



# TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

MARCH, 1978

## NEW RULES

The Department of Revenue has been converting sales tax Technical Information Memorandums to administrative rules. A list of the sales and use tax rules currently in effect are as follows:

<u>Number</u>	<u>Effective Date</u>	<u>Name</u>
11.001	2-1-78	Sales and Use Tax Definitions and Terms
11.01	3-1-78	Sales and Use Tax Forms
11.03	12-1-77	Elementary and Secondary Schools
11.05	1-1-78	Governmental Units
11.08	10-1-77	Medical Appliances, Prosthetic Devices and Aids
11.09	10-1-77	Medicines
11.26	10-1-77	Other Taxes in Taxable Gross Receipts and Sales Price
11.27	12-1-77	Warranties
11.28	12-1-77	Gifts, Advertising Specialties, Coupons, Premiums and Trading Stamps
11.29	8-1-77	Leases and Rentals of Tangible Personal Property
11.30	12-1-77	Credit Sales, Bad Debts and Re-possessions
11.32	1-1-78	"Gross Receipts" and "Sales Price"
11.38	11-1-76	Fabricating and Processing
11.39	12-1-77	Manufacturing
11.40	12-1-77	Exemption of Manufacturing Machines and Processing Equipment
11.41	12-1-77	Exemption of Property Consumed or Destroyed in Manufacturing
11.45	11-1-76	Sales by Pharmacies and Drug Stores
11.46	10-1-77	Summer Camps
11.47	10-1-77	Commercial Photographers and Photographic Services
11.48	12-1-77	Landlords, Hotels and Motels
11.49	2-1-78	Service Stations and Fuel Oil Dealers
11.50	2-1-78	Auctions
11.51	1-1-78	Grocer's Guidelist
11.52	2-1-78	Coin Operated Vending Machines
11.53	7-1-65	Concessionnaires (was No. 11.01)
11.54	4-1-76	Temporary Events (was No. 11.02)
11.61	9-1-76	Veterinarians and Their Suppliers
11.62	9-1-76	Barbers and Beauty Shop Operators
11.63	1-1-78	Radio and Television Stations
11.64	10-1-77	Background Music
11.65	2-1-78	Admissions

11.66	1-1-78	Communication & CATV Services
11.67	2-1-78	Service Enterprises
11.69	1-1-78	Financial Institutions
11.70	1-1-78	Advertising Agencies
11.78	2-1-77	Stamps, Coins and Bullion
11.79	2-1-77	Leases of Highway Vehicles and Equipment
11.80	10-1-77	Sales of Ice
11.81	10-1-77	Industrial Gases, Welding Rods and Fluxing Materials
11.82	12-1-77	Mailing Lists and Mailing Services
11.83	1-1-78	Motor Vehicles
11.84	12-1-77	Aircraft
11.91	11-1-76	Successor's Liability
11.92	8-1-77	Records and Record Keeping
11.94	2-1-78	Wisconsin Sales - Taxable Transportation Charges
11.95	3-1-78	Retailer's Discount

Administrative rules of the Department are part of the Wisconsin Administrative Code and are available on a subscription basis. The charge for a booklet containing current Department rules is \$1.20 and the annual calendar year subscription service to keep the booklet current is presently \$1.20.

If you desire a copy of only one or two of these rules, however, you may write to the Wisconsin Department of Revenue, Technical Services Staff, Room 417, 201 East Washington Avenue, Madison, Wisconsin 53702.

## ADVERTISING AGENCIES

Rule Tax 11.70, entitled "Advertising Agencies" went into effect on January 1, 1978. Because it affects many persons in the business community, whether they are retailers or purchasers, the full text of the rule is reproduced below:

**Tax 11.70 Advertising Agencies. (Sections 77.51 (4) (intro.) and (h), 77.52 (1) and (2), Wis. Stats.) (1) NONTAXABLE SERVICES.** Charges by advertising agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

- Writing original manuscripts or news releases.
- Writing copy to be used in media advertising.
- Consultation, market research and compiling statistical or other information.
- Recommendations for advertising themes or merchandising plans.
- Obtaining media space and time.

