)(d) and (2)(a) and (c) are amended to read:

Tax 11.94(1)(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser ~~shall not be~~ are not subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of the sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(2)(a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

**Note to Revisor:** Do not change the example at the end of sub. (2)(a).

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14(2)(c) based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the



purchaser. The "sales price" does not include transportation charges paid by the Wisconsin purchaser to a carrier independent of the seller when the purchaser arranges for the transportation.

SECTION 11. Tax 11.94(2)(d) is repealed.

**Note to Revisor:** Replace the first note at the end of Tax 11.94 with the following:

**Note:** Section Tax 11.94 interprets ss. 71.51(4)(a)3., (14)(intro.) and (d), (14r) and (15)(a) and 77.52(1), Stats.

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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

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

DEPARTMENT OF REVENUE

Dated: 8/10/99

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue

e:rules/1105 Adopt - Order

1999 Session

FISCAL ESTIMATE

ORIGINAL  UPDATED

DOA-2048 N(R10/98)

CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

TAX 11.05, 11.87, 11.94

Amendment No. if Applicable

Subject

Sales and Use Tax Treatment Relating to Governmental Units, Food and Beverage Products and Transportation Charges

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 reflects changes in the treatment for sales of meals by institutions of higher learning enacted in 1997 Wisconsin Acts 27 and 41, an exemption for local water authorities enacted in 1997 Act 184, and Circuit Court decisions relating to the treatment of transportation costs. Other changes clarify existing language to reflect the Department's current position, and alter style and format to conform to Legislative Council Clearinghouse standards. These rule changes do not have a fiscal effect.

Long-Range Fiscal Implications

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

Wisconsin Department of Revenue

John T. Stott, (608) 266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

*Yeang Eng Braun*

Date

3/3/99



# State of Wisconsin • DEPARTMENT OF REVENUE

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

*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

August 11, 1999

Gary L Poulson Deputy Revisor  
131 W Wilson St Ste 800  
Madison WI 53703-3233

Re: Clearinghouse Rule 99-054

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to governmental units; meals, food, food products and beverages; and Wisconsin sales and taxable transportation charges.

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

The rule order has also been e-mailed to you. If you have any questions regarding the rule order, please contact Mark Wipperfurth at 266-8253 or [mwipperf@dor.state.wi.us](mailto:mwipperf@dor.state.wi.us).

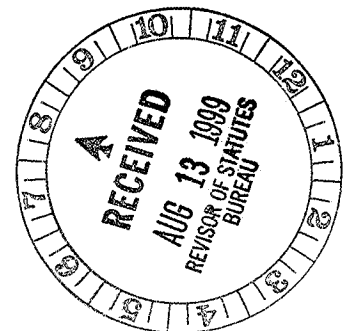
Sincerely,

Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules\1105 Adopt - Revisor

Enclosure

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





**State of Wisconsin • DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933  
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*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

August 11, 1999

Douglas La Follette Secretary of State  
30 W Mifflin St 10th Fl  
Madison WI 53703

Dear Secretary La Follette

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 99-054.

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

Sincerely,

A handwritten signature in cursive script that reads "Cate Zeuske".

Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules\1105 Adopt - Secretary of State

Enclosure

cc: Deputy Revisor