

2001 DRAFTING REQUEST

Bill

Received: 03/28/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Suzanne Jeskewitz (608) 266-3796

By/Representing: diane

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - sales

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Sales and use tax exemption for acetylene and oxygen used to cut metal

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	jkreye 03/28/2001	jdyer 03/28/2001	martykr 03/29/2001	_____	lrb_docadmin 03/29/2001		S&L Tax
	jkreye 05/01/2001	jdyer 05/01/2001		_____			
/2			pgreensl 05/01/2001	_____	lrb_docadmin 05/01/2001	lrb_docadminS&L 06/18/2001	Tax

FE Sent For: 05/04/2001.

↳ ("1/2")

<END>

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/2			pgreensl 05/01/2001	_____	lrb_docadmin 05/01/2001		S&L Tax

FE Sent For:

→ 05-04-01
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FE Sent For:		1/2 5/1 jld	5/1 P8	SELF <END>			

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/?	jkreye	1 3/28 jld	1 3/29 dm/29	Ch 3 dm/29			

FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.
Use this form only for bill draft requests. Attach more pages if necessary.

Date 3-23-01

Legislator, agency, or other person requesting this draft Rep. Sue Teskewitz

Person submitting request (name and phone number) Diane Handrick 6-3796

Persons to contact for questions about this draft (names and phone numbers) same

Goal Remove tax on acetylene + Oxygen when it's used to cut

Describe the problem, including any helpful examples. How do you want to solve the problem?

Currently, acetylene + oxygen are taxed since they are usually used as a fuel.

Our constituent uses acetylene + oxygen to cut steel. It is not used as a fuel in this case + should not be taxed that way.

According to DOR, the tax collected for acet + O₂ is so minimal
Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes:

Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

Thanks, Joe!

purchases of gases such as neon or argon used as a filler in the production of light bulbs are exempt. Welding rods which become a component part of the product manufactured may also be purchased without tax.

C. Items Consumed, Destroyed, or Losing Their Identity

Purchases of tangible personal property which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale are exempt under sec. 77.54(2), Wis. Stats. The exemption for items consumed or destroyed is, however, limited to purchases of items used by manufacturers in the manufacture of tangible personal property. The scope of this exemption is described in sec. Tax 11.41, Wis. Adm. Code.

The following items are deemed within the exemption if they are used "in the manufacture of tangible property for sale": acids, bleaching agents, catalysts, chemicals, cleaning compounds and solvents for maintaining manufacturing machinery, cutting and lubricating oils, filtering clay, fluxing material, foundry sand, greases, lapping and grinding compounds, purification agents, sandpaper, shielding gases, and wood used to smoke products.

Food processors who must maintain high sanitation standards in the manufacturing plant as required under established governmental standards may purchase chemicals and cleaning agents without tax to clean walls, ceilings, floors, and drains of the rooms in which manufacturing takes place, pursuant to the Wisconsin Tax Appeals Commission decision in *Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue*, dated May 18, 1984.

This exemption does not apply to purchases of clean towel service or to employe wearing apparel worn for the comfort or welfare of the employe. However, wearing apparel consumed during the manufacturing process which prevents contamination of the product produced is exempt.

D. "Destined for Sale" Restriction

Except for the exemption in sec. 77.54(2m), Wis. Stats., which applies to the production of shoppers guides, newspapers, and periodicals, there is no exemption for property which becomes an ingredient or component part of an article of tangible personal property unless the item produced is destined for sale. An item is not destined for sale if that item is:

- (a) Given away by the producer of the item.
- (b) Used by the manufacturer to repair the manufacturer's own equipment.

(c) Used to print advertising and the printer does not supply the paper.

Tangible personal property or services which become an ingredient or component of shoppers guides, news papers, or periodicals or that are consumed or lose their identity in the manufacture of one of those publications are exempt under sec. 77.54(2m), Wis. Stats. This provides an exemption for the paper purchased in the following situations:

- 1. The publisher of the exempt periodical provides the paper to the printer.
- 2. The publisher does its own printing of the exempt periodical.

Periodicals must be regularly issued at average intervals not exceeding 3 months and are defined in sec. Tax 11.19(3)(c), Wis. Adm. Code. The exemption in sec. 77.54(2m), Wis. Stats., does not apply to advertising supplements which are not newspapers. Therefore, a retailer's purchase of advertising supplements are taxable, whether the retailer has them distributed with a newspaper, shoppers guide, or other periodical.

E. Exemption in Sec. 77.54(2), Wis. Stats., Does Not Apply to Fuel or Electricity

The statutory language in sec. 77.54(2), Wis. Stats., specifically provides that fuel or electricity are not included within the exemption. Incorporated manufacturers, however, are permitted to offset corporate franchise or income taxes payable with sales tax paid on certain purchases of fuel and electricity, as described in section VI.B.

Coke used by a foundry is considered a fuel except for that portion (generally between 5% and 15%) of the coke which actually becomes an ingredient or component part of the grey-iron produced. An engineering analysis should be used to determine the correct percentage.