(f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.

(2) TAXABLE SALES. (a) Tax applies to an agency's gross receipts from the sale of tangible personal property located or used in Wisconsin whether the transfer is to the advertiser or to a third party at the direction of or on behalf of the advertiser. This applies to advertiser clients located both inside and outside Wisconsin. The sale of tangible personal property normally occurs when the advertising agency bills the client for the property and the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client. For example, an agency's billing to a client for finished art transferred to another Wisconsin business is taxable.

(b) Tax applies to an advertising agency's total retail sales price of tangible personal property, without any deduction for any cost element which becomes a part of the sales price. Such elements include preliminary art work, consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though such costs may be separately itemized in a billing to a client.

(c) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(d) The total sales price of the following items or services are subject to the tax:

1. Retail sales of signs, circulars, business cards, stationery, showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.
2. Charges for photographic services or photostats.
3. Charges for producing, fabricating, processing, printing or imprinting tangible personal property for consumers for a consideration, even though the consumers may furnish the materials used in the producing, fabricating, processing, printing or imprinting of the tangible personal property.
4. Charges for "finished art". "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes and includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced. The tax applies to sales of finished art whether it is used to produce a taxable item or an exempt item (e.g., periodical), or is used to provide an advertising service by placing advertising in an advertising media (such as newspapers, magazines, other publications and radio or television stations).

(3) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee", "retainer", "service charge", or "commission"

represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable items is taxable in accordance with the ratio between the charges.

(4) PURCHASES BY AGENCIES. (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that it resells before use, or that becomes physically an ingredient or component part of tangible personal property which it produces and sells.

(b) An advertising agency is the consumer of all tangible personal property not purchased for resale or not becoming physically an ingredient or component part of tangible personal property sold by such agency.

## DENTISTS' PURCHASES

In Department of Revenue vs. Milwaukee Refining Corp., 80 Wis. 2d 44 (1977), the Wisconsin Supreme Court held that the sales of gold bars to dentists who use the gold in the course of rendering their professional services are not subject to the sales tax.

Therefore, the sales by suppliers to dentists of gold, silver and other alloys, crowns, inlays or fillings and other types of tangible personal property installed in the mouths of the dentists' patients are not subject to the tax. A charge for labor used to fabricate a crown or inlay also is not taxable. Sales of nitrous oxide gas, oxygen and novocain to a dentist for treatment of patients are exempt sales of medicines (s. 77.54 (14)).

Dentists' suppliers continue to be liable for the tax on their sales to dentists of dental floss, cleaning paste, other supplies or equipment if such items are not: (1) Installed in a patient's mouth, or (2) Exempt medicines.

A dentist's total charge for dental services is not taxable, even though the dentist may charge separately for tangible personal property transferred to the patient as part of providing dental service.

## CIRCUIT COURT CASE ON "MANUFACTURING"

In a recent Dane County Circuit Court case, Department of Revenue vs. Bailey-Bohrman Steel Corporation (Case No. 157-072, December 16, 1977) the court held that the slitting of raw coiled steel does not constitute "manufacturing" as that term is defined in Wisconsin's sales and use tax law (s. 77.51 (27)). The taxpayer's entire operation consisted of taking raw steel coiled stock with a width of up to 48 inches and weighing about 15 tons and decoiling the coiled steel, slitting it into narrower widths and recoiling it for shipment to customers.

The taxpayer claimed that the machinery and equipment used in its steel slitting operation was used in "manufacturing" and was, therefore, exempt for Wisconsin's sales and use tax. The court rejected the taxpayer's exemption claim on the grounds that the taxpayer was not engaged in manufacturing since its operation was simple and did not produce a new article with a different form from the old article.