

Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs

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IMPORTANT CHANGES

Exemption Certificates. A new exemption certificate, Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), replaced the Resale Certificate (Form S-205) and Certificate of Exemption (Form S-207). However, purchasers may use, and retailers may still accept, the Form S-205 and Form S-207.

Professional Football Stadium District & Local Cultural Arts District Exempt. Sales, leases, and rentals to a professional football stadium district and a local cultural arts district were added to governmental units exempt from Wisconsin sales or use tax.

Four New Counties Adopt County Tax. Eau Claire, Washington, Green Lake and Taylor Counties adopted the county sales and use tax during 1999.

Football Stadium Tax. A football stadium district sales and use tax became effective November 1, 2000.

Information on the local exposition 3% rental car tax can be found in Wisconsin Publication 410, "Local Exposition Taxes." Information on the 0.5% premier resort area tax can be found in Wisconsin Publication 403, "Premier Resort Area Taxes."

Information on the Wisconsin rental vehicle and limousine fees can be found in Part IX.C. and D. of this publication.

If, after reading this publication, you have questions about the sales and use tax, any Department of Revenue office may be contacted for free assistance. (See Part XI for a listing of department offices.)

CAUTION

The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of November 1, 2000. Laws enacted after this date, administrative rules, and court decisions may change the interpretations in this publication. Also note that lists of taxable or exempt items in this publication are not all-inclusive. They merely set forth common examples.

I. INTRODUCTION

A. General

This publication provides information about the Wisconsin state, county, and stadium sales and use taxes as they affect persons in the business of selling, leasing, renting, or repairing motor vehicles. It includes information which should be of interest to new and used motor vehicle dealers, lessors, and persons operating garages, body shops, and service stations.

The information provided generally relates to the state's 5% sales and use tax. However, in counties which have adopted the 0.5% county sales and use tax and counties where the 0.1% or 0.5% stadium tax is imposed, the county tax and stadium tax may also apply to any transaction which is subject to the state tax.

B. Motor Vehicle Defined

"Motor vehicle" means a self-propelled vehicle (for example, an automobile, truck, truck-tractor, or motorcycle) designed for and capable of transporting persons or property on a highway.

"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, all-terrain vehicle, fork-lift truck, and road machinery.

C. Nature of the Sales and Use Tax

1. **Sales tax** is imposed upon the gross receipts of retailers who sell, lease, or rent tangible personal property or taxable services at retail in Wisconsin. Responsibility for collection and payment of the sales tax is placed upon the retailer.

In the sale of motor vehicles, only persons licensed as “dealers” with the Wisconsin Department of Transportation are considered to be retailers for purposes of imposing Wisconsin sales tax. For example, if a motor vehicle dealer sells a motor vehicle, the dealer is responsible for reporting the sales tax on the transaction. If a motor vehicle is sold by a person who is not a dealer, the person registering the motor vehicle with the Wisconsin Department of Transportation must pay any tax due.

2. **Use tax** is imposed upon the storage, use, or other consumption in Wisconsin of tangible personal property or taxable services where no Wisconsin sales tax was paid when originally purchased from a retailer. For example, use tax is imposed upon a purchaser when property is purchased without tax for resale or from an out-of-state company and is used by the purchaser and not resold.

See Part II for how gross receipts and sales price are computed for purposes of determining Wisconsin sales or use tax.

D. Tax Rate and Tax Base

The state tax rate of 5% is the same for both the sales and use tax. The sales tax is based upon gross receipts from retail sales. The use tax is based upon the sales price of the property or service purchased. In Wisconsin counties which have adopted the county tax, the total tax rate is 5.5% (5% state tax plus 0.5% county tax). In counties where the baseball stadium tax is imposed, the rate is 5.1% or 5.6%, depending on whether a county tax applies. In Brown county, the total tax rate is 5.5%, effective November 1, 2000 (5% state tax plus 0.5% football stadium tax).

The tax is imposed upon retailers’ taxable gross receipts, regardless of the tax they collect from the customer. If tax has been collected from customers and the customers have been notified of that fact, the tax collected should not be included in the base in computing the tax due the Department of Revenue. For example, if a company had \$100 of taxable sales and collected \$5 in tax, for a total of \$105, the company would multiply 5% times \$100 to determine the tax owed the department.

E. Seller’s Permits

The seller’s permit shows that a retailer is properly registered with the Department of Revenue, as required by law. Every person desiring to engage in the business of selling taxable tangible personal property or services at retail in Wisconsin must file an Application for Permit/Certificate (Form A-101) with the department. If you have more than one business location where you make retail sales, a separate seller’s permit is needed for each location.

Form A-101 may be obtained from any Department of Revenue office. This completed form should be mailed to the department at least three weeks before business operations begin. It is a misdemeanor for a retailer to sell taxable property or services without a seller’s permit.

F. Business Tax Registration

Persons applying for a seller’s permit or use tax registration certificate may be required to pay a Business Tax Registration (BTR) fee of \$20. The \$20 BTR fee is not required for a consumer’s use tax registration certificate.

The initial BTR fee covers a period of two years. At the end of that period, a \$10 BTR renewal fee applies.

G. Filing Tax Returns and Payment of Tax

Every person holding a seller’s permit must file a sales and use tax return, Form ST-12, for each reporting period. A reporting period may be either monthly, quarterly, or annually, depending on that person’s annual tax liability. Generally, the reporting period will be quarterly unless the Department of Revenue notifies the person in writing that the reporting period to be used is monthly or annually.

Persons with more than one business location file a consolidated return for all business locations.

II. GROSS RECEIPTS AND SALES PRICE

A. Gross Receipts and Sales Price Include

Gross receipts and sales price means the total amount of the sale or purchase, whether received in money or otherwise, except as provided in Parts II.C and VII.B.

Gross receipts and sales price, for purposes of imposing Wisconsin sales or use tax, assuming the sale of the property or service is subject to tax, include the following (this list is not all-inclusive):

1. Delivery, Handling, and Preparation

Charges for delivery, handling, and preparation of a motor vehicle are included in gross receipts subject to Wisconsin sales or use tax.

2. Extended Warranties and Service Contracts

Gross receipts subject to sales tax include charges for extended warranties or service contracts, if the motor vehicle purchased to which the warranty or service contract relates is subject to Wisconsin sales or use tax.

A “warranty” is a contract or agreement which promises indemnity against defects in tangible personal property sold.

Example 1: Customer A, a resident of Wisconsin, purchases a motor vehicle in Wisconsin. The motor vehicle is subject to Wisconsin sales or use tax. Therefore, the sale of the extended warranty is also subject to Wisconsin sales or use tax.

Example 2: Customer B purchases a motor vehicle in Wisconsin. Customer B also purchases an extended warranty with the motor vehicle. Customer B lives in Minnesota. Customer B will make no other use of the motor vehicle in Wisconsin other than its removal from Wisconsin to Minnesota. The motor vehicle is not subject to Wisconsin sales or use tax. Therefore, the extended warranty is also not subject to Wisconsin sales or use tax.

Example 3: Customer C, a resident of Wisconsin, purchases a motor vehicle in Wisconsin. At the time of sale, Customer C decides not to purchase an extended warranty with the motor vehicle. Six weeks after the sale of the motor vehicle, the dealer contacts Customer C to determine his or her satisfaction with the motor vehicle. At that time, Customer C decides to purchase an extended warranty on the motor vehicle from the dealer. Because the sale of the motor vehicle to which the extended warranty relates was subject to Wisconsin sales tax, the sale of the extended warranty is also subject to Wisconsin sales tax.

Example 4: Customer D, a resident of Wisconsin, purchases a motor vehicle in a county which has not adopted the county tax (nontaxable county). Customer D also purchases an extended warranty with the motor vehicle. Customer D lives in a county which has adopted the county tax (taxable county). The motor vehicle will customarily be kept in the taxable county. The sale of the motor vehicle is subject to the county tax. Therefore, the extended warranty is also subject to the county tax.

Example 5: Customer E, a resident of Wisconsin, purchases a motor vehicle in a county which has adopted the county tax (taxable county). Customer E also purchases an extended warranty with the motor vehicle. Customer E lives in a county which has not adopted the county tax (nontaxable county). The motor vehicle will customarily be kept in the nontaxable county. The sale of the motor vehicle is not subject to the county tax. Therefore, the extended warranty is also not subject to the county tax.

Example 6: Customer F, a resident of Wisconsin, purchases a motor vehicle in a county which has adopted the county tax (taxable county). At the time of sale, Customer F decides not to purchase an extended warranty with the motor vehicle. Customer F will keep the motor vehicle in a county which has not adopted the county tax (nontaxable county). Six months after the sale of the motor vehicle, the dealer contacts Customer F to determine satis-

faction with the motor vehicle. At that time, Customer F decides to purchase an extended warranty on the motor vehicle from the dealer. Because the sale of the motor vehicle to which the extended warranty relates was not subject to the county tax, the sale of the extended warranty is also not subject to the county tax.

Note: A charge by an extended warranty or service contract provider to a subsequent owner of a motor vehicle for transferring the extended warranty or service contract is not subject to Wisconsin sales or use tax. Similarly, a charge by a vehicle manufacturer to reassign the vehicle manufacturer warranty to a subsequent purchaser is not subject to Wisconsin sales or use tax.

See Part IV.U. for treatment of repair work provided under an extended warranty or service contract.

See Part II.B.8 for definition and treatment of insurance.

3. Federal Gas Guzzler Tax

The federal gas guzzler tax imposed under sec. 4064 of the Internal Revenue Code is included in gross receipts subject to Wisconsin sales or use tax.

4. Manufacturer's Rebates and Coupons

a. Manufacturer's Rebates

An amount received from a manufacturer after the sale of the vehicle by the manufacturer where the manufacturer specifies the amount and that the amount must be passed on to the customer is a manufacturer's rebate. Amounts received by a motor vehicle dealer from a manufacturer which the motor vehicle dealer is not required to pass on to a customer are manufacturer's wholesale incentives and are discussed in Part II.B.3.

The amount of a manufacturer's rebate applied against the purchase price of a vehicle does not reduce the dealer's gross receipts

subject to sales tax. The customer is still responsible for sales tax on the amount of the manufacturer's rebate.

It should be noted that the sales tax under sec. 77.52(1), Wis. Stats., is imposed on the gross receipts of the retailer (e.g., motor vehicle dealer). The retailer may, in turn, collect the sales tax from the customer per sec. 77.52(3), Wis. Stats.

Example: A manufacturer sells a motor vehicle to a motor vehicle dealer who in turn places the vehicle into inventory, with a sticker price of \$18,000. At some later date, to generate sales, the manufacturer offers a rebate (e.g., \$1,500) to a customer for purchasing the vehicle within a specified time frame. This rebate must be passed on to the customer.

Assuming the motor vehicle is sold for the sticker price, the motor vehicle dealer's gross receipts for the sale of the motor vehicle under this example are \$18,000. The manufacturer pays \$1,500 and the customer pays \$16,500. The motor vehicle dealer's taxable gross receipts are \$18,000; they are not affected by the fact that someone other than the customer has contributed towards the sales price. The manufacturer will contribute the \$1,500 but will usually indicate that the customer is responsible for all taxes.

b. Manufacturer's Coupons

A "manufacturer's coupon" distributed by the manufacturer of a motor vehicle through circulars or other mailings which may be used at a motor vehicle dealership does not reduce the motor vehicle dealer's gross receipts subject to Wisconsin sales or use tax.

A manufacturer's coupon is, in effect, a sharing of the purchase price with the customer. Therefore, the motor vehicle dealer's gross receipts from the sale are not reduced by the coupon amount because the retailer receives the full purchase price for the item

sold (i.e., a portion from the customer and the remainder from the manufacturer).

Example: A motor vehicle dealership services motor vehicles. A customer brings his or her motor vehicle in for an oil change. The charge for the oil change is \$20. The customer presents a manufacturer's coupon that he or she received in the mail for \$5 off the cost of an oil change and pays the motor vehicle dealer \$15 cash.

The motor vehicle dealer's gross receipts subject to Wisconsin sales or use tax are \$20 (\$15 received from the customer plus \$5 received from the manufacturer).

See Part II.B.3 regarding dealer coupons.

5. Exchanges or Barter

Gross receipts subject to Wisconsin sales or use tax include the exchange or barter of tangible personal property for taxable or nontaxable services and realty or intangibles. Gross receipts or sales price is the value of the services, realty, or intangibles received.

Example: A dealer exchanges a vehicle having a retail price of \$6,000 for printing services which have an established price of \$6,000. The dealer must report gross receipts from the sale of the motor vehicle of \$6,000, the established price of the printing services received.

6. Capitalized Cost Reductions

Capitalized cost reductions made in cash do not reduce gross receipts subject to sales or use tax.

B. Gross Receipts and Sales Price Do Not Include

Gross receipts and sales price, for purposes of imposing Wisconsin sales or use tax, do not include the following (this list is not all-inclusive):

1. Trade-In Allowances

a. General

If the sale of a motor vehicle and the trade-in are one transaction, gross receipts and

sales price subject to Wisconsin sales or use tax do not include the amount of the trade-in. Therefore, if a motor vehicle (or any other tangible personal property) is traded in for a motor vehicle of greater value, the amount subject to tax is only that amount representing the difference between the full purchase price and the amount allowed for the motor vehicle traded-in.

If a motor vehicle is traded in for a motor vehicle of lesser value, and there is no other consideration given, the amount subject to tax is zero.

Example: Individual A owns a motor vehicle subject to a lien of \$10,000. Individual A trades in this vehicle to Dealer B on the purchase of a new vehicle. Dealer B determines that the trade-in value of the vehicle owned by Individual A is \$12,400. The selling price of the new vehicle is \$20,000. Dealer B will pay off the bank lien.

Gross receipts subject to sales tax on the sale of the new vehicle to Individual A is \$7,600 (\$20,000 selling price less \$12,400 trade-in). The amount of debt assumed by Dealer B does not reduce the amount of the trade-in allowed by Dealer B for purposes of computing gross receipts subject to sales tax.

A reduction in gross receipts for a trade-in allowance is not allowed if:

- i. There is a separate sale of a motor vehicle by either the buyer or seller of another motor vehicle not traded-in, even if the proceeds of one sale are immediately applied by the seller to the purchase of another motor vehicle.

Example: Mr. "A" sells his old motor vehicle to "B" for \$2,000 by advertising it in the newspaper. Upon receipt of the \$2,000, Mr. "A" purchases a new motor vehicle from his motor vehicle dealer for \$16,000, using the \$2,000 received from "B" as a down payment. This \$2,000 paid to the dealer is not a

trade-in. In this situation, “B” would pay \$100 tax ($\$2,000 \times 5\%$) at the time of registering the motor vehicle with the Department of Transportation. The sale of the \$16,000 motor vehicle by the dealer to “A” is subject to \$800 tax ($\$16,000 \times 5\%$).

- ii. Proceeds received from an insurance company are used to purchase another motor vehicle because the insured motor vehicle was damaged or demolished, even though the insurer remits the insurance proceeds directly to the dealer.

b. Trade-In of a Leased Motor Vehicle for a New or Used Motor Vehicle

There are two transactions that occur when a leased motor vehicle is “traded-in” for another motor vehicle. One is the sale of the leased motor vehicle (with permission of lessee if the lessee has the option to purchase or at the discretion of the lessor if the lessee does not have the option to purchase) from the lessor to the dealer at the buy out price. The other is the sale of the replacement motor vehicle to the dealer’s customer. The dealer typically may buy the leased motor vehicle from the lessor without tax for resale. The dealer is required to collect and report a sales tax on the total gross receipts received from the customer on the sale of the replacement motor vehicle no matter how designated.

Example 1: Individual leases a motor vehicle from Leasing Company. Individual wishes to purchase a motor vehicle from Dealer. The value of the leased motor vehicle is \$12,000. Pay-off of the lease is \$12,000. Selling price of the new motor vehicle is \$20,000

Dealer pays Leasing Company \$12,000 for the leased motor vehicle, which Dealer will resell. Individual pays Dealer \$20,000 for the new motor vehicle.

Leasing Company is not subject to Wisconsin sales tax on the sale of the leased motor vehicle to Dealer, provided Dealer gives Leasing Company a properly completed exemption certificate claiming resale. Dealer is subject to Wisconsin sales tax on sale of the motor vehicle to Individual, which Dealer may collect from Individual. Dealer’s gross receipts subject to tax are \$20,000.

Example 2: Individual leases a motor vehicle from Leasing Company. Individual wishes to purchase a motor vehicle from Dealer. Value of the leased motor vehicle is \$10,000. Pay-off of the lease is \$12,000. Selling price of the new motor vehicle is \$20,000.