V. EXEMPTION FOR CONTAINERS AND OTHER PACKAGING AND SHIPPING MATERIALS

A. Statutory Language

Section 77.54(6)(b), Wis. Stats., exempts from the tax the gross receipts from the sale of and the storage, use, or other consumption of:

"Containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property, if such items are used by the purchaser to transfer merchandise to customers and meat casing, wrapping paper, tape, containers, la-

X
welding

shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.

(c) Section 77.54(2), Wis. Stats., provides an exemption for:

"The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity." (Emphasis added)

why X

2. Fuel Exemption Limited

The only exemptions for fuel used for business purposes are set forth in 1. (a) and (b).

3. Definitions of Fuel and Utility

"Fuel" is a material used to produce heat or power by burning, or something that feeds a fire. Gases such as acetylene or oxygen are, in most instances, used as a fuel. When oxygen is used to enrich the fuel mixture in an industrial furnace, or when oxygen and acetylene are used in a welding process, they are used as fuels.

A "utility" is a company authorized by law to perform a service for the public in a particular area, and is subject to Public Service Commission regulation. A corporation which produces electricity or steam primarily for its own consumption is not a utility.

not welding
cutting

B. The Franchise or Income Tax Credit

1. A Corporate Franchise or Income Tax Credit Is Available for Sales and Use Taxes Paid on Fuel and Electricity Consumed in Manufacturing

A corporation's franchise or income tax may be reduced by the Wisconsin sales and use taxes paid on fuel and electricity consumed in manufacturing tangible personal property in this state. Any unused credit may be carried forward to be offset against the corporation's franchise or income tax in the next succeeding 15 years. However, each year's credit must first be applied against the franchise or income tax liability of that year, before an unused credit from a prior year may be applied (sec. 71.28(3),

Wis. Stats.). Section Tax 2.11, Wis. Adm. Code, provides more information on this subject.

2. Must Be Consumed by a Manufacturer

This credit is allowed only to corporations engaged in manufacturing in Wisconsin. For an explanation of what constitutes manufacturing see section II.

3. Must Be Consumed in Manufacturing

The sales or use tax credit applies only to fuel or electricity which is "consumed in manufacturing." Fuel or electricity used to operate machines and equipment used directly in the step-by-step manufacturing process is consumed in manufacturing.

Fuel or electricity used outside the scope of manufacturing such as that used in providing plant heating, cooling, air conditioning, communications, lighting, safety, and fire prevention is not consumed in manufacturing and there is no credit for sales and use taxes paid thereon. Other activities which are outside the scope of manufacturing are activities associated with administration, advertising, distribution, receiving, research and product development, sales, shipping, storage, and warehousing.

When separate gas or electric meters are not used to determine what portion of the fuel or electricity is actually consumed in manufacturing, a reasonable allocation will be accepted.

4. When Sales and Use Taxes Are Paid

When computing the sales and use tax credit, the tax "paid" is to be construed in the light of the method used in computing taxable income. Thus, in computing the credit, a corporation which keeps its books and records on the accrual method may consider the sales and use taxes accrued during the income year for purchases made during that year. The credit applies to purchases made during the year, even though a portion of these purchases are in inventory at the end of the year.

VII. PRINTED ADVERTISING MATERIAL PURCHASED BY MANUFACTURERS FOR OUT-OF-STATE USE

A. Statutory Language

Under sec. 77.54(25), Wis. Stats., a sales and use tax exemption is provided for:

"The gross receipts from the sale of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the

Handrick, Diane

From: Ourada, Thomas D
Sent: Monday, December 11, 2000 4:37 PM
To: Handrick, Diane
Subject: RE: Question for you....

Diane, the tax on acetylene is referenced in the Wis. Administrative Code Tax 11.41 (4). This rule further defines what is included in fuel and electricity and so therefore is **not** tax exempt. The rule mentions oxygen and acetylene as being included as fuel. You can get some further information in our sales tax publication at <http://www.dor.state.wi.us/pubs/99pb201.pdf> Check page 32 for a description of manufacturing ingredients, component parts and consumable items that are exempt and you will see that fuel does not qualify. I have asked our research staff to put a fiscal note on the revenue from this taxation and they will try to do so - it is not expected to be that great.

-----Original Message-----

From: Handrick, Diane
Sent: Monday, December 11, 2000 10:08 AM
To: Ourada, Thomas D
Subject: Question for you....

Hi, Tom. Will you give me a call when you have a minute? I have some questions about the revenue generated for the DOR by the tax on acetylene (sp?) Thanks a bunch.

Diane Handrick
Office of Rep. Suzanne Jeskewitz
608.266.3796

Ruice
Law...
exceptions...
fabrication field
is different
cut material:
Sometimes use a
torch (O₂ + acetylene)
cut steel... not using
it as a fuel
propane - cut steel or run vehicles
When law started, couldn't believe this was categorized
as a fuel

~~deleted - used~~
left msg w/ male
employee...



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-296717

JK:.....

