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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-105

AN ORDER to repeal Tax 11.67 (3) (e) 3.; to renumber Tax 11.67 (3) (L) and (n); to renumber and amend Tax 11.67 (3) (m); and to amend Tax 11.67 (2) (a) and (3) (e) 2., (f), (h) and (j), relating to service enterprises.

Submitted by **DEPARTMENT OF REVENUE**

07-06-99 RECEIVED BY LEGISLATIVE COUNCIL.
07-29-99 REPORT SENT TO AGENCY.

RS:WF:jal



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

November 15, 1999

Honorable Fred Risser
President, State Senate
Rm 220 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Scott Jensen
Speaker State Assembly
Rm 211 W State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 99-105

Dear Senator Risser and Representative Jensen:

Pursuant to s. 227.19(2), Stats., this is to notify you that the proposed rule order relating to service enterprises is in final draft form. The proposed rule order was published in the **Wisconsin Administrative Register** in Mid-September 1999. A public hearing was not required under the exception provided in s. 227.16(2)(e), Stats.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows:

Summary of Proposed Rule Order

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

Statutes interpreted: ss. 77.51(4), (12), (13), (14)(intro.), (h) and (L), (15), (20) and (22) (a) and (b) and 77.52(1), (2)(a) and (2m)(a) and (b), Stats.

SECTIONS 1 AND 2. Tax 11.67(2)(a) is revised, to update language and to remove examples from the text of the rule and set them forth separately, per Legislative Council Rules Clearinghouse ("Clearinghouse") standards.

Tax 11.67(3)(e)2. is revised and Tax 11.67(3)(e)3. is repealed, to clarify that the taxability of materials used in constructing a prototype depends on the primary objective of the customer, and that determining whether a transaction is a purchase and sale of a prototype, or a research and development service with the prototype being incidental, is done on a case-by-case basis.

SECTION 3. Tax 11.67(3)(f), (h) and (j) are revised, to conform language and punctuation to Clearinghouse standards.

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SECTION 4. Tax 11.67(3)(L) to (n) are renumbered Tax 11.67(3)(k) to (m), to conform numbering to Clearinghouse standards. As renumbered, Tax 11.67(3)(L) is revised, to conform punctuation to Clearinghouse standards.

Sincerely,



Cate Zeuske
Secretary of Revenue

CZ:MPW:cil
e:rules\1167 Committees – President Speaker

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 99-105
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to:

- Clarify that the taxability of materials used in constructing a prototype depends on the primary objective of the customer, and that determining whether a transaction is a purchase and sale of a prototype, or a research and development service with the prototype being incidental, is done on a case-by-case basis.
- Conform language and style to Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was not required, pursuant to s. 227.17(2)(e), Stats.

Legislative Council Staff Recommendations

The Legislative Council staff reviewed the proposed rule and had no comments or recommendations.

Regulatory Flexibility Analysis

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

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

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.67(3)(e)3.; renumber Tax 11.67(3)(L) and (n); renumber and amend Tax 11.67(3)(m); and amend Tax 11.67(2)(a) and (3)(e)2., (f), (h) and (j), relating to service enterprises.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.51(4), (12), (13), (14)(intro.), (h) and (L), (15), (20) and (22) (a) and (b) and 77.52(1), (2)(a) and (2m)(a) and (b), Stats.

SECTIONS 1 AND 2. Tax 11.67(2)(a) is revised, to update language and to remove examples from the text of the rule and set them forth separately, per Legislative Council Rules Clearinghouse ("Clearinghouse") standards.

Tax 11.67(3)(e)2. is revised and Tax 11.67(3)(e)3. is repealed, to clarify that the taxability of materials used in constructing a prototype depends on the primary objective of the customer, and that determining whether a transaction is a purchase and sale of a prototype, or a research and development service with the prototype being incidental, is done on a case-by-case basis.

SECTION 3. Tax 11.67(3)(f), (h) and (j) are revised, to conform language and punctuation to Clearinghouse standards.

