



TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT OF REVENUE

MARCH, 1979

Exemption Certificates

Rule Tax 11.14 entitled "Exemption certificates" went into effect on December 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 11.14 Exemption certificates (including resale certificates). (Sections 77.52(13) to (16), and 77.53(10) and (11), Wis. Stats.)

(1) **THE STATUTES.** The sales tax status of exemption certificates is contained in sections 77.52(13) to (16), Wis. Stats., and the use tax status of exemption certificates is contained in sections 77.53(10) and (11), Wis. Stats.

(2) **GENERAL.** (a) Exemption certificates are issued by purchasers to sellers or lessors to verify that a transaction is exempt. Sellers and lessors can make sales without sales or use tax when they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with 4 types of exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this rule, are the following:

1. Resale Certificate (Form S-205).
2. Certificate of Exemption (Form S-207).
3. Manufacturer's Exemption Certificate (Form S-207m).
4. Farmer's Exemption Certificate (Form S-206).

(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.

(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 resale or 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, a resale or other exemption certificate must 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 must be properly executed, dated and contain all the necessary information. Thus, all retailers should be familiar with the instructions contained in the certificate. A certificate claiming an exemption not provided by law is not valid.

(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 shall 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 (including continuous resale 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 his or her previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6) **RESALE CERTIFICATE (Form S-205).** (a) **Effect of obtaining resale certificate.** 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 a resale certificate 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 resale certificates.** A resale certificate (Form S-205) shall contain the following information: 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" resale 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; or

(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.

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. For example, a "continuous" resale certificate 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. If all of these conditions are met, the seller is relieved from the burden of proving that the sale or property or services was not a taxable sale.

(7) **CERTIFICATE OF EXEMPTION (Form S-207).** (a) The certificate of exemption (Form S-207) is a multiple purpose form which may be used for purchasing any of the following 6 exempt types of property or services: 1. Containers and other packaging, packing and shipping materials used to transfer merchandise to customers of the purchaser.

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

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

4. Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization 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.

5. Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts or fuel therefor.

6. 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.

(b) A certificate of exemption may also be used for any other exemption provided by law, except for resale, or for farmers' or manufacturers' exemption claims. The use of the Form S-207 is explained on the back of the certificate.

(8) **MANUFACTURER'S EXEMPTION CERTIFICATE (Form S-207m).** (a) A supplier which accepts a properly completed manufacturer's exemption certificate (Form S-207m) 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 a Form S-207m 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 must 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.

(9) **FARMER'S EXEMPTION CERTIFICATE (Form S-206).** A retailer shall have a signed farmer's exemption certificate (Form S-206) for every exempt sale made to a farmer. Rule Tax 11.12 describes the types of property which may be sold to farmers without tax, and the use of the farmer's exemption certificate.

(10) **DIRECT PAY PERMITS.** The law does not provide for use of direct pay permits by manufacturers or other businesses. Such permits are allowed in certain states and authorize a purchaser to report taxes directly to the state, even when making taxable purchases from in-state suppliers. Thus, under Wisconsin law, a purchaser must furnish a supplier with the appropriate exemption certificate when making exempt purchases. Assertions by a purchaser that the purchaser will pay the use tax directly to the state should not be accepted, as they do not relieve the seller of the obligation to report the tax on such sales.

(11) **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. (Section 77.52(16), Wis. Stats.) Such purchaser may also be liable for other penalties provided by law for filing incorrect returns.

NOTE: the interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

Exempt Organizations

Sales of tangible personal property or taxable services made to organizations organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, are exempt from the sales and use tax *if* they have a Certificate of Exempt Status Number issued by the Wisconsin Department of Revenue. The Certificate of Exempt Status Number, if granted, applies to purchases only. It does not apply to sales by those organizations. To obtain such certificate, a qualifying group may write to:

Wisconsin Department of Revenue
Compliance Bureau
4638 University Avenue
P.O. Box 8902
Madison, WI 53708