Dealer pays Leasing Company \$12,000 for the leased motor vehicle, which Dealer will resell. Individual pays Dealer \$20,000 for the new motor vehicle. Individual also pays Dealer \$2,000 for the difference between the value of the leased motor vehicle and pay-off of the leased motor vehicle.

Leasing Company is not subject to Wisconsin sales tax on the sale of the leased motor vehicle to Dealer, provided Dealer gives Leasing Company a properly completed exemption certificate claiming resale. Dealer is subject to sales tax on the sale of the new motor vehicle to Individual, which Dealer may collect from Individual. Dealer’s gross receipts subject to tax are \$22,000 (\$20,000 selling price of the new motor vehicle plus the \$2,000 payment made by Individual to Dealer that is directly related to obtaining the new motor vehicle).

Example 3: Individual leases a motor vehicle from Leasing Company. Individual wishes to purchase a motor vehicle from Dealer. Value of the leased motor vehicle is \$10,000. Pay-off of the lease is \$12,000. Selling price of the new motor vehicle is \$20,000.

Dealer pays Leasing Company \$10,000 for the leased motor vehicle, which Dealer will resell. Individual pays Dealer \$20,000 for the new motor vehicle. Individual pays Leasing Company \$2,000 for the difference between the value of the leased motor vehicle and the pay-off of the leased motor vehicle as settlement of the lease.

Leasing Company is not subject to Wisconsin sales tax on the sale of the leased motor vehicle to Dealer, provided Dealer gives Leasing Company a properly completed exemption certificate claiming resale. Leasing Company is subject to sales tax on the final payment of \$2,000 made by Individual in settlement of the lease. Dealer is subject to sales tax, which Dealer may collect from Individual, on the sale of the new motor vehicle to Individual based on gross receipts of \$20,000.

Example 4: Individual leases a motor vehicle from Leasing Company. Individual wishes to purchase a motor vehicle from Dealer. Value of the leased motor vehicle is \$12,000. Pay-off of the lease is \$10,000. Selling price of the new motor vehicle is \$20,000.

Dealer pays Leasing Company \$10,000 for the leased motor vehicle which Dealer will resell. Individual pays Dealer \$20,000 for the new motor vehicle. Dealer, as a discount, reduces the selling price of the new motor vehicle by \$2,000 for the difference between the value of the leased motor vehicle and the pay-off of the leased motor vehicle.

Leasing Company is not subject to Wisconsin sales tax on the sale of the leased motor vehicle to Dealer, provided Dealer gives Leasing Company a properly completed exemption certificate claiming resale. Dealer is subject to sales tax on the sale of the motor vehicle to Individual based on gross receipts of \$18,000 (\$20,000 selling price of the new motor vehicle less \$2,000 discount).

c. Trade-In of an Owned Motor Vehicle on a Leased Motor Vehicle

If a customer trades in an owned motor vehicle to a lessor on the lease of a new motor vehicle, the value of the trade-in reduces the taxable lease payments on the new motor vehicle.

Example 1: A person trades in an owned motor vehicle with a value of \$2,400 to a leasing company. The leasing company would lease the person a new motor vehicle for \$300 per month over a 24-month period with no trade-in. However, the trade-in value of the old motor vehicle is applied as a capitalized cost reduction ratably to each payment over the life of the new lease, reducing the taxable lease receipts to \$200 per month [\$300 monthly payment for new motor vehicle less value of trade-in prorated over the life of the new lease ($\$2,400 \div 24$ months)].

Note: Capitalized cost reductions made in cash are subject to Wisconsin sales or use tax.

Example 2: At the end of a lease, a lessee exercises an option to purchase the motor vehicle for \$4,000. The motor vehicle is valued at \$6,000. Then, the lessee trades in the motor vehicle on a new leased vehicle.

The lessor is subject to Wisconsin sales tax on the \$4,000 option price paid by the lessee, which may be collected from the lessee. The vehicle is now owned by the customer and may be traded in for \$6,000 to a lessor for a new leased vehicle as described in Example 1 above.

d. Trade-In of a Leased Motor Vehicle on a Leased Motor Vehicle

There are two transactions that occur when a leased motor vehicle is “traded in” on another leased motor vehicle. One is the sale of the leased motor vehicle from Lessor 1 to Lessor 2 (with the permission of the lessee, if the lessee has an option to purchase

or at the discretion of the lessor, if the lessee does not have the option to purchase). The other is the lease of a new motor vehicle from Lessor 2 to the lessee.

Example: Individual leases a motor vehicle from Leasing Company A. At the end of the lease, Individual may purchase the motor vehicle from Leasing Company A for \$4,000. The value of the motor vehicle at the end of the lease is \$5,800. Leasing Company B will lease to Individual a new motor vehicle for \$400 per month for 36 months.

Leasing Company A sells the motor vehicle leased by Individual to Leasing Company B for \$4,000 (payoff), which Leasing Company B will resell. Leasing Company B will allow as a capitalized cost reduction against its lease of the new motor vehicle to Individual the \$1,800 difference between the value of the motor vehicle it purchased from Leasing Company A (\$5,800) and the payoff (\$4,000).

Leasing Company A is not subject to tax on the sale of the leased motor vehicle to Leasing Company B, provided Leasing Company B gives Leasing Company A a properly completed exemption certificate claiming resale. The lease payment charged by Leasing Company B that is subject to sales tax is \$350 per month for 36 months (\$400 less \$50, which is the capitalized cost reduction prorated over the life of the lease ($\$1,800 \div 36$ months)).

Note: Capitalized cost reductions made in cash do not reduce the amount of lease payments subject to tax.

- e. Replacement (“Trade-In”) of a Capitalized Service Motor Vehicle (also see Part VII.B.)

If a dealer retires a service vehicle from use that was properly capitalized and depreciated for income or franchise tax purposes, puts it into inventory, and selects a new service vehicle from inventory to replace it,

there is no reduction in the cost of the new vehicle for purposes of computing the sales price subject to use tax.

Example: A motor vehicle dealer has a pickup truck which it uses as a service truck in its service department. The truck is properly capitalized and depreciated for income or franchise tax purposes. The truck is licensed in the dealer’s name. After two years, the dealer returns the vehicle to inventory to be sold as a used vehicle. The dealer selects a new pickup truck from its inventory, licenses it in the dealer’s name, and properly capitalizes it for income or franchise tax purposes. There is no deduction from the measure of the tax (i.e. cost) of the new service vehicle for the value of the prior service vehicle returned to inventory.

Note: A motor vehicle dealer can structure its transaction in such a way as to allow a trade-in allowance for a service vehicle returned to inventory and replaced with a new vehicle and thereby only pay Wisconsin sales tax on the actual use of the service vehicle (through lease payments).

Example 1: Company A is a motor vehicle dealer. Company B is a separate corporation, a subsidiary of Company A. Company B operates as the rental/lease provider for Company A. Company A sells a pickup truck to Company B which Company B will lease back to Company A for use in its service operation. Later, Company B trades in the pickup truck to Company A, which Company A then offers for sale as a used vehicle, for another truck which Company B will lease back as a replacement for the first vehicle.

The sale of the truck by Company A to Company B is not subject to Wisconsin sales or use tax as a sale for resale. The monthly lease payment, which must be at fair market value, from Company B to Company A is subject to Wisconsin sales or use tax. The retail sale of the used truck by

Company A is subject to Wisconsin sales or use tax.

Example 2: Company C is a motor vehicle dealer. Company D is also a motor vehicle dealer. Company C purchases its service vehicles from Company D at Company D's cost. Company D sells a pickup truck to Company C for \$10,000, which Company C will use in its operations. Company C trades in its old pickup truck to Company D for \$4,000 in the same transaction. The sale of the truck to Company C is subject to Wisconsin sales tax on gross receipts of \$6,000 (\$10,000 less \$4,000 trade-in).

2. Dealer Refunds or Credits.

a. General

Gross receipts do not include such part of the selling price that is refunded in cash or credit as a result of property returned or adjustments in the sales price after the sale has been completed, provided the retailer has included the refunded receipts in its current or prior sales and use tax return and has paid the sales tax on such receipts.

b. Dealer "Buy-Back" or "Cash-Back" Settlement With Customer

Occasionally a dealer, in order to resolve a dispute with a customer, or in settlement of litigation, may either buy a vehicle back from a customer, or return a portion of the customer's purchase price. The amounts returned to the customer may be deducted from the dealer's gross receipts subject to sales or use tax if the original sales price was included in the dealer's taxable receipts, sales tax was paid on those receipts, and the dealer returns to the customer the sales tax paid on the amount returned.

3. Dealer Rebates and Manufacturer's Incentives

a. Dealer Rebates or Coupons

Cash discounts, price reductions for dealer coupons, and dealer rebates allowed by a dealer directly to customers reduce the dealer's gross receipts subject to the tax.

b. Manufacturer's Wholesale Incentive

A manufacturer's wholesale incentive is an incentive from the manufacturer to the dealer to sell X number of motor vehicles or to sell X number of a specific model. This arrangement is between the manufacturer and the dealer. The dealer may or may not pass a portion of the price reduction along to the customer. If the dealer does pass a portion along to the customer in the form of a price reduction, although not required to do so by the manufacturer, the dealer's gross receipts subject to the tax are reduced by the amount passed along to the customer.

4. Federal Luxury Tax

The federal luxury tax is imposed on the sale of motor vehicles under secs. 4001 through 4003 of the Internal Revenue Code and is not included in gross receipts subject to Wisconsin sales or use tax.

5. Bad Debts

If a retailer allows customers to buy on credit and the customer fails to pay, a deduction from gross receipts reported on the sales and use tax return (Form ST-12) is allowed for a bad debt (to the extent the selling price was included in the retailer's taxable gross receipts and the tax was paid by the retailer to the department). The deduction is taken at the time the debt is properly written off as a bad debt for Wisconsin income or franchise tax purposes.

Example: Company A reported taxable gross receipts of \$100 from the repair of a motor vehicle on its January 2000 sales and use tax return and reported and paid tax of \$5. In May

2000, Company A determines that the amount is uncollectible. Company A may reduce its gross receipts on its May 2000 sales and use tax return by \$100 for the taxable receipts previously reported that are uncollectible.

6. Interest and Financing

Interest and financing charges are excluded from gross receipts and sales price if such charges are separately stated on the invoice (e.g., retail installment contract) given to the customer.

7. Insurance

Charges for insurance are excluded from gross receipts provided the charge is separately stated on the invoice (e.g., retail installment contract) given to the customer.

Insurance is a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property.

See Part III.C. for treatment of insurance charges relating to the lease of motor vehicles and Part III.J. for treatment of repair work under an insurance plan.

Note: Charges for extended warranties or service contracts are subject to Wisconsin sales or use tax, even though separately stated, if the motor vehicle to which the warranty relates is subject to Wisconsin sales or use tax. See Part II.A.2.

8. Rental Vehicle Fee

The 3% rental vehicle fee imposed under sec. 77.995, Wis. Stats., on the lease of certain motor vehicles for periods of 30 days or less is not included in gross receipts subject to Wisconsin sales or use tax.

C. Using Fair Market Value

If a person properly purchased a motor vehicle without tax because it was for resale or otherwise exempt and uses the property in some other manner or for some other purpose, the purchaser is subject

to sales or use tax on the purchase of the motor vehicle.

The amount subject to tax is the sales price as defined in Part II with the following exceptions:

1. If the taxable use first occurs more than six months after the sale to the purchaser, the purchaser **may** use the fair market value of the motor vehicle at the time the taxable use first occurred.
2. If the person is a motor vehicle dealer, see Part VII.B.

Example: In 1998, Company A purchased a truck without Wisconsin sales or use tax because it was used exclusively in common or contract carriage. Company A gave its supplier a properly completed exemption certificate. In January 2000, Company A begins to use the truck to haul its own products. Company A is subject to Wisconsin sales tax on the purchase price of the truck or the fair market value as of January 2000, whichever is less.

Example 2: In 1998, Individual A, a resident of another state, purchased a boat in another state without sales or use tax. In 2000, Individual A, still a nonresident of Wisconsin, registers the boat in Wisconsin where he will use it at his vacation home. Individual A is subject to Wisconsin use tax on the purchase price of the boat. Individual A may not use the fair market value of the boat as the amount subject to tax since the boat was not purchased without tax because it was for resale or otherwise exempt from Wisconsin tax.

III. TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY

All sales and leases of tangible personal property, including motor vehicles and motor vehicle parts, are subject to sales tax, unless the transaction is specifically exempt by law. Listed below are examples of retailers' transactions involving sales of tangible personal property which are taxable (this list is not all-inclusive):

A. Motor Vehicles

The sale of a motor vehicle by a licensed motor vehicle dealer is subject to Wisconsin sales or use tax.

A Wisconsin resident purchasing a motor vehicle in a foreign country or another state, or for delivery in a foreign country or another state, must pay the Wisconsin use tax, based upon the purchase price, when the resident registers the motor vehicle in Wisconsin for use in Wisconsin. See Part IX.A. regarding credit.

B. Motor Vehicle Parts

The sale of parts, accessories, and attachments for motor vehicles is subject to Wisconsin sales or use tax.

C. Leases

The lease of a motor vehicle is subject to Wisconsin sales or use tax.

In determining its taxable gross receipts, a lessor may deduct the cost of motor fuel, vehicle license fees, federal highway use taxes, and public liability insurance furnished to the lessee solely for the protection of the lessee, provided the deductions meet the following conditions:

1. The charge is reasonable.
2. The charge is separately stated in the lease agreement, billing, or invoice.
3. The lessor is willing and able to lease the motor vehicle or mobile equipment without providing such deductible items.
4. The lessor's deduction is limited to its cost of the items furnished with the leased equipment.

The lessor may deduct from gross receipts the above items regardless of whether the lease is short-term or long term provided these conditions are met.

The lessor **may not** deduct the cost of maintenance or repair charges or interest or financing costs it incurs, nor amounts spent for the lessor's own protection or for the protection of leased property, including collision, other insurance protection, or dispatch service.

Gross receipts from leases or rentals of motor vehicles and mobile equipment used on highways in

Wisconsin and out-of-state are subject to Wisconsin sales tax if the vehicles and equipment are garaged in Wisconsin. "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

Note: Capitalized cost reductions made in cash do not reduce the amount subject to Wisconsin sales or use tax.

See Appendix E, sec. Tax 11.79, Wis. Adm. Code, for more information on leases.

D. Sales to Donor

Sale of a motor vehicle to a donor (person or organization giving away the motor vehicle as a gift or prize) is subject to Wisconsin sales or use tax unless the motor vehicle is sold to a nonprofit organization that holds a Certificate of Exempt Status (CES) or to a governmental unit described in Part IV.B.

The amount subject to tax is the selling price of the motor vehicle.

If the donor, such as a motor vehicle dealer, purchased without tax as property for resale the motor vehicle that is donated, the donor is subject to use tax on the purchase price of the motor vehicle, except as provided in Part II.C. and VII.D.

The gift recipient or prize winner is **not** subject to the sales or use tax on the value of the motor vehicle when the motor vehicle is registered.

E. Motor Vehicle Dealer Employees

Sale or lease of a motor vehicle by a motor vehicle dealer to a salesperson or other person employed by that dealer is subject to Wisconsin sales or use tax.

F. Vans for Transporting Children

Sales of vans used in transporting school children, if the seating capacity is less than 10, are subject to Wisconsin sales or use tax. However, if the van is sold to a Wisconsin school or school district, the sale is exempt from tax as discussed in Part IV.B and D.

G. Taking Over Payments

If a motor vehicle is transferred from A to B and no money is exchanged, but B agrees to pay off the loan balance on the motor vehicle, the amount of the loan assumed by B is considered the sales price of the motor vehicle which is subject to Wisconsin sales or use tax.

H. Transfer Between Parent and Subsidiary

The sale of a motor vehicle by a parent corporation to its wholly owned subsidiary corporation, or by a subsidiary to its parent, is a taxable transfer of a motor vehicle, except as provided in Parts IV.O. and P.

Note: A sale of a motor vehicle to a subsidiary or parent that will sell or lease the vehicle is not subject to Wisconsin sales or use tax because it is for resale.

I. Judicial Sale

Motor vehicles sold under a court order are taxable, including a sale by a trustee in bankruptcy pursuant to the order of a federal bankruptcy court. If the sale is not by a licensed motor vehicle dealer, the purchaser of the motor vehicle must pay the sales or use tax prior to registering or titling the motor vehicle in Wisconsin.

J. Repairs Under Insurance Plan

Receipts from an insurer for repair parts or services performed to satisfy a claim under an insurance plan are subject to Wisconsin sales or use tax.

IV. EXEMPT SALES OF TANGIBLE PERSONAL PROPERTY

As mentioned in Part III, all retail sales and leases of tangible personal property are taxable unless specifically exempt by law. An exemption certificate (e.g., Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), or similar document) is required to support the exempt sale. See Part X for more information on exemption certificates.