SECTION 4. Tax 11.67(3)(L) to (n) are renumbered Tax 11.67(3)(k) to (m), to conform numbering to Clearinghouse standards. As renumbered, Tax 11.67(3)(L) is revised, to conform punctuation to Clearinghouse standards.

SECTION 1. Tax 11.67(2)(a) and (3)(e)2. are amended to read:

Tax 11.67(2)(a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such the tangible personal property to them. ~~Examples are physicians, lawyers and accountants.~~

Note to Revisor: Insert the following example following Tax 11.67(2)(a):

Example: Persons engaged in the business of furnishing services include physicians, lawyers and accountants.

(3)(e)2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, ~~the researcher owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided to the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes, is deemed not a sale of tangible personal property. However, if the prototype is transferred to a customer for use in its business or for the purpose of reselling it, the researcher may purchase the materials used to construct the prototype without tax as property for resale if the primary objective of the customer in the transaction is to obtain tangible personal property, such as a prototype, the researcher may purchase the material used to construct the prototype without tax as property for resale. The subsequent sale of the prototype by the researcher to the customer is subject to tax unless an exemption applies. If the primary objective of the customer is to obtain the information resulting from production of the prototype, the prototype is considered transferred to the customer incidental to the research and development services. The researcher is subject to tax on the material purchased and used to construct the prototype. Determinations shall be made on a case-by-case basis.~~

Note to Revisor: Remove the examples following Tax 11.67(3)(e)2. and insert the following note:

Note: For a ruling on whether a specific transaction is a sale of a prototype or a research and development service with the prototype transferred incidental to the research and development service, write to Wisconsin Department of Revenue, Administration Technical Services, P.O. Box 8933, Madison, WI 53708-8933. The transaction should be described in detail.

SECTION 2. Tax 11.67(3)(e)3. Is repealed.

SECTION 3. Tax 11.67(3)(f), (h) and (j) are amended to read:

Tax 11.67(3)(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such the tangible personal

property. Gross receipts shall may not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though ~~such~~ those costs may be itemized in billing the customer.

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by architects, engineers, or other business firms. These charges are taxable if the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing, which is tangible personal property, for use by the customer. When the person performing drafting services uses his or her own concepts and ideas in producing detailed drawings for a customer, the sale of the drawings is not a sale of tangible personal property.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs ~~such~~ that service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

SECTION 4. Tax 11.67(3)(L) to (n) are renumbered Tax 11.67 (3)(k) to (m) and as renumbered, Tax 11.67(3)(L) is amended to read:

Tax 11.67(3)(L) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. These persons are the consumers of the tangible personal property, such as soap, brushes, and towels, they purchase, except for the wax, air freshener and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax, air freshener and protectants sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to these operators.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

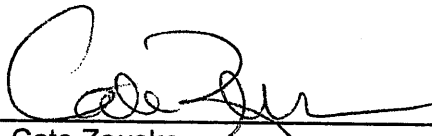
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated:

June 30, 1999

By:



Cate Zeuske
Secretary of Revenue

e:\rule\1167 Proposed Order

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #
INTRODUCTION #
Admin. Rule # Tax 11.67

Subject:
Sales and Use Tax Treatment of Various Services

Fiscal Effect

- State:** No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation
- | | | |
|--|---|--|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No

<input type="checkbox"/> Decrease Costs |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues | |
| <input type="checkbox"/> Create New Appropriation | | |

Local: No Local Government Costs

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

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed order updates the Department of Revenue's Administrative Code relating to taxable sales by service enterprises, and the taxability of components utilized in the production of research and development prototypes. The changes clarify existing language to reflect the Department's current position, and alter style and format to conform to Legislative Council Clearinghouse standards. These rule changes do not have a fiscal effect.

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue John T. Stott, (608) 266-9706	Yeang-Eng Braun (608) 266-2700 <i>Yeang-Eng Braun</i>	6/18/99