JLD RMR

in 3-28-01

1 AN ACT ^{gan} relating to: a sales tax and use tax exemption for oxygen and
2 acetylene[✓] used to cut metal.

Analysis by the Legislative Reference Bureau

This bill creates a sales tax and use tax exemption for oxygen and acetylene used to cut metal.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 77.54 (46)[✓] of the statutes is created to read:

4 77.54 (46) The gross receipts from the sale of and the storage, use, or other
5 consumption of oxygen and acetylene[✓] used to cut metal.

6 SECTION 2. Effective date.

7 (1) This act takes effect on the first day of the 2nd[✓] month beginning after
8 publication.

9 (END)

Kreye, Joseph

To: Handrick, Diane
Subject: RE: LRB question

Hi Diane,

That shouldn't cause any problems. "Manufacturing" is a defined term under s. 77.54 (6m). Therefore, I can change line 5 to read: "consumption of oxygen and acetylene used to cut metal **in manufacturing, as defined under s. 77.54 (6m).**

Joseph T. Kreye, Legislative Attorney
Legislative Reference Bureau
(608) 266-2263
joseph.kreye@legis.state.wi.us

-----Original Message-----

From: Handrick, Diane
Sent: Monday, April 30, 2001 10:55 AM
To: Kreye, Joseph
Subject: LRB question

Hi, Joe. Regarding LRB 2967 (sales and use tax exemption for acetylene and oxygen used to cut metal), would it cause any problems to add:

(line 5): consumption of oxygen and acetylene used to cut metal **in the manufacturing process**

1. Should it say "manufacturer's process" or read as above?
2. This wording was suggested to differentiate the manufacturing process from other groups who use these materials to cut, such as demolition companies or companies which compress cars....

Thanks!

Diane Handrick
Office of Rep. Suzanne Jeskewitz
608.266.3796



2

2001 BILL

SOON
in May '01

Regen

1 AN ACT to create 77.54 (46) of the statutes; relating to: a sales tax and use tax
2 exemption for oxygen and acetylene used to cut metal.

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This bill creates a sales tax and use tax exemption for oxygen and acetylene used to cut metal. *in manufacturing* ✓

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5 consumption of oxygen and acetylene used to cut metal.

6 SECTION 2. Effective date.

in manufacturing, as defined under s. 77.54(6m) Sub.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

May 22, 2001

MEMORANDUM

To: Representative Jeskewitz

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to 2001 (un-introduced) (LRB-2967/2)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

May 22, 2001

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on LRB 2967/2 regarding Exempting from Sales and Use Tax Acetylene and Oxygen Used to Cut Metal

We have the following concerns about LRB 2967/2:

1. In addition to acetylene and oxygen, other industrial gases are used to cut metal, such as natural gas, propane and other propylene-based fuels. The Administrative Code (s. Tax 11.81(2)(b)2.) refers to "Acetylene and other gases used in torches...". The sponsor may wish to substitute the phrase "... other gases used to cut metal in manufacturing", unless the bill's intent is to be limiting.
2. According to a major distributor of acetylene and oxygen in Wisconsin, oxy-acetylene welding has been largely supplanted by newer technologies. Nonetheless, an administrative problem for the manufacturer and the department would occur if the manufacturer used the same fuel tanks and equipment for welding, cleaning or any purpose other than cutting metal in manufacturing.

If you have questions regarding this technical memorandum, please contact Blair Kruger at 266-1310 or bkruger@dor.state.wi.us.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

May 1, 2001

MEMORANDUM

To: Representative Jeskewitz

Thanks, Joe!

From: Joseph T. Kreye, Legislative Attorney

Re: LRB-2967/2 Sales and use tax exemption for acetylene and oxygen used to cut metal

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2263 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

*called 5/4/01
5 days from now
should be back by now*

Emery, Lynn

From: Emery, Lynn
Sent: Friday, July 06, 2001 4:59 PM
To: Rep.Jeskewitz
Subject: LRB-2967/2 (attached)



01-2967/2

Memo

To: Rep. Jeskewitz (The Bill's Requestor)

Attached is a fiscal estimate prepared for your 2001 draft that has not yet been introduced.

LRB Number: LRB -2967

Version: "1/2"

Entered In Computer And Copy Sent To Requestor Via E-Mail: 05/22/2001

Fiscal Estimate Prepared By: (agency abbr.) DOR

If you have questions about the attached fiscal estimate, you may contact the agency/individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* * * * *

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

- If this is **re-drafted** to a new version please attach this early fiscal estimate to the back of the draft's file between the old version and the new version.
- If this draft gets **introduced** ... and the version of the attached fiscal estimate is correct ... please write the drafts intro. number below and give this fiscal estimate to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2001 AB-471

- If this draft gets **introduced** ... and the version of the attached fiscal estimate is for a previous version ... please attach this early fiscal estimate to the back of the draft's file between the old version and the new version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.

Barman, Mike

From: Barman, Mike
Sent: Tuesday, May 22, 2001 3:41 PM
To: Rep.Jeskewitz
Subject: LRB-2967/2 (FE by DOR - attached - for your review)



FE.pdf

Fe