The following are examples of transactions or amounts involving motor vehicles which are exempt from sales and use tax (this list is not all-inclusive):

A. Sales for Resale

Sales for resale include motor vehicles sold to dealers who sell them to customers, to leasing companies who lease them, and to organizations who auction them, without making any use of the vehicle in addition to retention, demonstration, or display while holding them for sale or lease.

See Part VII.B for information on a motor vehicle dealer's use of a motor vehicle for a purpose in addition to retention, demonstration or display while holding it for sale.

If there is a sale for resale to a Wisconsin dealer or lessor and the motor vehicle is to be registered in Wisconsin, Form MV11, "Application For Title/Registration," must be used to claim the resale exemption. If there is a sale for resale to a Wisconsin dealer and the vehicle is not registered in Wisconsin, the "Wisconsin Sales and Use Tax Exemption Certificate" (Form S-211) should be used to claim exemption from Wisconsin sales or use tax.

B. Governmental Units

Sales, leases, and rentals to the following governmental units are exempt from Wisconsin sales or use tax:

- 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.
- The State of Wisconsin or any of its agencies.
- Any unit of Wisconsin government or an agency or instrumentality of one or more units of Wisconsin government. This exemption includes any municipality, public school, or public school district in Wisconsin.
- A county-city hospital established under sec. 66.47, Wis. Stats.

- An uptown business improvement district organized under sec. 66.608, Wis. Stats.
- A sewerage commission organized under sec. 281.43(4), Wis. Stats., or a metropolitan sewerage district organized under secs. or 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.
- A joint water authority created under sec. 66.0735, Wis. Stats.
- A local exposition district, professional baseball park district, professional football stadium district, or local cultural arts district, under subchs. II, III, IV, and V of ch. 229, Wis. Stats.
- The University of Wisconsin Hospitals and Clinics Authority.

Sellers may obtain from the customer (1) a Wisconsin Sales and Use Tax Exemption Certificate (Form S-211) or (2) a purchase order, in lieu of an exemption certificate, or may record the governmental unit's Certificate of Exempt Status (CES) number on the invoice it keeps as part of its records as evidence that the transaction is exempt.

This exemption does not apply to sales to foreign countries and other states and their agencies.

C. Common or Contract Carriers

Sales, leases, and rentals of motor trucks, truck-tractors, road tractors, buses, trailers, and semitrailers, and accessories, attachments, parts, supplies, and materials therefor, sold to common or contract carriers who use such motor trucks, truck-tractors, road tractors, buses, trailers, and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in sec. 71.38, Wis. Stats., are exempt from Wisconsin sales or use tax.

Accessories, attachments, and parts for motor vehicles which are exempt from sales or use tax include the following items if they are assigned to and carried on vehicles which are used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units, and

their fuel, radios, flag kits, including flags and reflectors, items designed to be used with a vehicle which protect or secure the vehicle's load, such as tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps, and shoring beams.

Accessories, attachments, and parts do **not** include: clean towel service, cleaning supplies, wrenches and repair tools, welding torches and welding gas, battery chargers, grinding discs, and shovels, regardless of whether or not assigned to and carried on vehicles used exclusively as common or contract carriers.

Refer to sec. Tax 11.16(1)(am), Wis. Adm. Code, Appendix B, for the definition of "exclusively" as used in this publication.

Common or contract carriers have an I.C., L.C., or M.C. number issued by the appropriate federal or state agency. They must show this I.C., L.C., or M.C. number in claiming an exemption from sales and use tax on Form MV-1, MV11, Form S-211, or similar document.

Wrecker operators that have an L.C. number issued by the Transportation Commission may purchase wreckers without tax if they are to be used exclusively in "for hire" contract carriage.

D. Tax-Exempt Nonprofit Organizations

Sales, leases, and rentals to any nonprofit corporation, community chest fund, foundation, or organization organized and operated exclusively for religious, charitable, scientific, or educational purposes or for the prevention of cruelty to children or animals, except hospital service corporations under s. 613.80(2), Wis. Stats., are exempt from Wisconsin sales or use tax. Included within this group are nonprofit churches, hospitals, private schools, the Scouts, YMCAs, Red Cross, and Community Chests. These organizations are issued a Certificate of Exempt Status (CES) number by the Wisconsin Department of Revenue. To claim the exemption, the CES number must be written on the bill of sale or Form MV-1 or MV-11 or supported by a Wisconsin Sales and Use Tax Exemption Certificate (Form S-211).

The motor vehicle purchased or leased must be registered in the name of the organization, not an individual, for the transaction to be exempt.

E. Motor Fuel for Highway Use

Sales of motor vehicle fuel (e.g., gasoline or diesel) or alternate fuel (e.g., CNG or LPG) subject to the Wisconsin excise tax on highway fuels are not subject to Wisconsin sales or use tax, except when sold without the excise tax or when the excise tax is subsequently refunded because the buyer does not use the fuel in operating a motor vehicle upon public highways.

F. Sales to Nonresidents

Sales, leases, and rentals of motor vehicles or truck bodies (truck bodies include semitrailers) to persons who are not residents of Wisconsin, if use in Wisconsin is limited to removing the motor vehicle or truck body from Wisconsin, are exempt from Wisconsin sales or use tax. If the vehicle is to be used in Wisconsin (e.g., at a vacation home), prior to removal from Wisconsin, the exemption does not apply.

Trailers, other than semitrailers, but including car transport devices such as car caddies, do not qualify for this exemption because they are not motor vehicles or truck bodies.

Dealers should document exemptions from Wisconsin sales or use tax on sales to nonresidents by completing section "E" of Form MV11 (nondealers by completing section "D" of Form MV-1).

This exemption applies to motor vehicles sold to nonresident corporations. A nonresident corporation is a corporation incorporated outside Wisconsin.

If this exemption does not apply, a credit may be allowed in the state of residence for the Wisconsin sales or use tax paid. The customer should contact the resident state for more information.

Caution: This exemption applies only to truck bodies and motor vehicles as defined in sec. Tax 11.83(1), Wis. Adm. Code, and does not include boats, snowmobiles, all-terrain vehicles, trailers, or the separate sale of a "slide-in" camper.

G. Purchases Prior to Becoming Wisconsin Resident

An aircraft, motor vehicle, boat, snowmobile, mobile home, trailer, semitrailer, or all-terrain vehicle purchased outside Wisconsin for personal use by a nonresident of Wisconsin 90 days or more before bringing it into Wisconsin, in connection with a change of domicile to Wisconsin, is exempt from Wisconsin use tax.

H. Delivery Outside Wisconsin

Sales of any type of motor vehicle, trailer, car caddy, slide-in camper, etc., are not subject to Wisconsin sales or use tax if delivery is physically made outside of Wisconsin to a nonresident customer or the customer's agent. The item is also exempt if delivery is made by common carrier under a bill of lading to a location outside of Wisconsin, regardless of any f.o.b. point or whether the freight is paid in advance or is made freight charges collect.

I. Driver's Education Vehicles

The loan of a motor vehicle by a motor vehicle dealer to any school or school district for a driver training educational program conducted by the school or school district is not subject to Wisconsin sales or use tax.

J. Volunteer Fire Departments

Sales, leases, and rentals of fire trucks, ambulances, and rescue vehicles and related equipment, and parts and supplies therefor, to volunteer fire departments are exempt from Wisconsin sales or use tax.

K. Native Americans

Sales to Native Americans who live on a Native American reservation, by retailers located either on or off a Native American reservation, are not subject to Wisconsin sales or use tax, if delivery of the motor vehicle occurs on the Native American's tribal reservation. (**Caution:** If a retailer knows that the property or service is intended for consumption, use, or storage in Wisconsin, but off the Native American's tribal reservation, the retailer is re-

quired to collect sales or use tax on such property or service.)

In order to show that the sale is exempt, the dealer should obtain a Wisconsin Sales and Use Tax Exemption Certificate (Form S-211) signed by the Native American stating that the Native American took possession of the motor vehicle on the reservation of which he or she is an enrolled member.

For more information about taxation of Native Americans, obtain the tax release titled "Taxation of Indians" published in *Wisconsin Tax Bulletin* 69 (October 1990).

L. Beneficiaries

A motor vehicle received as a bequest or inheritance from an estate is not subject to Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is taxable.

M. Repossessions

Repossessions of motor vehicles by a motor vehicle dealer or other person providing financing (e.g. banks), when the only consideration is cancellation of the customer's obligation to pay for the motor vehicle, are not subject to tax. However, the sale of the repossessed motor vehicle is subject to Wisconsin sales or use tax, unless an exemption applies.

N. Federal Banks and Credit Unions

Sales, leases, and rentals to Federal Reserve Banks and federally chartered credit unions are not subject to tax. However, sales, leases, and rentals to state chartered credit unions or other credit unions not federally chartered are taxable.

O. Entity Organizations

The following are not subject to Wisconsin sales or use tax:

1. Transfers to a corporation upon its organization solely in consideration for the issuance of its stock.
2. Transfers to a newly formed partnership solely in exchange for a partnership interest.

3. Transfers to a limited liability company upon its organization solely in consideration for a membership interest.

P. Entity Distributions

The following are not subject to Wisconsin sales or use tax:

1. Distribution of property by a corporation to its stockholders as a dividend or in whole or partial liquidation.
2. Distribution by a partnership to its partners in whole or partial liquidation.
3. The distribution of property by a limited liability company to its members in whole or partial liquidation.

Q. Farming

Sales of all-terrain vehicles and trucks not licensed for highway use to farmers for use directly and exclusively in farming are not subject to Wisconsin sales or use tax.

R. School Buses

Sales of school buses are not subject to Wisconsin sales or use tax when used exclusively as common or contract carriers. A school bus is defined as a motor vehicle designed primarily for the transportation of pupils having a seating capacity of 10 or more persons, in addition to the driver. A school bus does not include a motor vehicle registered as an automobile.

S. Occasional Sales

1. Nondealer Sales

The sale (not leases or rentals) of motor vehicles, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, and aircraft registered or titled under the laws of Wisconsin, and boats registered or titled under the laws of Wisconsin or the United States, by a person not licensed as a Wisconsin dealer, are not subject to sales tax (i.e., the seller does not collect the tax).

Caution: The purchaser of a motor vehicle, snowmobile, etc., from a nondealer in a taxable transaction must pay any tax due to the agency registering the item before the motor vehicle, snowmobile, etc., is titled and registered for use in Wisconsin. For sales of motor vehicles, the purchaser must complete the Department of Transportation's Form MV-1, "Application For Title/Registration," and submit it with the proper title and registration fees and any tax payable to that department before the title and registration can be issued. The amount subject to tax (gross receipts or sales price) is determined as described in Part II.

2. Immediate Family

There is an exemption from tax for the sale of a motor vehicle, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle, aircraft registered or titled under the laws of Wisconsin, or boat registered or titled under the laws of Wisconsin or the United States to the spouse, mother, mother-in-law, father, father-in-law, stepparent, child, stepchild, daughter-in-law, or son-in-law of the seller in whose name the item was previously registered in Wisconsin if the seller is not engaged in the business of selling that type of property.

Caution: A motor vehicle dealer's sale of a motor vehicle to the dealer's spouse, mother, mother-in-law, father, father-in-law, stepparent, child, stepchild, daughter-in-law, or son-in-law is taxable because the dealer is in the business of selling this type of property.

3. Sole Shareholder

The sale of a motor vehicle to a corporation by a person who is the sole owner of that corporation is exempt from sales or use tax as an occasional sale if the sole shareholder is not in the business of selling motor vehicles and the motor vehicle was registered or titled in the name of the sole shareholder or the sole shareholder's spouse.

Other transfers between stockholders and the corporation they own are taxable (e.g. the sale

of a motor vehicle by a corporation to its sole shareholder), except as provided in Parts IV.O. and P.

T. Mobile Homes

1. New

A sales and use tax exemption is provided for 35% of the total amount for which a new mobile home is sold that is:

- a primary housing unit as defined under sec. 340.01(29), Stats., or
- transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

This 35% exemption only applies to sales, not to leases and rentals.

No credit is allowed for trade-ins.

2. Used

A sales and use tax exemption is also provided for the full amount for which a used mobile home is sold which is a primary housing unit as defined under s. 340.01(29), Wis. Stats.

U. Repairs Under Extended Warranties or Service Contracts

Receipts from an extended warranty or service contract provider for repair parts or services performed to satisfy a claim under a vehicle manufacturer warranty, extended warranty, or service contract are not subject to Wisconsin sales or use tax.

Caution: Receipts from a customer for a deductible or co-payment for repair parts or services performed to satisfy a claim under a vehicle manufacturer warranty, extended warranty, or service contract are subject to Wisconsin sales or use tax.

V. Handicapped Equipment

The sale of adaptive equipment that makes it possible for handicapped persons to enter, operate, or leave a vehicle is exempt from Wisconsin sales or use tax if the equipment is purchased by an individual who will use it, a person acting directly on behalf of that individual, or a nonprofit organization.

The exemption does not apply to the sale and installation of a modified roof or doorway.

W. Raffles

Sales of raffle tickets for the chance to win a motor vehicle are not subject to Wisconsin sales or use tax.

See Parts III.D and IV.D. for information on the sales or use tax treatment of the motor vehicle that is raffled.

V. TAXABLE SALES OF SERVICES

Sales of the following services are subject to Wisconsin sales or use tax, unless an exemption applies (this list is not all-inclusive):

A. Labor

Labor for repair, service, alteration, fitting, cleaning, painting, coating, inspection, and maintenance performed on a motor vehicle is subject to Wisconsin sales or use tax. Also subject to tax is labor for installation of accessories or attachments to motor vehicles, such as a radio or air conditioner.

Example: Individual B locked his keys in his motor vehicle. Company A, a locksmith, unlocks the motor vehicle for Individual B. The charge by Company A to Individual B is subject to Wisconsin sales or use tax.

B. Towing

The entire charge for towing a motor vehicle into Wisconsin is taxable, but towing a motor vehicle from Wisconsin to an out-of-state location is not taxable. Towing for an automobile club or service

agency, such as the AAA, is taxable to the same extent as towing for any other customer.

Other examples of taxable servicing of a motor vehicle by tow truck operators include: (a) returning a truck or other motor vehicle to an upright position after it has tipped over, (b) winching a motor vehicle back on a highway, and (c) freeing a truck from a "Low Clearance" overhead structure.

The following examples illustrate the sales and use tax treatment of towing.

Example 1: Company A operates a service station that offers towing service. Company A is contacted by Individual Z who indicates that his motor vehicle will not start. Company A tows Individual Z's motor vehicle to its service station and repairs the motor vehicle. Company A charges \$30 for towing services provided.

The towing charge is subject to Wisconsin sales or use tax.

Example 2: Company B provides towing services. Company B does not provide repair services. Company B is contacted by Individual X who indicates that her motor vehicle will not start. Company B tows the motor vehicle to Company C, a service station, who will repair Individual X's motor vehicle. Company B charges Individual X \$30 for the towing services provided.

The towing charge is subject to Wisconsin sales or use tax.

Example 3: Company D, a towing company, has contracted with a Wisconsin county to tow vehicles abandoned or damaged on the county highways. The county contacts Company D and indicates that a vehicle has been abandoned on a highway. Company D tows the vehicle to its location until the owner is located and picks up the motor vehicle. The motor vehicle may or may not require repair. The owner of the motor vehicle pays Company D \$40 for the towing services provided.

The \$40 towing charge is subject to Wisconsin sales or use tax.

Example 4: Company E, a towing company, has contracted with a Wisconsin city to remove motor vehicles from “no parking” zones. Company E tows the motor vehicle to the city garage. Company E bills the city on a monthly basis for the towing services it provides. The owner of the motor vehicle pays a \$50 fine and/or a towing charge to the city and is allowed to claim his or her motor vehicle.

The city does not resell the towing service to the owners of towed motor vehicles. The city is the consumer of the towing service. However, the towing charge by Company E to the city is not subject to Wisconsin sales or use tax because it is a sale to a Wisconsin governmental unit.

Example 5: Company F operates a service station. Company F is contacted by an insurance company to tow a damaged motor vehicle to Company F’s service station and repair the motor vehicle. Company F charges the insurance company \$45 for the towing service provided.

The \$45 towing charge is subject to Wisconsin sales or use tax.

Example 6: Company G is a towing service provider. Company G is contacted by an insurance company to tow a damaged motor vehicle to a salvage yard for disposal. Company G charges the insurance company \$45 for the towing service provided.

The \$45 towing charge is subject to Wisconsin sales or use tax.

Example 7: Company H operates a service station. Company H is contacted by Common Carrier Y to tow Y’s truck, which is used exclusively and directly in common carriage for hire, to the service station and repair the truck. Company H charges Common Carrier Y \$100 for towing service provided.

The \$100 towing charge is not subject to Wisconsin sales or use tax because at the time the truck is towed, if sold, it would have been exempt from Wisconsin sales or use tax. Motor trucks sold to common or contract carriers who use the trucks exclusively as common or contract carriers are exempt from Wisconsin sale or use tax. Company H should

obtain a properly completed exemption certificate from Common Carrier Y.

Example 8: Company I provides towing service. Company I is contacted by Individual V, a nonresident of Wisconsin, to tow her damaged motor vehicle to a salvage yard for disposal. Company I charges Individual V \$30 to tow the motor vehicle.

The \$30 towing charge is subject to Wisconsin sales or use tax. Although the motor vehicle at the time of towing is exempt from Wisconsin tax if sold for immediate removal from Wisconsin, sec. 77.52(2)(a)10, Wis. Stats. specifically excludes from exemption towing of motor vehicles exempt from sales and use tax under sec. 77.54(5)(a), Wis. Stats.

Example 9: Company J provides towing services. Company J does not provide repair services. Company J is contacted by Individual U who indicates that his motor vehicle will not start. Company J tows the motor vehicle to Company K, a service station, who will repair Individual U’s motor vehicle. Company J charges Company K \$30 for the towing services provided. Company K charges Individual U \$40 for the towing service provided.

The \$40 towing charge by Company K to Individual U is subject to Wisconsin sales or use tax. The \$30 charge for towing by Company J to Company K is not subject to Wisconsin sales or use tax, provided Company K gives Company J a properly completed exemption certificate claiming resale.

C. Parking

Charges for parking a motor vehicle are subject to Wisconsin sales or use tax. Parking includes the temporary storage of a motor vehicle that is available for immediate use.

Example 1: Company A repairs Individual B’s motor vehicle. Individual B is unable to pick up the vehicle for a week. Company A charges Individual B \$30 for “storing” his motor vehicle until it can be picked up. Because the motor vehicle is available for immediate use upon repair of the motor vehicle, the \$30 charge by Company A is considered a charge for parking and is subject to Wisconsin sales tax.

Example 2: Company A tows Individual B's motor vehicle to its repair shop. The vehicle is damaged and cannot be driven. Company A charges Individual B \$20 for "storing" the vehicle until Individual B's insurance company can estimate the cost of the damage and approve repairs. Because the motor vehicle is not available for immediate use, the \$20 charge by Company A is not considered a charge for parking and is not subject to Wisconsin sales tax.

VI. SALES OF SERVICES NOT SUBJECT TO TAX

A. Repairs, Etc. of Exempt Tangible Personal Property

The repair, service, alteration, fitting, cleaning, towing, painting, coating, inspection, and maintenance performed on a motor vehicle is not subject to Wisconsin sales or use tax provided the motor vehicle, if sold at the time of the repair, service, etc., would have been exempt from tax.

Exception: The repair, service, alteration, fitting, cleaning, towing, painting, coating, inspection, and maintenance performed on a motor vehicle or truck body that was exempt from Wisconsin sales or use tax because the item was purchased by a nonresident, where the only use in Wisconsin is the removal from Wisconsin, is subject to Wisconsin sales or use tax.

Example 1: Company A, a motor vehicle dealer, takes several of the motor vehicles it holds for resale to a car wash to be cleaned. The charge by the car wash is not subject to Wisconsin sales or use tax because at the time the motor vehicles are washed, they would be exempt from tax (resale). Company A should provide the car wash with a properly completed exemption certificate claiming resale.

Example 2: Company B, a motor vehicle dealer, repairs a truck for a common carrier who uses the vehicle exclusively in common carriage for hire. The charge by the motor vehicle dealer for repairing the truck is not subject to Wisconsin sales or use tax because at the time of the repair, the truck, if sold, would have been exempt from Wisconsin sales or use tax.

Example 3: Company C, a service station, repairs the motor vehicle of a nonresident of Wisconsin. The charge by the service station for repairing the motor vehicle is subject to Wisconsin sales or use tax.

B. Limousine Service

Limousine service, which includes the use of a limousine with a driver, is a transportation service that is not subject to Wisconsin sales or use tax.

Example: Corporation B provides a limousine with driver to the general public. Corporation B charges the customer either \$40 per hour or a flat fee for a given destination (e.g., \$115 for a trip from Milwaukee to O'Hare Airport in Chicago). The \$40 charge per hour and the \$115 flat fee are not subject to Wisconsin sales or use tax.

Caution: Although not subject to Wisconsin sales or use tax, charges for limousine service may be subject to the Wisconsin limousine fee. For more information, see Part IX.D.

VII. PURCHASES

A. Parts and Supplies

1. General

Persons engaged in motor vehicle repair, including body shops, may purchase for resale without tax, tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. Such property includes paints, paint hardeners, plastic fillers, welding rods, and motor vehicle parts.

Purchases of tangible personal property not physically transferred to a customer or attached to a customer's motor vehicle are subject to tax. Such property includes tools, equipment, and supplies used or consumed in performing motor vehicle repair service. Examples of taxable supplies include: sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes,

lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive, and all other items not physically transferred to the customer's motor vehicle.

The purchaser is subject to use tax on any items acquired without tax with an exemption certificate claiming resale which are used in a taxable manner. Therefore, parts purchased without tax for resale which are installed on service vehicles (e.g., parts trucks, etc.) are subject to use tax.

Note: Parts installed on a vehicle used solely for rental are not subject to Wisconsin sales or use tax because the rental vehicle is property for resale.

2. Separately Stated Supply Charges

All businesses have certain overhead costs and expenses, including various supplies they consume in conducting their business, such as electricity, heating fuel, cleaning supplies, etc. The business is the consumer of all such supplies and must pay sales or use tax on these supplies even if these costs are passed on to the customer.

Example: A body shop on its invoice to a customer includes an item called "supplies charge" which is intended to cover the body shop's overhead costs. Even though the "supplies charge" to the customer may be subject to sales or use tax, the supplies are not resold to the customer and may not be purchased by the body shop without payment of sales or use tax as property for resale.

3. Goodwill Work

A retailer who provides free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, maintenance agreement, express warranty, or insurance policy, may purchase the parts without Wisconsin sales or use tax as property for resale.

Example 1: Customer Z, a resident of Wisconsin, purchased a motor vehicle from a Wisconsin dealership. The dealership charged Wisconsin sales tax on the sale of the motor vehicle. Customer Z brought the motor vehicle to the dealership for repairs that were not covered under any express warranty. While performing the repairs, a part is damaged. The dealership, as a matter of goodwill under an implied warranty, provides the part free of charge to Customer Z. The dealership may purchase the part provided free to Customer Z without Wisconsin sales or use tax as property for resale.

Example 2: Company B, a used motor vehicle dealership, sold a used motor vehicle to Individual C. The used motor vehicle display label contained the terms "As Is – No Warranty." Company B and Individual C did not negotiate a warranty (express or implied) with the sale of the used motor vehicle. At a later date, Individual C finds a defect in the motor vehicle he purchased and returns the motor vehicle to Company B for repair. Company B repairs the motor vehicle without charge in order to maintain good customer relations with Individual C. Company B may not purchase the parts used to repair Individual C's motor vehicle without Wisconsin sales or use tax as property for resale since the parts were not sold or supplied under a warranty or service contract (express or implied).

B. Dealer's Use of Motor Vehicles

A motor vehicle dealer is entitled to purchase motor vehicles for resale, lease, or rental without payment of the sales tax. The dealer may use the motor vehicle for retention, demonstration, or display without becoming liable for the sales tax or use tax. However, if the motor vehicle is used for "purposes in addition to retention, demonstration, or display," the dealer becomes liable for the payment of use tax. "Purposes other than demonstration or display" includes business use as well as personal use. It includes such use as running errands for parts and supplies, salesperson transportation, and owner, partner, or officer transportation.

The amount subject to use tax on motor vehicles purchased and used by a dealer for any purpose, in

addition to retention, demonstration, or display, is as follows:

1. *Motor vehicles held for sale and assigned to (a) specific dealer employees subject to withholding of federal income taxes on wages or (b) owners who actively participate in the daily operation of the dealership*

The amount subject to use tax per month per plate (regular or dealer) is as follows for the periods listed:

| | |
|-------------------|--------|
| 1/1/01 - 12/31/01 | \$ 110 |
| 1/1/00 - 12/31/00 | \$ 106 |
| 1/1/99 - 12/31/99 | \$ 104 |
| 1/1/98 - 12/31/98 | \$ 102 |
| 1/1/97 - 12/31/97 | \$ 99 |
| 9/1/95 - 12/31/96 | \$ 96 |

The department annually adjusts the amount subject to tax to the nearest whole dollar to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor, for the 12 months ending on June 30 of the year before the change.

Examples of motor vehicles subject to use tax based on an amount per plate per month include (this list is not all-inclusive):

- Automobiles assigned to salespersons who use the automobiles for personal travel (e.g., travel to and from home)
- Automobiles assigned to the controller and other employees subject to withholding for federal income tax purposes who use the automobiles for personal travel (e.g., travel to and from home)
- Automobiles assigned to sole proprietors, partners, shareholders, LLC members, or other owners of a dealership who actively participate in the daily operation of the dealership and use the automobiles for personal travel (e.g., travel to and from home)

“Actively participate” means the person performs services for the dealership, in-

cluding selling, accounting, managing, and consulting, for more than 500 hours in a taxable year for which the person receives compensation. “Actively participate” does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor’s own use, or monitoring the finances or operations of the activity in a nonmanagerial capacity.

Note: Motor vehicles not subject to use tax (i.e., there is no sales tax due on a dealer plate affixed to the vehicle) include the following:

- Motor vehicles used only as demonstrators for customers
- Motor vehicles that are driven to and from auctions and that are held only for sale
- Motor vehicles provided by a dealer to customers without charge for use while their motor vehicle is being serviced or repaired by the dealer

Example: A motor vehicle dealer holds a dealer plate that it uses only on motor vehicles it drives to auction to sell. Use tax is not due.

2. *Motor vehicles held for sale and not assigned to specific dealer employees subject to withholding for federal income tax purposes on wages or certain dealership owners*

The amount subject to tax is the “lease value” of the motor vehicle for the period the motor vehicle is used by the dealer for any purpose, in addition to retention, demonstration, or display. The “lease value” is computed using the IRS Lease Value Table contained in IRS Reg. § 1.61-21(d)(2).

See Appendix H for a copy of the IRS Lease Value Table in effect as of November 1, 2000.

Examples of motor vehicles subject to use tax based on amounts from the IRS Lease Value Table include (this list is not all-inclusive):

- Motor vehicles used to transport customers (e.g., courtesy shuttle)
- Motor vehicles assigned to owners of a dealership who do not actively participate in the daily operation of the dealership. See B.1. for a definition of “actively participate.”
- Motor vehicles used by spouses or family members of the dealer who are not (a) dealer employees subject to withholding for federal income tax purposes or (b) owners who actively participate in the daily operation of the dealership
- Motor vehicles assigned to officers and directors of the dealer who are not subject to withholding for federal income tax purposes
- Motor vehicles provided by a dealer to municipalities and nonprofit organizations who use them for community service projects (e.g., DARE)
- Motor vehicles provided to athletic coaches, celebrities, and other dignitaries without charge for their use

If the motor vehicle is used for a purpose, in addition to retention, demonstration, or display, for a period of less than one calendar month, the lease value may be prorated to reflect the period it was used during the calendar month.

Example: Dealer A removes a new vehicle from inventory on February 1, 2000, that it will use as a courtesy shuttle for customers. The purchase price of the vehicle to the dealer was \$12,000. Using the federal lease value tables, Dealer A computes a monthly

lease value of \$300 (\$3,600 annual lease value ÷ 12 months). At the end of the business day on February 15, Dealer A returns the vehicle to inventory for sale. Dealer A owes Wisconsin use tax on the vehicle of \$8.05 (\$300 monthly lease value x 15/28 (or \$161) x 5%).

3. *Motor vehicles not held for sale which are properly capitalized for income or franchise tax purposes*

The amount subject to use tax is the sales price of the motor vehicle to the dealer.

Examples of motor vehicles subject to use tax based on the sales price to the dealer include (this list is not all-inclusive):

- Tow trucks not held for sale
- Parts trucks not held for sale
- Motor vehicles not held for sale used to haul other vehicles to and from auctions
- Snow plows not held for sale
- Antique vehicles not held for sale (e.g. held for promotional purposes)
- New motor vehicles purchased by used motor vehicle dealers that may not be held for sale until after certain Department of Transportation requirements have been met

C. Mixed Use Vehicles

Some motor vehicle dealerships may use motor vehicles in more than one manner. For example, a motor vehicle may be used as both a service rental and to pick up parts, mail, etc.

A vehicle used to pick up parts, mail, etc., that is held for sale is required to be licensed in the dealer’s name and the dealer must pay use tax on the lease value, as described in Part VII.B.2, while used to pick up parts, mail, etc.

A service rental vehicle used exclusively for rental may be purchased by the dealership as property for resale since the rental of a motor vehicle is consid-

ered to be a continuing sale. The dealer reports sales tax on the receipts from the rental of the motor vehicle.

If a motor vehicle is used both as a service rental and to pick up parts, mail, etc., the lease value, as described in Part VII.B.2, for the time the motor vehicle is used to pick up parts, mail, etc., is subject to use tax. Any receipts from the rental of that same motor vehicle are subject to sales tax. The use tax paid on the lease value of the motor vehicle may not be used to offset sales tax due on the rental receipts.

Example: Company A, a Wisconsin licensed motor vehicle dealer, purchases a vehicle for \$12,000 without tax for resale. Company A uses the vehicle for 40% of the month to pick up parts, mail, etc., and 60% of the month as a service rental. Receipts from the rental of the motor vehicle during the month are \$400.

Company A will report state sales and use tax relating to this vehicle for the month as follows:

| | |
|---|--------------------|
| Sales tax on rental receipts ($\$400 \text{ receipts} \times 5\% \text{ tax rate}$) | \$20 |
| Use tax on lease value [($\$3,600 \text{ annual lease value} \div 12 \text{ months}$) $\times 40\% \text{ taxable use} \times 5\% \text{ tax rate}$] | <u>\$ 6</u> |
| Total sales and use tax relating to vehicle for the month | <u><u>\$26</u></u> |

D. Donation of Property

There is an exemption from use tax for property removed from inventory, which was purchased without tax for resale or with a valid exemption certificate, that is donated to any of the following entities:

1. State of Wisconsin or any agency thereof.
2. Any county, city, village, town, or school district in Wisconsin.
3. A county-city hospital established under sec. 66.47, Wis. Stats.
4. A sewerage commission organized under sec. 281.43(4), Wis. Stats., or a metropolitan

sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.

5. A joint water utility created under sec. 66.0735, Wis. Stats.
6. Any other unit of government in Wisconsin or any agency or instrumentality of one or more units of government in Wisconsin.
7. A local exposition district, professional baseball park district, professional football stadium district, or local cultural arts district under subchs. II, III, IV, and V of ch. 229, Wis. Stats.
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 sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation.
9. University of Wisconsin Hospitals and Clinics Authority

VIII. COUNTY AND STADIUM SALES AND USE TAXES

A. General

1. County tax

A county use tax is imposed upon every motor vehicle, boat, snowmobile, mobile home 45 feet or less in length, trailer, semi-trailer, all-terrain vehicle, or aircraft, if (a) that property must be registered or titled with the State of Wisconsin, and (b) that property is to be customarily kept in a county which has adopted the tax. The county tax is imposed regardless of where delivery of the motor vehicle, boat, etc., takes place.

Since April 1, 1986, several Wisconsin counties have adopted a 0.5% county sales and use tax. This tax results from the county boards in these

counties approving an ordinance to adopt the tax.

Listed below are the 53 counties that have adopted the 0.5% county tax as of November 1, 2000, and the effective date for each county's tax.

Counties With County Tax

| County | Effective Date | County | Effective Date |
|-----------------|----------------|------------------|----------------|
| Adams (01) | 1/1/94 | Marquette (39) | 4/1/89 |
| Ashland (02) | 4/1/88 | Milwaukee (40) | 4/1/91 |
| Barron (03) | 4/1/86 | Monroe (41) | 4/1/90 |
| Bayfield (04) | 4/1/91 | Oconto (42) | 7/1/94 |
| Buffalo (06) | 4/1/87 | Oneida (43) | 4/1/87 |
| Burnett (07) | 4/1/89 | Ozaukee (45) | 4/1/91 |
| Chippewa (09) | 4/1/91 | Pepin (46) | 4/1/91 |
| Columbia (11) | 4/1/89 | Pierce (47) | 4/1/88 |
| Crawford (12) | 4/1/91 | Polk (48) | 4/1/88 |
| Dane (13) | 4/1/91 | Portage (49) | 4/1/89 |
| Dodge (14) | 4/1/94 | Price (50) | 1/1/93 |
| Door (15) | 4/1/88 | Richland (52) | 4/1/89 |
| Douglas (16) | 4/1/91 | Rusk (54) | 4/1/87 |
| Dunn (17) | 4/1/86 | St. Croix (55) | 4/1/87 |
| Eau Claire (18) | 1/1/99 | Sauk (56) | 4/1/92 |
| Forest (21) | 4/1/95 | Sawyer (57) | 4/1/87 |
| Green Lake (24) | 7/1/99 | Shawano (58) | 4/1/90 |
| Iowa (25) | 4/1/87 | Taylor (60) | 7/1/99 |
| Iron (26) | 4/1/91 | Trempealeau (61) | 10/1/95 |
| Jackson (27) | 4/1/87 | Vernon (62) | 1/1/97 |
| Jefferson (28) | 4/1/91 | Vilas (63) | 4/1/88 |
| Juneau (29) | 4/1/92 | Walworth (64) | 4/1/87 |
| Kenosha (30) | 4/1/91 | Washburn (65) | 4/1/91 |
| LaCrosse (32) | 4/1/90 | Washington (66) | 1/1/99 |
| Langlade (34) | 4/1/88 | Waupaca (68) | 4/1/89 |
| Lincoln (35) | 4/1/87 | Waushara (69) | 4/1/90 |
| Marathon (37) | 4/1/87 | | |

You will be notified in the *Sales and Use Tax Report*, which is sent to all registered retailers, whether there are any changes to counties that have adopted the county tax.

2. Stadium tax

a. Baseball

Effective January 1, 1996, a baseball stadium use tax is imposed at the rate of 0.1% upon every motor vehicle, boat, snowmobile, mobile home 45 feet or less in length, trailer, semi-trailer, all-terrain vehicle, or aircraft, if (a) that property must be registered or titled with the State of Wisconsin,

and (b) that property is to be customarily kept in one of the following Wisconsin counties: Milwaukee, Ozaukee, Racine, Washington, and Waukesha. This stadium use tax is imposed regardless of where delivery of the motor vehicle, boat, etc., takes place.

b. Football

Effective November 1, 2000, a football stadium use tax is imposed at the rate of 0.5% upon every motor vehicle, boat, snowmobile, mobile home 45 feet or less in length, trailer, semi-trailer, all-terrain vehicle or aircraft if (a) that property must be registered or titled with the State of Wisconsin, and (b) that property is to be customarily kept in Brown county. This stadium use tax is imposed regardless of where delivery of the motor vehicle, boat, etc., takes place.

Refer to Publication 201, "Wisconsin Sales and Use Tax Information," for general information about the county and stadium sales and use taxes.

B. Sales by Dealers

The dealer (seller) of motor vehicles and other items registered with the state must collect the state sales tax and the county and stadium use taxes, if applicable, from the buyer. The state sales tax, county use tax, and stadium use tax are reported on the dealer's Sales and Use Tax Return (Form ST-12).

Example: "A" (a resident of Milwaukee County) buys a motor vehicle for \$5,000 from "C", who is a motor vehicle dealer in a county which does not have the county tax or the baseball or football stadium tax. "C" must remit the 5% state sales tax of \$250, the 0.5% county use tax of \$25, and the 0.1% baseball stadium tax of \$5 to the Department of Revenue. All dealers (whether or not the dealers are located in counties that have adopted the county tax or that have a baseball or football stadium tax) are required to remit the county and stadium taxes if the motor vehicle will be customarily kept in a county that has adopted the county tax and/or that has a baseball or football stadium tax.

Note: Although the county and stadium tax imposed on these sales are “use taxes,” you should report these sales as “receipts subject to sales tax” on your sales and use tax returns, Schedule CT. Reporting in this manner allows you to take advantage of the retailer’s discount on these taxes.

C. Sales by Nondealers

The purchaser of a motor vehicle in a taxable transaction must remit the 5% state use tax, 0.5% county use tax, and the 0.1% baseball stadium or 0.5% football stadium use tax to the state agency at the time of registering or titling with the state agency, if the purchaser-registrant will customarily keep the motor vehicle in a county that has adopted the 0.5% county tax and has the 0.1% or 0.5% stadium tax. This applies to purchases made anywhere in Wisconsin or out-of-state.

Example: “A” buys a motor vehicle for \$5,000 from “B”, who is not a motor vehicle dealer. “A” is a resident of Milwaukee County which has adopted the county tax and has the baseball stadium tax. “A” will keep the motor vehicle at his or her residence. “A” must file an Application for Title/Registration (Form MV-1) with the Department of Transportation and include with this form the 5% state use tax of \$250, the 0.5% county use tax of \$25, and the 0.1% baseball stadium use tax of \$5.

Motor vehicles, trailers, semi-trailers, mobile homes not exceeding 45 feet in length, boats, snowmobiles, and all-terrain vehicles are treated in a similar manner for county and baseball or football stadium sales and use tax purposes, although the examples above only refer to motor vehicles.

IX. OTHER

A. Credit for Tax Paid in Another State

1. Credit allowed

If a motor vehicle is purchased outside Wisconsin, a credit is allowed against Wisconsin state use tax due for sales or use tax paid to another state or the District of Columbia in which the purchase was made. The credit may not exceed the Wisconsin state use tax due.

If the purchaser is subject to the Wisconsin county and/or stadium taxes, a credit is allowed against the Wisconsin county and/or stadium taxes for any similar local tax paid in another state, not to exceed the amount of Wisconsin county and/or stadium taxes.

Example 1: Individual Z, a resident of Wisconsin, purchases a motor vehicle in another state for \$10,000. The other state imposes a sales tax of \$300 on the sale (3% X \$10,000). The purchase of the motor vehicle is subject to Wisconsin state use tax at the time the motor vehicle is registered or titled in Wisconsin. The amount of tax due is \$200 [(5% Wisconsin state tax rate X \$10,000) - (3% other state tax rate X \$10,000)].

Example 2: Assume the same facts as Example 1, except that the other state’s sales tax rate is 6% and Individual A paid sales tax to the other state of \$600. The amount subject to Wisconsin state use tax is \$0. Credit is not allowed for the \$100 of other state’s tax paid that exceeded the Wisconsin state use tax.

2. Credit not allowed

Credit is not allowed for taxes paid to another country.

B. Refunds Under “Lemon Law”

The law governing repair, replacement, and refund under a new motor vehicle warranty, commonly called the “lemon law,” allows a consumer to return a motor vehicle to its manufacturer for a refund of all or a portion of the purchase price, if the motor vehicle has certain conditions or defects which remain after a reasonable attempt to repair the motor vehicle. The “lemon law” also allows a consumer to recover the sales tax from the manufacturer for a contract to purchase entered into on or after April 22, 1986, or to collect a sales tax refund directly from the Department of Revenue whenever the manufacturer fails to refund the sales tax.

C. Rental Vehicle Fee

1. General

A 3% fee is imposed on the rental of the following vehicles in Wisconsin for a period of 30 days or less by establishments primarily engaged in the short-term rental of vehicles without drivers:

- Type I automobiles – Motor vehicles designed and used primarily for carrying persons but which do not come within the definition of motor bus, motor cycle, moped, or motor bicycle.
- Station wagons – Dual purpose vehicles designed for the transportation of persons and also designed in such a manner that the seats may be removed or folded out of the way for the purpose of increasing the property carrying space within the vehicle. The term includes, but is not limited to, types of vehicles which carry the trade names of station wagon, estate wagon, town and country wagon, and country sedan. The vehicle shall be classed as an automobile for purposes of registration.
- Motor homes – Motor vehicles designed to be operated upon a highway for use as a temporary or recreational dwellings and having the same internal characteristics and equipment as mobile homes.
- Camping trailers – Vehicles with a collapsible or folding structure designed for human habitation and towed upon a highway by a motor vehicle.

A rental is in Wisconsin if the lessee takes possession of the motor vehicle from the lessor in Wisconsin.

An “establishment primarily engaged in the short-term rental of vehicles without drivers” is a business location whose primary business is the rental of vehicles for periods of 30 days or less. A location’s primary business may be determined by comparing the gross receipts from each activity at a location for the previous tax-

able year (e.g., sales, service, rentals, etc.) to the total gross receipts at that location for the previous taxable year. The activity with the greatest percentage of gross receipts is the primary business.

Example: Company A has two locations. At one location, Company A operates a motor vehicle dealership. At the other location, Company A operates a rental car business, only renting Type 1 automobiles for periods of 30 days or less. The percentages of total gross receipts for the previous taxable year at the motor vehicle dealership are as follows: Sales (45%), services (35%), rentals of Type 1 automobiles for 30 days or less (10%), and rentals of vehicles for more than 30 days (10%).

Since the motor vehicle dealership location’s primary business is sales, it is not an “establishment engaged primarily in the short-term rental of vehicles.” Therefore, taxable receipts from rentals of vehicles for 30 days or less at that location are not subject to the 3% rental vehicle fee. Taxable receipts from rentals of vehicles at its rental car business location are subject to the 3% rental vehicle fee.

Note: For the period April 1, 1998, through July 31, 1998, the rental of the following vehicles in Wisconsin for a period of 30 days or less, by establishments primarily engaged in the short-term rental of vehicles without drivers, were also subject to the rental vehicle fee:

- Motor trucks – Motor vehicles designed, used, or maintained primarily for the transportation of property.
- Road tractors – Motor vehicles designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of the vehicle or load so drawn.
- Truck tractors – Motor vehicles designed and use primarily for the drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

- Semitrailers – Vehicles of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle, but do not include mobile homes. A vehicle used with a redi-mix motor truck to spread the load is a semitrailer.
- Trailers – Vehicles without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, but do not include mobile homes.
- Motor buses – Motor vehicles designed primarily for the transportation of persons rather than property and having a passenger-carrying capacity of 16 or more persons, including the operator. Passenger-carrying capacity shall be determined by dividing by 20 the total seating space measured in inches.

2. Exemptions

The following exemptions apply to the rental vehicle fee:

- Rerentals

Example: Company A leases an automobile in Wisconsin from Company B for 30 days or less. Company A will use the automobile solely to lease to Individual C in Wisconsin.

The charge by Company B to Company A for the lease of the automobile is not subject to the 3% rental vehicle fee because it is for rerental. Company A should provide Company B with a properly completed exemption certificate claiming resale (Form S-211). The charge by Company A to Individual C is subject to the 3% rental vehicle fee if Company A is an establishment primarily engaged in the short-term rental of vehicles without drivers.

- Rentals as a service or repair replacement vehicle

Example: Individual A takes his automobile to Company B for repair. For a fee of \$20 per day, Company B provides Individual A with an automobile to use while his automobile is being repaired. Individual A picks up the automobile in Wisconsin and uses it for five days.

The charge by Company B to Individual A for the use of the automobile is not subject to the 3% rental vehicle fee. Company B should obtain an exemption certificate (Form RV-207) from the customer.

- Rentals to the federal government
- Rentals to organizations under sec. 77.54(9a), Wis. Stats., including a Wisconsin state agency, county, city, village, town, public school, or school district and nonprofit organizations that hold a Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue
- Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts

Note: Exemptions, other than those listed above, that apply for Wisconsin sales or use tax purposes (e.g., common or contract carriage) do not apply for the rental vehicle fee.

3. Returns

The rental vehicle fee is reported on the Wisconsin Rental Vehicle Fee Return (Form RV-012) **Note:** Do **not** report the rental vehicle fee on a Wisconsin sales and use tax return, Form ST-12.

D. Limousine Fee

1. General

A 5% fee is imposed on the charge for providing a limousine with a driver in Wisconsin.

A limousine with driver is considered provided in Wisconsin if the customer is picked up by the limousine provider in Wisconsin.

Example 1: Company A is hired to pick up a customer at his home in Madison, Wisconsin and take him by limousine to O'Hare International Airport in Chicago. The charge for limousine service from Madison to Chicago is subject to the 5% limousine fee.

Example 2: Company A is hired to pick up a customer at O'Hare International Airport in Chicago and take him by limousine to his home in Madison, Wisconsin. The charge for limousine service from Chicago to Madison is not subject to the 5% limousine fee.

Example 3: Company A is hired by Individual B to provide limousine service. The driver will pick up Individual B at her home in Milwaukee, Wisconsin, take her by limousine to a theater performance in Chicago, Illinois, and after the performance, return her to her home in Wisconsin. The charge for limousine service is subject to the 5% limousine fee.

“Limousine” means a passenger automobile that has a capacity of 10 or fewer persons, excluding the driver; that has a minimum of five seats behind the driver; that is operated for hire on an hourly basis under a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person who hires the vehicle and not over a defined regular route.

“Limousine” does not include taxicabs, hotel or airport shuttles or buses, buses employed solely in transporting school children or teachers, vehicles owned and operated without charge or remuneration by a business entity for its own purposes, vehicles used in car pools or van pools, public agency vehicles that are not operated as a commercial venture, vehicles operated as part of the employment transit assistance program under sec. 106.26, Wis. Stats., ambulances, or any vehicle that is used exclusively in the business of funeral directing.

Example 1: Company A owns a limousine that it provides with a driver at the request of a customer. Rather than charging a per hour fee, a customer with a known destination is charged a flat fee. The flat fee has been determined, in part, based on experience of how long the trip will take. Company A is considered to be providing limousine service subject to the 5% fee, even though it does not charge the customer by the hour.

Example 2: Company A owns several vehicles which it uses to provide limousine service to customers. For transporting one person, Company A will generally use a luxury sedan, which seats three behind the driver.

The charge for providing the luxury sedan with a driver is not subject to the 5% limousine fee. The luxury sedan is not a “limousine” because it seats less than five behind the driver.

Example 3: Company A provides limousine service to hotel customers who wish to travel from their hotel to the airport and vice versa. Company A does not have a set route it follows nor does it provide this service at set times per day. Company A may provide service to that hotel on three days in one week and may not have another customer from that hotel for several weeks.

The limousine with driver provided by Company A is not an airport or hotel shuttle because limousine services are not provided at frequent regular intervals over a set route. Therefore, charges to the hotel or customer for the limousine with driver are subject to the 5% limousine fee.

2. Exemptions

The following exemptions apply to the limousine fee:

- Rentals to the federal government
- Rentals to organizations under sec. 77.54(9a), Wis. Stats., including a Wisconsin state agency, county, city, village, town, public school, or school district and

nonprofit organizations that hold a Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue

- Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts

3. Returns

The limousine fee is reported on the Wisconsin Rental Vehicle Fee Return (Form RV-012).

Note: Do **not** report the limousine fee on a Wisconsin sales and use tax return, Form ST-12.

X. RECORD KEEPING

A. General

Every person required to have a seller's permit must keep adequate records of business transactions to enable that person, as well as the Department of Revenue, to determine the correct amount of tax for which the person is liable. The law requires that all persons must report their gross receipts by the accrual accounting method, unless the Department of Revenue determines an undue hardship would result. In such situations, the cash basis is permitted.

Each permittee is required to keep a complete and accurate record of beginning and ending inventories, purchases, sales, cancelled checks, receipts, invoices, bills of lading, and all other pertinent documents and books of accounting pertaining to the business. Retailers engaged in business in a county which has adopted the county tax or a county that has the stadium tax shall keep records showing the county and stadium sales and use taxes due in that county or district. Any person who fails or refuses to keep adequate records may be subject to penalties.

B. Exemption Certificates and Exemption Claims

If a person (such as a motor vehicle dealer, lessor, garage, service station, etc.) claims that part or all of his or her sales of tangible personal property or taxable services are exempt from sales and use tax, such person is required to keep a record of the name

and address of the person to whom the exempt sale was made, the date of sale, the article sold, the amount of exemption, the reason that the sale was exempt from tax, and a signature of the purchaser. The department has preprinted exemption certificates available (e.g., Form S-211). However other documents such as purchase orders, sales documents, etc., may be used in lieu of the department prepared forms, provided they contain the required information discussed above.

The reason for keeping such records is that the sales and use tax law provides that all gross receipts are taxable until the contrary is established. The seller has the burden of proving that a sale of tangible personal property or taxable services is exempt, unless the seller takes in good faith a certificate (or other information as described in 2. and 3. below) in an approved form from the purchaser which indicates that the property or service being purchased is for resale or is otherwise exempt.

Three common reasons that sales of tangible personal property or taxable services may be exempt are:

1. The use to be made of the item purchased (for example, the item is going to be resold or is used exclusively in common or contract carriage and is, therefore, exempt). The seller should obtain a completed exemption certificate from the customer.
2. The nature of the organization the customer represents (such as churches, schools, Wisconsin municipalities, federal government). Sales to the federal government and Wisconsin government, municipalities, and public schools may be supported by a) a Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), or b) a copy of the purchase order, which should be retained as part of the seller's records, or by recording the governmental unit's Certificate of Exempt Status on the invoice.

Exempt sales to nonprofit organizations holding a Certificate of Exempt Status (CES), such as a church, can be shown by recording the exempt status number on the invoice. (Nonprofit organizations organized and operated exclusively for religious, charitable, scientific, or educa-

tional purposes, or for the prevention of cruelty to children or animals, may apply to the Department of Revenue for a Certificate of Exempt Status and, if approved, will be issued an exempt status number by the department.)

3. The purchaser furnishes the seller a) a copy of its Wisconsin direct pay permit or b) a statement that the purchaser holds a Wisconsin direct pay permit, the permit number, and the date the permit was issued.

Caution: Motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, and aircraft may not be purchased without sales or use tax using a direct pay permit.

Note: If exemptions are claimed for any of the above four reasons, the seller must keep as part of his or her records the completed certificates, purchase orders, or invoices to prove that the sales were exempt.

Every purchaser of a motor vehicle, before registering or titling the vehicle in Wisconsin, must present proof that all applicable sales or use taxes have been paid or that such sale was exempt from the tax, prior to receipt of title and registration.

For sales by a licensed Wisconsin motor vehicle dealer, the proof of tax payment or exemption from tax payment is provided for on the "Application For Title/Registration," Form MV11. It is the responsibility of the licensed motor vehicle dealer to: (1) complete the Form MV11 in triplicate including Section E, "Tax Statement and Fee Computation" and transmit the original copy with proper fees to the Department of Transportation within seven business days from the sale of the vehicle, (2) give one copy to the customer, and (3) retain one copy for a period of four years. The customer's copy of the form also serves as a receipt to the customer for payment of registration and title fees and authorizes operation of the vehicle until the plates and/or title are received.

Note: See sec. Tax 11.14, Wis. Adm. Code (Appendix F) for a discussion of authorized exemption certificates and a description of requirements for alternative certificates.

XI. QUESTIONS OR ADDITIONAL INFORMATION

A. Department of Revenue Assistance

If you have any questions or need additional information about the sales and use tax law, contact any Department of Revenue office for free assistance. The address and telephone number of each office is listed in the telephone directory of that city.

Department of Revenue offices are located in: Appleton, Baraboo, Beaver Dam, Eau Claire, Elkhorn, Fond du Lac, Grafton, Green Bay, Hayward, Hudson, Janesville, Kenosha, La Crosse, Lancaster, Madison, Manitowoc, Marinette, Marshfield, Milwaukee, Monroe, Oshkosh, Racine, Rhinelander, Rice Lake, Shawano, Sheboygan, Superior, Tomah, Watertown, Waukesha, Waupaca, Wausau, West Bend, and Wisconsin Rapids.

Contact the Department of Revenue by any of the following:

Write . . . Wisconsin Department of Revenue
PO Box 8902
Madison WI 53708-8902

Telephone . . . (608) 266-2776

Fax . . . (608) 267-1030

E-Mail . . . sales10@dor.state.wi.us

Visit our web site . . . www.dor.state.wi.us

B. Other Informational Aids

If you are required to file sales and use tax returns, you should be aware of changes in the tax laws, new interpretations, and court cases which may affect how you file returns and compute the tax. Informational type aids available to you include:

Sales and Use Tax Report

The *Sales and Use Tax Report* is published one or more times each year by the Department of Revenue, and is mailed without charge to all persons holding a seller's permit or use tax certificate. It includes general information about sales and use taxes, including new tax laws enacted by the Legislature.

Publications

You may obtain the following sales and use tax publications from any Department of Revenue office. The publications are also available on the web site www.dor.state.wi.us.

| No. | Title |
|-----|---|
| 200 | Electrical Contractors |
| 201 | Wisconsin Sales and Use Tax Information |
| 202 | Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs |
| 205 | Do You Owe Wisconsin Use Tax? (Individuals) |
| 206 | Sales Tax Exemption for Nonprofit Organizations |
| 207 | Sales and Use Tax Information for Contractors |
| 210 | Sales and Use Tax Treatment of Landscaping |
| 211 | Sales and Use Tax Information for Cemetery Monument Dealers |
| 212 | Businesses: Do You Owe Wisconsin Use Tax On Imported Goods? |
| 213 | Travelers: Don't Forget About Use Tax |
| 214 | Do You Owe Wisconsin Use Tax? (Businesses) |
| 216 | Filing Claims for Refund of Sales or Use Tax |
| 217 | Auctioneers |
| 219 | Hotels, Motels, and Other Lodging Providers |
| 220 | Grocers |
| 221 | Farm Suppliers and Farmers |
| 222 | Motor Vehicle Fuel Users: Do You Owe Use Tax? |
| 223 | Bakeries |
| 224 | Veterinarians - How Do Wisconsin Sales and Use Taxes Affect Your Business |
| 225 | Barber and Beauty Shops -How Do Wisconsin Sales and Use taxes Affect Your Operations? |
| 226 | Golf Courses - How Do Wisconsin Sales and Use Taxes Affect Your Operation |
| 403 | Premier Resort Area Tax |
| 410 | Local Exposition Taxes |

Wisconsin Tax Bulletin

The *Wisconsin Tax Bulletin* is a quarterly publication prepared by the Department of Revenue which is distributed to those persons who have purchased a subscription to it. The Bulletin includes information on most taxes administered by the Department of Revenue, including sales and use, income, franchise, estate, and excise taxes. It includes up-to-date information on new tax laws, interpretations of ex-

isting laws, information on filing various types of returns, and current tax topics and gives a brief excerpt of major Wisconsin tax cases decided by the Wisconsin Tax Appeals Commission and the courts.

A subscription, which costs \$7 per year, may be obtained by writing to: Department of Administration, Document Sales, PO Box 7840, 202 South Thornton Avenue, Madison, Wisconsin 53707-7840. The Bulletins are also available on the Department of Revenue's web site at www.dor.state.wi.us.

Rules – Wisconsin Administrative Code

The *Wisconsin Administrative Code* includes administrative rules that interpret the Wisconsin Statutes. Rules have the force and effect of law. The Department of Revenue has adopted a number of rules concerning sales and use tax interpretations.

A book of the administrative rules of the Department of Revenue may be obtained from: Department of Administration, Document Sales, PO Box 7840, 202 South Thornton Avenue, Madison, WI 53707-7840. A subscription update service which provides all new Department of Revenue rules and changes to existing rules is also available from Document Sales. Copies of individual sales and use tax rules may be obtained from any Department of Revenue office and are also available on the Revisor of Statutes web page at www.legis.state.wi.us/rsb/code/tax/tax011.pdf.

Topical and Court Case Index

The *Topical and Court Case Index* is a two-part index. The first part (a Topical Index) will help you find the particular Wisconsin statute, administrative rule, *Wisconsin Tax Bulletin* tax release, publication, private letter ruling, or Attorney General opinion that deals with your particular tax question. The second part of the index (a Court Case Index) lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions relating to your question. The index is published each December with an addendum to the index provided each May.

The *Topical and Court Case Index*, which costs \$18 (plus sales tax), may be obtained from the Wisconsin Department of Administration, Document Sales,

PO Box 7840, 202 Thornton Ave., Madison, WI 53707-7840.

XII. COMMON ERRORS TO AVOID

To avoid problems if you are audited by the Department of Revenue, remember:

1. Indicate the out-of-state address on invoices or Forms MV11 of nonresidents purchasing motor vehicles without Wisconsin sales or use tax who will not use the motor vehicles in Wisconsin except for removal from Wisconsin (see Part IV.F).
2. Indicate the delivery location on sales invoices or Forms MV11 for sales to Native Americans (see Part IV.K).
3. Charge sales tax on warranties, whether charged separately or with the sale of a motor vehicle, if the related motor vehicle was subject to tax (see Part II.A.2).
4. Record a nonprofit organization's CES number on the invoice or Form MV11 for exempt sales to nonprofit organizations. The motor vehicle must be titled in the nonprofit organization's name only (see Part IV.D).
5. Sales to persons who will donate the motor vehicle are taxable, regardless of contest rules, unless the donor is an exempt entity (see Part III.D). Sales to persons who will auction the motor vehicle are not subject to tax because the property is for resale (see Part IV.A).
6. Manufacturer's rebates and coupons do not reduce taxable gross receipts regardless of whether the customer applies the rebate as a reduction to the purchase price of the motor vehicle or receives cash (see Part II.A.4).
7. Sales of motor vehicles delivered in Wisconsin to corporations incorporated outside Wisconsin are exempt, if immediately removed from Wisconsin (see Part IV.F).
8. Charges to employees for personal use of motor vehicles are taxable (see Part III.E).
9. Taxable gross receipts do not include the 10% federal luxury tax (see Part II.B.5).
10. All exempt sales must be supported by exemption certificates except for sales to exempt entities and governmental units where recording of a CES number on the invoice is sufficient (see Part X.B).
11. The deductible portion charged to a customer for services performed under an extended warranty or service contract is taxable (see Part IV.U).
12. Charges for parts and repairs to an insurance company under an insurance plan are taxable (see Part III.J).
13. The exemption for common or contract carriers does not apply to motor vehicles registered as automobiles, tow trucks used for purposes other than or in addition to towing for hire, and trucks used to haul garbage or snow (see Part IV.C).
14. Salvage companies who pay the amount owed by a motor vehicle dealer's customer for services performed on a vehicle in exchange for the vehicle's title cannot issue an exemption certificate claiming resale to the motor vehicle dealer for purchase of the services performed. The charge by the motor vehicle dealer for the services performed is subject to Wisconsin sales or use tax.
15. County tax and stadium tax is imposed on sales of motor vehicles customarily kept in a taxable county even if the dealer is not located in a taxable county (see Part VIII.B).
16. County tax and stadium tax is imposed on taxable repairs if the motor vehicle is delivered to the customer in a taxable county (see Part VIII).
17. County tax and stadium tax is charged on the lease of less than 30 days of a motor vehicle if the customer takes possession of the motor vehicle in a taxable county (see Part VIII).
18. County tax and stadium tax is charged on the long-term lease (30 or more days) of a motor vehicle if the motor vehicle is to be customarily kept in a taxable county (see Part VIII).

19. The cost of a motor vehicle used for business purposes (e.g., towing, service vehicle, or any motor vehicle properly capitalized on the balance sheet of the dealership and not held for sale) is subject to use tax (see Part VII.B).
20. A trade-in allowance may not be taken for a service vehicle put back in inventory in exchange for another motor vehicle (see Part II.B.1.e).
21. Charges for washing motor vehicles and demo motor vehicles that will be resold are not taxable provided the dealership gives the service provider a properly completed exemption certificate claiming resale. Charges for washing service vehicles and other properly capitalized vehicles are taxable (see Part VI).
22. Motor vehicles donated from resale inventory are not taxable if the donation is to an exempt entity (see Part VII.D).
23. Items used in repairing a motor vehicle that are not transferred to the customer (tools, rags, sandpaper, cleaners, etc.) are taxable (see Part VII.A).
24. The cost of parts used in repairing service vehicles and other motor vehicles capitalized on the dealership's balance sheet are subject to tax (see Part VII.A).
25. The cost of advertising items given away (brochures, key chains, etc.) are subject to tax (see Part III).
26. A motor vehicle used to pick up parts, mail, etc., **and** as a rental vehicle is subject to use tax (see Part VII.C).
27. Items purchased from out-of-state vendors where a sales tax has not been charged that are used in a taxable manner are subject to use tax (office supplies, office equipment, etc.) (see Part I.C).
28. When reporting use tax on your sales and use tax return, keep a separate schedule indicating vendor, invoice number, item purchased, and purchase price for each item subject to use tax with your copy of the sales and use tax return filed.

APPENDIX A

SECTION TAX 11.83 — MOTOR VEHICLES

Tax 11.83 Motor vehicles. (1) DEFINITIONS. In this section:

(a) “Actively participates” means the person performs services for the dealership, including selling, accounting, managing and consulting, for more than 500 hours in a taxable year for which the person receives compensation. “Actively participates” does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use or monitoring the finances or operations of the activity in a nonmanagerial capacity.

(b) “Motor vehicle” means a self-propelled vehicle, such as an automobile, truck, truck-tractor 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 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) 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.

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) The delivery, handling and preparation of a motor vehicle being sold and the sale of a warranty, relating to the sale of a motor vehicle that is taxable.

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

(c) The sale of equipment and accessories 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 directly on behalf of the handicapped person or a nonprofit organization.

(d) 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).

Example: Charges for installation of a radio or air conditioner into a motor vehicle are taxable.

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) OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS. (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent, stepparent, father-in-law, mother-in-law, child, stepchild, son-in-law or daughter-in-law of the transferor or is transferred from an individual to a corporation which is solely owned by the individual; and the motor vehicle has been previously registered in Wisconsin in the name of the transferor; and the transferor is not a motor vehicle dealer.

(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full “sales price” of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of 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) PURCHASES BY NONRESIDENTS. (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than in their removal from Wisconsin are exempt. Truck bodies include semi-trailers. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

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

(c) A motor vehicle, trailer, semi-trailer, all-terrain vehicle or mobile home purchased 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.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (6).

(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 Wisconsin and registered in Wisconsin is subject to 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 may be applied as a credit against and deducted from the Wisconsin use tax. This credit does not apply to taxes paid to another country or to municipalities in other states, or to motor vehicle registration fees.

(7) TRANSFER BY INHERITANCE, GIFT OR PRIZE. (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 shall pay the tax to the department of transportation at the time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable, unless the donor is an organization described in s. 77.54(9a), Stats.

(c) A motor vehicle donated to an organization described in s. 77.54(9a), Stats., is not subject to Wisconsin use tax.

(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 employees, 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 and used by a specific dealer employe subject to withholding from federal income tax on wages are subject to Wisconsin use tax on \$104 per motor vehicle registration plate per month. The \$104 amount is effective January 1, 1999 and is subject to change annually as explained in the notes following sub. (8)(b).

2. Motor vehicles held for sale which are assigned to and used by persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, are subject to Wisconsin use tax on \$104 per motor vehicle registration plate per month. The \$104 amount is effective January 1, 1999 and is subject to change annually as explained in the notes below.

Note: As provided in s. 77.53(1m), Stats., the department will annually adjust the amount per plate 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.

Note: The amount per plate subject to use tax under par. (b)1. and 2. was \$96 for the period September 1, 1995 through December 31, 1996, \$99 for the period January 1, 1997 through December 31, 1997, and \$102 for the period January 1, 1998 through December 31, 1998.

3. Motor vehicles held for sale and not assigned to and used by 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 26CFR 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.

4. 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 employes subject to withholding for federal income tax purposes or owners who actively participate in the day-to-day operations of the dealership for a purpose in addition to retention, demonstration or display and are subject to use tax as provided in par. (b)1. and 2., 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) 3. or 4.

(d) *Transitional provision.* For motor vehicles, not assigned to employes or salespersons subject to federal withholding on wages or owners who actively participate in the day-to-day operations of the dealership, 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)3. does not apply.

(9) SALES BY DEALERS TO THEIR SALESPERSONS OR OTHER EMPLOYES. When a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons or other employes, the transaction is subject to the sales tax.

(10) HEAVY EQUIPMENT DEALERS. Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration may not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with Wisconsin. The heavy equipment dealers may purchase motor vehicles for resale without tax.

(11) MOTOR VEHICLE REPAIR PARTS AND SUPPLIES. (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. The property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle is subject to tax. The property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Taxable supplies include sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle even though a separate charge may be made to the customer for these supplies.

(c) A supplier 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 the property in the regular course of business.
3. Specifies on the resale certificate each type of item the purchaser sells in the regular course of business.

(12) EXEMPTION FOR MIXING AND PROCESSING UNITS. Sales, leases and rentals of mobile units used for mixing and processing, and the motor vehicles and trailers on

which the units are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units, are exempt from the sales and use tax.

(13) **EXEMPTION FOR VEHICLES USED IN WASTE REDUCTION OR RECYCLING.** Gross receipts from the sale, lease or rental of vehicles which are not required to be licensed for highway use and which are used exclusively and directly in waste reduction or recycling activities are exempt from sales and use tax.

(14) **REFUNDS UNDER "LEMON LAW."** Sales tax refunds made under s. 218.015(2)(f), Stats., the "lemon law," are normally made in the same manner as the other sales tax refunds. However, when a defective motor vehicle is returned to the manufacturer for a refund of the purchase price, the purchaser is permitted to collect a sales tax refund directly from the department if the manufacturer fails to refund the tax.

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)1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; and (i) The use of the amount per plate rather than the lease value, as described in sub. (8)(b)2., as the measure of use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7)(a) and (8), Register, May, 1981, No. 307, eff. 6-1-81; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84; am. (7)(a)1. and 2., Register, February, 1986, No. 362, eff. 3-1-86; emerg. am. (7)(a) 1. and 2., eff. 3-24-86; am. (7)(a) 1. and 2., Register, October, 1986, No. 370, eff. 11-1-86; cr. (11), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2)(a), (c) and (d), (3)(a) and (4)(a) and (c), cr. (5), (13) and (14), renum. (5) to be (6), renum. (6) to (11) to be (7) to (12) and am. (8)(a), (9), (10), and (11)(a), (b) and (c)1., Register, June, 1991, No. 426, eff. 7-1-91; am. (2)(a), (c), (d), (3)(a), (4)(a), (b), (6), (7)(a), (b), (8)(b), (10) and (14), cr. (7)(c), Register April, 1993, No. 448, eff. 5-1-93; am.(1), (2), (3)(d), (4)(b), (5), (6), (7)(a), (11)(c) and (12), r. and recr. (8), Register February, 1997, No. 494, eff. 3-1-97; renum (1) and (8)(b)2. and 3. to be (1)(b) and (8)(b)3. and 4. and am. (1)(b), am.(8)(b)1., (c)2. and (d), cr. (1)(a), (8)(b)2., Register, August 1999, No. 524, eff. 9-1-99.

SECTION TAX 11.16 — COMMON OR CONTRACT CARRIERS

Tax 11.16 Common or contract carriers. (1) MOTOR CARRIERS. (a) *Exemption.* Section 77.54(5)(b), Stats., provides a sales and use tax exemption for: “Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38.”

(am) *Exclusively.* As used in s. 77.54(5)(b), Stats., and this section, “exclusively” means that the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for this tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

Note: Under department of transportation rules, a licensed carrier (LC) number is required if a common or contract carrier hauls goods of others for hire. The sales and use tax exemption in par. (a) applies only if the common or contract carrier used the vehicle exclusively for hauling goods of others for hire.

(b) *Accessories and attachments.* Accessories, attachments, parts and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54(5)(b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle’s load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps and shoring beams. This exemption does not include corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. (h).

Note: In a decision dated May 19, 1980 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Dane County Circuit Court reversed the November 23, 1979 decision of the Wisconsin Tax Appeals Commission and held that van equipment and supplies that are exempt under s. 77.54(5)(b), Stats., include furniture pads, covers, packing supplies, tape, pianoboards, ladders, walkboards, straps, lining paper and corrugated boxes. The Court also stated that “It must be kept in mind that it is undisputed that all of the items are assigned to and carried on the vans.” The Court of Appeals District IV, affirmed the Circuit Court’s decision. Under this interpretation, the only corrugated boxes and packing materials

that qualify for exemption under s. 77.54(5)(b), Stats., are those that are assigned to and carried on an exempt van and that are not transferred to a customer.

(c) *Repairs.* The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt vehicles shall be exempt.

(d) *Exceptions.* The exemption shall not apply to the following property used by common or contract carriers: automobiles as defined in s. 340.01(4), Stats., except an automobile registered as a truck, station wagons as defined in s. 340.01(61), Stats., and self-propelled vehicles for off-highway use, such as road machinery, fork lifts and other industrial trucks.

(e) *Equipment and supplies.* Equipment acquired by a carrier for the repair, service or maintenance of its exempt vehicles is not exempt, including repair tools, welding torches, battery chargers and grinding discs.

(f) *Conversion to private use.* If a vehicle purchased without tax is converted to private use, a use tax or sales tax pursuant to s. Tax 11.14(2)(c) is due. The tax is measured by the sales price of the vehicle to the purchaser, except that if the taxable use first occurs more than 6 months after the sale to the purchaser, the measure of the tax may be, at the purchaser’s option, either the sales price or the vehicle’s fair market value at the time the taxable use first occurs.

(g) *Packaging materials.* The transfer to a customer of corrugated boxes, containers and related packing materials in conjunction with moving or transporting a customer’s goods is incidental to the selling, performing or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

(h) *Occasional sales.* Motor carriers shall not be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less 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 or 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 for resale without paying tax by issuing to their supplier a properly completed resale certificate 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.

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

Examples: 1) A truck purchased to transport pads and packing materials to and from moving jobs qualifies for the exemption in par. (a).

2) Cutting down trees, cutting them into logs and hauling them to a mill as a private business operation voids the exemption in par. (a), even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

3) Trucks purchased for hauling refuse, garbage or snow do not qualify for exemption under par. (a).

4) Vehicles of a milk or cheese factory that engage in hauling milk from farms to its plant for processing do not qualify for the exemption under par. (a).

5) Towing of vehicles to the repair facility of a garage-wrecker operator is part of a private repair business which is not exempt under par. (a).

(2) RAILWAY ROLLING STOCK. (a) Section 77.54(12), Stats., provides a sales and use tax exemption for: *“The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.”*

(b) The exemption for rolling stock includes:

1. The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt rolling stock.

2. Purchases of any equipment which is operated on railroad rails, including an industrial firm’s switching locomotives used to switch freight cars on its own property, except vehicles which may also be used on a highway.

3. Fuel used to heat a caboose, or run a compressor which cools a railway car.

4. A utility’s coal cars used to haul coal from mines to the utility.

(c) The exemption does not apply to:

1. Rails, crossties and other road building and maintenance materials. However, sales of crossties to a common or contract carrier are exempt if they are shipped wholly or in part by way of the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside Wisconsin if the property is transported outside Wisconsin for use by the

carrier in the conduct of its business as a carrier. The exemption will not be invalidated because of interruption of the shipment for storage, drying, processing or creosoting of the crossties in Wisconsin.

2. Bracing materials, rough lumber and dunnage materials.

3. Ice to refrigerate a railway car.

(3) COMMERCIAL VESSELS. (a) Section 77.54(13), Stats., provides a sales and use tax exemption for: *“The gross receipts from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor.”*

(b) The exemption for commercial vessels applies to:

1. Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more.

2. Items that become a component part of the exempt commercial vessel.

3. The sale or furnishing of repair, alteration, cleaning, painting and maintenance of exempt commercial vessels.

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, nets, fishing tackle, lumber for dry docking, bracing, blocking and dunnage materials and other materials not incorporated into the vessel.

Note: Section Tax 11.16 interprets ss.77.54(5)(b), (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; and (b) The exemption for certain railroad crossties became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (1) (a) and (d), (3) (b) 1., Register, November, 1981, No. 311, eff. 12-1-81; am. (3) (b) 1., Register, January, 1983, No. 325, eff. 2-1-83; am. (1) (b), (d) and (2) (b) 2., r. and recr. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (f) and (3) (b) 1., Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (3) (b) 1., Register, April, 1990, No. 412, eff. 5-1-90; correction in (1) (a) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1990, No. 412; am. (1) (a) and (d) and (2) (c) 1., r. (1) (g), renun. (1) (h) to be (g) and (l) (i) to be (h), Register, June, 1991, No. 426, eff. 7-1-91

SECTION TAX 11.27 — INSURANCE AND WARRANTIES

Tax 11.27 Insurance and Warranties. (1) DEFINITIONS. In this section:

(a) “Insurance” means a contract or agreement which promises indemnity against loss or damage resulting from perils outside of and unrelated to defects in tangible personal property.

(b) “Warranty” means a contract or agreement which promises indemnity against defects in tangible personal property sold.

(2) RECEIPTS FROM INSURANCE. Gross receipts from the sale of insurance are not subject to Wisconsin sales or use tax when separately stated on the invoice.

Examples: 1) Company A rents a vehicle to Customer A for \$200 which includes insurance. The entire charge of \$200 is subject to Wisconsin sales or use tax because the charge for insurance is not separately stated.

2) Company A rents a vehicle to Customer B for \$200. On the invoice, Company A shows a charge for vehicle rental of \$175 and a charge for insurance of \$25. The charge of \$175 is subject to Wisconsin sales or use tax.

(3) RECEIPTS FROM WARRANTIES. Gross receipts from the sale of warranties are subject to Wisconsin sales or use tax provided the tangible personal property to which the warranty relates is or was subject to Wisconsin sales or use tax.

Examples: 1) Company A sells a machine to Customer C which will be used exclusively and directly in manufacturing. Customer C purchases an extended warranty with the machine. Customer C provides Company A with a properly completed manufacturer’s exemption certificate. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the machine to which it relates is not subject to Wisconsin sales or use tax.

2) Customer D, a resident of Minnesota, purchases an automobile from a dealership in Wisconsin. Customer D makes no use of the automobile in Wisconsin other than to drive it to his home in Minnesota. Customer D purchases an extended warranty with the automobile. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the sale of the automobile is not subject to Wisconsin sales or use tax.

3) Assume the same facts as in Example 2, except that Customer D does not purchase the extended warranty at the time of sale of the automobile. Instead, six weeks after the sale, Customer D purchases the extended warranty from the dealer. The sale of the extended warranty is not subject to Wisconsin sales or use tax because the automobile to which the sale relates was not subject to Wisconsin sales or use tax.

4) Customer E, a resident of Wisconsin, purchases an appliance from a store in Wisconsin. Customer E purchases an extended warranty with the appliance. The sale of the extended warranty is subject to Wisconsin sales tax because the sale of the appliance is subject to Wisconsin sales tax.

5) Assume the same facts as in Example 4, except that Customer E does not purchase the extended warranty at the time of sale of the appliance. Instead, 2 months after the sale, Customer E purchases the extended warranty from the store. The sale of the extended warranty is subject to Wisconsin sales tax because the appliance to which the sale relates was subject to Wisconsin sales tax.

(4) REPAIRS BY RETAILERS UNDER INSURANCE PLANS. (a) Gross receipts from charges by a retailer to a customer or an insurer for taxable repair parts or taxable services performed under an insurance plan are subject to Wisconsin sales or use tax.

Examples: 1) Company A sold an appliance to Customer E. Company A also sold an insurance plan for the appliance to Customer E. The appliance is later repaired by Company A under the insurance plan. Company A bills the insurance company for the repair. The charge to the insurance company is subject to Wisconsin sales or use tax.

2) Company A sold an appliance to Customer F. Company A also sold an insurance plan for the appliance to Customer F. The appliance is later repaired by Company A under the insurance plan. Company A bills the customer for the repair. Customer F submits the bill to the insurance company and receives reimbursement from the insurance company. The charge to Customer F for the repair is subject to Wisconsin sales tax.

(b)1. A retailer who provides parts or performs taxable repair services to tangible personal property under an insurance plan may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under an insurance plan is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property.

(5) REPAIRS BY RETAILERS UNDER WARRANTIES. (a) Gross receipts from charges by a retailer to a customer for taxable repair parts or taxable services performed under a warranty are subject to Wisconsin sales or use tax.

Example: Customer A purchased an automobile from a dealership in Wisconsin. Customer A purchased an extended warranty from the dealership which was subject to Wisconsin sales or use tax. Customer A brings the automobile to the dealership for repair under the warranty. Under the terms of the warranty, Customer A must pay a deductible of \$100. The \$100 charge to Customer A is subject to Wisconsin sales or use tax.

(b) Reimbursement to a retailer from a manufacturer or other person, whether in the form of money or replacement of parts used to perform repair services under a warranty is not subject to Wisconsin sales or use tax.

Example: Customer B purchased a television with an extended warranty from an appliance store. Customer B has the television repaired under the warranty. The appliance store is reimbursed \$200 by the warranty company for the repair of the television. The \$200 reimbursement is not subject to Wisconsin sales or use tax.

(c)1. A retailer who provides parts or performs taxable repair services to tangible personal property under a warranty may purchase the tangible personal property transferred to the customer as part of the repair without Wisconsin sales or use tax as property for resale.

2. A person who provides tangible personal property in repairing real property under a warranty is the consumer of tangible personal property transferred to a customer as part of the repair to real property and is subject to Wisconsin sales or use tax on the purchase of the tangible personal property transferred.

Note: Refer to s. Tax 11.68 for information about distinguishing between real and tangible personal property.

(6) **REPAIRS NOT BY RETAILERS.** If a retailer does not repair tangible personal property under a warranty or insurance plan, but instead has another person perform the repairs covered under the warranty or insurance plan, the person's gross receipts from the sale of the repair to the retailer are not subject to Wisconsin sales or use tax provided the retailer gives the person a properly completed resale certificate. The charge for repairs by the other person is exempt as a sale for resale whether or not the original sale of the

property to which the warranty or insurance plan relates occurred in Wisconsin. The sales and use tax treatment of the charge by the retailer to the customer or plan provider is the same as provided in subs. (4) and (5).

Note: Refer to s. Tax 11.14 for information regarding exemption certificates, including resale certificates.

(7) **GOODWILL WORK.** A retailer who provides free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, maintenance agreement, express warranty, or insurance plan may purchase the parts without Wisconsin sales or use tax as property for resale.

Example: Customer Z, a resident of Wisconsin, purchased an automobile and extended warranty from a Wisconsin dealership. The dealership charged Wisconsin sales tax on the sale of the automobile and warranty. Customer Z brought the vehicle to the dealership for repairs that were covered under the warranty. While performing the repairs, a part is damaged. The dealership, who is not required by the terms of the warranty to provide the part, provides the part free of charge to Customer Z. The dealership may purchase the part provided free to Customer Z without Wisconsin sales or use tax as property for resale.

Note: Section Tax 11.27 interprets ss.77.51(4)(a) and (14)(intro.), 77.52(2)(a)10. and 77.54(8), Stats.

Note: The interpretations in s. Tax 11.27 are effective under the general sales and use tax law on and after September 1, 1969, except that the definitions in sub (1) and the provisions in subs. (4)(b)2 and (5)(c)2 became effective on February 1, 1994.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1), (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2)(c), Register, July 1987, No. 379, eff. 8-1-87; r. and recr., Register, January 1994, No. 457, eff. 2-1-94

SECTION TAX 11.49 — SERVICE STATIONS AND FUEL OIL DEALERS

Tax 11.49 Service stations and fuel oil dealers. (1) TAXABLE SALES. Sales by service station operators and fuel oil dealers subject to the sales tax include the following:

- (a) The sale of furnace or heating fuel to customers, other than for residential or farm use.
- (b) The repair, service, cleaning, painting, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor and including motor vehicles and truck bodies owned by nonresidents except as provided in sub. (2).
- (c) The towing of motor vehicles.

Examples: 1) The charge to a customer for towing a vehicle to a repair facility is taxable.

- 2) The charge to a customer for towing a vehicle from a no parking zone is taxable even though a governmental unit arranged for the towing.
- 3) The charge to a customer for towing a demolished vehicle to a junkyard is taxable.
- 4) The charge to a Wisconsin governmental unit for towing is exempt from tax.
- 5) The charge to a repair facility for towing a vehicle to the facility for repair which will be passed on to the customer is not taxable provided the repair facility gives the towing company a properly completed resale certificate. However, the charge for the towing service to the customer by the repair facility is taxable.

(d) Retail sales of tangible personal property, including motor oil, antifreeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(f) Providing parking for motor vehicles. Providing temporary storage of a motor vehicle is considered parking if the vehicle is ready and available for immediate use.

(2) EXEMPT SALES. Sales by service station operators and fuel oil dealers not subject to the sales tax include the following:

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate, Form S-207, to purchase special fuel

without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. If motor fuel or special fuel is purchased without tax under s. 77.54(11), Stats., because it is subject to the excise tax imposed under ch. 78, Stats., and then the excise taxes are later refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle upon the public highways, the fuel is subject to the tax, unless otherwise exempt under ss. 77.54(1), (3), (5), (6) (c), (9a), (12), (13), (30) (a) or other exemptions in subch. III, ch. 77, Stats.

(b) Sales made directly to governmental units of this state, schools or 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. Sales to employes of these entities are not exempt, even though the entity may reimburse the employe for the expenditure.

(c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.38, Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus or truck with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of parts and repairs for tractors or farm machines used directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales to farmers of fuel used in farming.

(f) Sales of general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54 (5) (a), Stats.

(g) Sales of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) (L) 7. and 8.

(h) Sales of repairs, alterations, cleaning, painting and maintenance services to common or contract carrier vehicles exempt under sub. (2)(c), mobile mixing and processing units and the vehicle or trailer on which they are mounted, and motor vehicles not required to be licensed for highway use which are used in waste reduction or recycling activities.

(i) Sales of accessories, attachments, parts, supplies and materials for mobile mixing and processing units and the vehicle or trailer on which they are mounted, including highway fuel for units operated on public highways.

(j) Sales of wood residue used for fuel and sold for use in a business activity. Wood residue includes slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or wood residue.

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase, without tax, "for resale", repair parts and materials used in the work which are physically transferred to their customers. This includes auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods.

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rub-

bing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

Note: Section Tax 11.49 interprets ss.77.52(2)(a)9. and 10. and (2m)(b) and 77.54(3), (5),(9a), (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; and (j) All towing services became taxable effective May 1, 1993.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a), Register, July, 1987, No. 379, eff. 8-1-87; correction in (2) (c) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1990, No. 412; am. (1) (b) and (d), (2) (b), (c) and (f) and (3) (a), cr. (2) (g), (h) and (i), Register, March, 1991, No. 423, eff. 4-1-91; am (1)(b) and (2)(d), renum. (1)(c)(intro.) and (2)(e) to (i) to be (1)(c) and (2)(f) to (j) and am. (1)(c), r. (1)(c)1. to 3, cr. (1)(f) and (2)(e), Register, April 1993, No. 448, eff. 5-1-93.

APPENDIX E

SECTION TAX 11.79 — LEASES OF HIGHWAY VEHICLES AND EQUIPMENT

Tax 11.79 Leases of highway vehicles and equipment.

(1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under sub. (1), the cost of the following items may be deducted if they meet the conditions in sub. (3):

- (a) Motor fuel.
- (b) Vehicle license fees.
- (c) Federal highway use taxes.
- (d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in sub. (2) may be deducted if:

- (a) The charge is reasonable.
- (b) The charge is separately stated in the lease agreement, billing or invoice.
- (c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in sub. (2).
- (d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under sub. (1), the cost of the following may not be deducted:

- (a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.
- (b) Maintenance or repair charges incurred by the lessor.
- (c) Interest and other financing costs incurred by the lessor.
- (d) Dispatch service.

(5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

(6) **EXEMPT LEASES.** Gross receipts from the rental or lease of the following property shall be exempt from sales and use tax provided the lessor receives a properly completed exemption certificate as described in s. Tax 11.14:

- (a) Highway vehicles, except automobiles, leased to common or contract carriers who use the vehicles exclusively in common or contract carriage, including urban mass transportation of passengers as defined in s. 71.38, Stats.
- (b) Motor vehicles not licensed for highway use which are used exclusively and directly in conjunction with waste reduction or recycling activities described in s. 77.54(5)(c), Stats.
- (c) Mobile units used for mixing and processing, including the motor vehicle or trailer on which the unit is mounted. Accessories, attachments, parts, supplies and materials for the mobile unit, vehicle and trailer are also exempt.
- (d) Leases of highway vehicles and equipment for resale.

Note: Section Tax 11.79 interprets ss. 77.51(13)(k) and (14)(intro.) and (j), 77.54(5)(c) and (d) and (26m) and 77.58(6), Stats.

Note: The interpretations in s. Tax 11.79 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for vehicles and equipment used in waste reduction or recycling activities became effective July 1, 1984, pursuant to 1983 Wis. Act 426; and (b) The exemption for mobile mixing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77; cr. (4) (d), Register, September, 1984, No. 345, eff. 10-1-84; cr. (6), Register, June, 1991, No. 426, eff. 7-1-91.

APPENDIX F

SECTION TAX 11.14 — EXEMPTION CERTIFICATES

Tax 11.14 Exemption certificates (1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52(13) to (17), Stats., and the use tax status of exemption certificates is contained in s. 77.53(10) to (13), Stats.

(2) GENERAL. (a) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors shall exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with the following 2 sales and use tax exemption certificates:

1. Wisconsin sales and use tax exemption certificate, form S-211. This is a multipurpose form which may be used for any sales and use tax exemption provided by law, except as provided in sub. (14). For direct pay, form S-211 may be used as the document described in s. Tax 11.13(5)(a)2. if all of the required information is included on the form S-211.

2. Construction contract entered into before the effective date of county/stadium tax, form S-207CT-1. This is a certificate which may be used by a contractor to purchase building materials without a county or stadium tax under the circumstances described in sub. (13).

(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. The law requires that the certificate be signed by and bear the name and address of the purchaser and that it indicate the general character of the property or service being purchased and the basis of the claimed exemption.

(c) If a purchaser certifies in writing by using an exemption certificate that the property purchased will be used for activities or under circumstances which make the purchase of the property exempt from the sales tax or for resale, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

(3) EFFECT OF OBTAINING CERTIFICATE. (a) A seller is relieved of liability for the tax if the seller takes from the purchaser a valid, written exemption certificate which certifies that the purchaser will use the property or service in a manner or for a purpose entitling the seller to accept the certificate in good faith.

(b) To be valid, an exemption certificate shall upon its face disclose a proper basis for exemption. The use of phrases

such as “nontaxable,” “exempt” or similar terminology do not provide a proper basis for an exemption. A certificate shall be properly executed and dated and shall contain all the necessary information. A certificate claiming an exemption not provided by law is not valid.

Note: All retailers should be familiar with the instructions contained in an exemption certificate.

(c) If a certificate is valid, a seller or lessor who accepts the certificate in good faith is relieved of any liability for collection or payment of tax upon transactions covered by the certificate. For good faith to be shown, the certificate may contain no statement or entry which the seller or lessor knows, or has reason to believe, is false or misleading. The question of good faith is one of fact and depends upon a consideration of all the conditions surrounding the transaction. If the seller accepts a certificate with knowledge which gives rise to a reasonable inference that the purchaser does not intend to use the item or service as claimed, the good faith of the seller will be questioned. The seller is presumed to be familiar with the law and rules of the department relating to the business or businesses in which the seller is involved.

(4) FAILURE TO OBTAIN CERTIFICATE. If a seller does not obtain a certificate, a seller is not relieved from liability for the tax, nor from the burden of proving the sale was for resale or otherwise exempt. It is not a satisfactory substitute for obtaining an exemption certificate from the purchaser, for the seller to accept payment of the seller’s billing with the tax or tax reimbursement deleted, or to accept the purchaser’s permit number, or a statement that the transaction is not taxable.

(5) CONTINUOUS CERTIFICATES. (a) Continuous exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(b) Continuous exemption certificates approved by the department do not allow a purchaser to issue “this time only” purchase orders canceling the continuous tax exemption certificate for the one transaction only. The notation “taxable” on a purchase order is not sufficient to relieve a purchaser of the responsibility for a previously issued continuous certificate. The seller is not liable for the tax on transactions covered by a valid exemption certificate, unless the purchase order is

accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6) **RESALE.** (a) *Effect of obtaining certificate claiming resale.* 1. The burden of proving that a sale of property or services is not at retail is upon the seller unless the seller accepts a certificate from the purchaser certifying that the property is purchased for resale. If valid and accepted in good faith from a person who is in the business of selling tangible personal property or taxable services and who holds a seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives an exemption certificate claiming resale for property acquired and then makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax shall be reported and paid by the purchaser with the tax return for the period in which the property is first so stored or used.

(b) *Contents of exemption certificates claiming resale.* An exemption certificate claiming resale shall contain the following information for the seller to be relieved from the burden of proving the sale of property or services was not a taxable sale:

1. The name and address and the signature of the purchaser.
2. A description of the general character of the tangible personal property or service sold by the purchaser.
3. A general description of the property or service purchased for resale if a "continuous" exemption certificate is used, or an itemization of the property or service purchased if a "single purchase" certificate is used.
4. The seller's permit number of the purchaser, except that:
 - a. A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a seller's permit number.
 - b. A person registered as a seller in another state, who makes no retail sales in Wisconsin, may insert the name of the state in which registered and the permit number issued to the person by that state.
 - c. A person who makes exempt sales only in the regular course of business may insert the words, "exempt sales only" in the space for a seller's permit number.
5. An indication of the general character of the purchaser's business. This is for the protection of the seller, since it may enable the seller to determine whether a particular type of property or service may be sold without collecting the tax. If the nature of the business described is such that the property or services purchased normally would not be resold, the

seller should question the purchaser's reason for issuing the certificate. If a satisfactory answer cannot be provided, the certificate should not be accepted. If all of these conditions are met, the seller is relieved from the burden of proving that the sale of property or services was not a taxable sale.

Example: A "continuous" exemption certificate claiming resale describing a business as a "tavern" normally should not be accepted for the sale of a radio, camera, auto part or other item not regularly sold by taverns.

(7) **MANUFACTURING EXEMPTION.** (a) A supplier which accepts a properly completed exemption certificate, claiming a manufacturing exemption, in good faith marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of the property or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If an exemption certificate is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser shall designate which items are taxable.

(b) If the manufacturer uses "single purchase" certificates, it may print these as an integral part of its purchase orders, as long as the essential information on the approved form is retained.

(8) **FARMER'S EXEMPTION.** A retailer shall have a signed exemption certificate for every exempt sale made to a farmer.

Note: Section Tax 11.12 describes the types of property which may be sold to farmers without tax, and the use of the exemption certificate to claim farming exemptions.

(9) **EXEMPTION FOR FUEL OIL, PROPANE, COAL, STEAM AND WOOD FOR FUEL FOR RESIDENTIAL OR FARM USE.** A retailer shall have a signed exemption certificate if the sale of fuel oil, propane, coal, steam or wood for residential or farm use is partially exempt from sales or use tax. If the sale is 100% exempt, an exemption certificate is not required.

(10) **EXEMPTION FOR ELECTRICITY AND NATURAL GAS SOLD FOR RESIDENTIAL OR FARM USE.** A retailer of electricity or natural gas shall have a signed exemption certificate for all sales of electricity or natural gas for residential or farm use which are exempt from sales or use tax unless any, or all, of the following apply:

- (a) 100% of the electricity or natural gas is for exempt use.
- (b) The sale is to an account which is properly classified as residential or farm pursuant to schedules which are filed for rate tariff with the Wisconsin public service commission which are in force at the time of the sale.
- (c) The sale is to an account which is properly classified as residential or farm for classification purposes as directed by the federal rural electrification administration.

(11) **GOVERNMENT SALES AND USE TAX EXEMPTION.** (a) A retailer of tangible personal property or taxable services may accept from a federal or Wisconsin governmental unit an exemption certificate as proof that a sale is exempt from sales or use tax.

(b) In lieu of accepting an exemption certificate as provided in par. (a) a retailer may accept any one of the following:

1. A purchase order or similar written document from the governmental unit identifying itself as the purchaser.

2. A verbal indication of the governmental unit's certificate of exempt status, or CES number, which the retailer shall record on the copy of the invoice it retains.

(12) **OTHER EXEMPTIONS.** The Wisconsin sales and use tax exemption certificate, form S-211, may also be used for any other sales and use tax exemption provided by law, including the following:

(a) Containers and other packaging, packing and shipping materials used to transfer merchandise to customers of the purchaser.

(b) Tangible personal property becoming an ingredient or component part of an article of tangible personal property in any form destined for sale.

(c) Trailers or accessories, attachments, parts, supplies, materials and service on motor trucks, tractors and trailers which are used exclusively in common or contract carriage.

(d) Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization or governmental unit holding a certificate of exempt status, C.E.S. Sales to organizations holding a C.E.S. also can be shown to be 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, to purchase without tax even though it has not been issued a Wisconsin certificate of exempt status.

(e) Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.

(f) Commercial vessels and barges of 50-ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts and fuel therefor.

(13) **CONSTRUCTION CONTRACTS ENTERED INTO BEFORE THE EFFECTIVE DATE OF A COUNTY OR STADIUM TAX.** (a) The certificate for a construction

contract entered into before the effective date of a county tax, or a stadium tax as defined in s. Tax 11.001(4), form S-207CT-1, is used by contractors to purchase building materials without the county or stadium tax. The certificate shall be used by a contractor only if the following 3 conditions are met:

1. The contractor entered into a written contract or made a formal bid before the effective date of the county or stadium tax to construct, alter, repair or improve real estate for another person.

2. The written contract is for a fixed price that cannot be changed or the formal written bid cannot be altered or withdrawn.

3. The building materials purchased on or after the effective date of the county or stadium tax are affixed and made a part of real estate in fulfilling the written contract or formal written bid.

(b) The certificate shall give the descriptive name of the contract, job site, county or stadium tax effective date, date of prime contract and bid, date contract was signed, the seller's name, the date of performance of the contract and the contractor's name and address and shall be signed by the contractor.

(14) **DIRECT PAY PERMITS.** The use of direct pay permits in Wisconsin is authorized under s. 77.52(17m), Stats. A person may apply to the department for a direct pay permit.

Note: For information on who qualifies for a direct pay permit and how to use direct pay, refer to s. Tax 11.13.

(15) **IMPROPER USE OF CERTIFICATES.** A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor under s. 77.52 (16), Stats. The purchaser may also be liable for other penalties provided by law for filing incorrect returns.

(16) **CERTAIN COMMODITIES.** No exemption certificate is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse.

Note: Section Tax 11.14 interprets ss. 77.52(13) to (17), 77.53(10) to (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; and (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 con-

signed 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; and (d) The multipurpose exemption certificate, form S-211, was created in November 1998 to replace various types of exemption certificates.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (7)(a), Register, June, 1983, No. 330, eff. 7-1-83; cr. (2)(c) and am. (10), Register, July, 1987, No. 379, eff. 8-1-87; cr. (2)(a)5. and 6., (10), (11) and (14), am. (2)(a), (5)(b), (6)(b)(intro.) and 5., (7)(a)(intro.) and 4. and 5., (8)(a) and (9), renum. (10) and (11) to be (12) and (13) and am., Register,

March, 1991, No. 423, eff. 4-1-91; am. (2)(c), (3)(b) and (c), (6)(b)4., r. and recr. (12), Register, June 1995, No. 474, eff. 7-1-95; renum. (12), (13) and (14) to be (13), (14) and (15), am. (2)(a)(intro.), cr. (2)(a)7. and (12), Register, October 1997, No. 502, eff. 11-1-97; am.(1)(c), (3)(a) and (b), (5)(b), (6)(a)2., (b), 3., r. and recr. (2)(a)1. and 2., cr. (6)(b)4.c. and (16), r. (2)(a) 3. to 7., (7)(b), (10)(b), (11)(b) and (12)(b)1., renum. (7)(a)1. to 6. to be (12)(a) to (f) and am. (12)(d), renum. (8) to (10)(a) to be (7) to (9) and am. (7)(a), (8) and (9), renum. (11)(a)1. to 3. to be (10)(a) to (c), renum. (12)(a) to be (11)(a) and am., renum. (12)(b)2. and 3., (13), (14) and (15) to be (11)(b)1. and 2., (13), (14) and (15) and am. (13)(a), 1. and 3. and (b), Register August 1999, No. 524, eff. 9-1-99.

APPENDIX H

IRS Annual Lease Value Table

(From IRS Reg. § 1.61-21(d)(2) as of November 1, 2000)

| Automobile Fair Market Value | Annual Lease Value* | Automobile Fair Market Value | Annual Lease Value* |
|---|------------------------------------|---|------------------------------------|
| \$0 to 999 | \$ 600 | 22,000 to 22,999 | \$ 6,100 |
| 1,000 to 1,999 | 850 | 23,000 to 23,999 | 6,350 |
| 2,000 to 2,999 | 1,100 | 24,000 to 24,999 | 6,600 |
| 3,000 to 3,999 | 1,350 | 25,000 to 25,999 | 6,850 |
| 4,000 to 4,999 | 1,600 | 26,000 to 27,999 | 7,250 |
| 5,000 to 5,999 | 1,850 | 28,000 to 29,999 | 7,750 |
| 6,000 to 6,999 | 2,100 | 30,000 to 31,999 | 8,250 |
| 7,000 to 7,999 | 2,350 | 32,000 to 33,999 | 8,750 |
| 8,000 to 8,999 | 2,600 | 34,000 to 35,999 | 9,250 |
| 9,000 to 9,999 | 2,850 | 36,000 to 37,999 | 9,750 |
| 10,000 to 10,999 | 3,100 | 38,000 to 39,999 | 10,250 |
| 11,000 to 11,999 | 3,350 | 40,000 to 41,999 | 10,750 |
| 12,000 to 12,999 | 3,600 | 42,000 to 43,999 | 11,250 |
| 13,000 to 13,999 | 3,850 | 44,000 to 45,999 | 11,750 |
| 14,000 to 14,999 | 4,100 | 46,000 to 47,999 | 12,250 |
| 15,000 to 15,999 | 4,350 | 48,000 to 49,999 | 12,750 |
| 16,000 to 16,999 | 4,600 | 50,000 to 51,999 | 13,250 |
| 17,000 to 17,999 | 4,850 | 52,000 to 53,999 | 13,750 |
| 18,000 to 18,999 | 5,100 | 54,000 to 55,999 | 14,250 |
| 19,000 to 19,999 | 5,350 | 56,000 to 57,999 | 14,750 |
| 20,000 to 20,999 | 5,600 | 58,000 to 59,999 | 15,250 |
| 21,000 to 21,999 | 5,850 | | |

For vehicles having a fair market value in excess of \$59,999, the annual lease value is equal to (.25 X the fair market value of the automobile) + 500.

* Annual lease value must be divided by 12 to arrive at monthly lease value.