

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-162**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. The definition of “exclusively” in s. Tax 11.20 (2) (d) should be redrafted. First, the definition is internally inconsistent. The first part of the definition requires that items be “used solely” in activities that qualify for the exemption while the last part of the definition says that the sales and use tax exemption is not invalidated by “infrequent and sporadic use for purposes other than exempt activities.” It is suggested that the word “solely” be replaced with a word that more clearly indicates the department’s intent concerning the extent to which items must be used in exempt activities in order to qualify for a sales and use tax exemption.

b. In s. Tax 11.20 (2) (f) and (4) (c), “including” should replace “such as.”

c. In s. Tax 11.20 (4) (m) (intro.), “in any of the following manners” should replace “as follows.”

d. Section Tax 11.20 (6) (b) is explanatory material, rather than an administrative rule. If the department feels that the explanation in s. Tax 11.20 (6) (b) is necessary, it should be placed in a note to s. Tax 11.20. [See s. 1.09 (1), Manual.]

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The definition of “amount” in s. Tax 11.20 (a) is confusing. It is unclear what is meant by the phrase “at hand or under consideration.” The department should clarify this definition.

b. The first sentence of the note following s. Tax 11.20 (3) and the second note following this subsection would be more properly placed following s. Tax 11.20 (6) (a), which explicitly provides that waste reduction and recycling activities do not include the collection, transportation or storage of solid waste.

c. Section Tax 11.20 (4) (intro.) implies that the sales and use tax exemption for motor vehicles depends upon whether the motor vehicle is used exclusively and directly in waste reduction or recycling activities. The language of the rule implies this because it includes motor vehicles along with machinery and equipment in the introductory paragraph to the rule. However, under s. 77.54 (5) (c), Stats., motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used ***in conjunction with*** waste reduction or recycling activities are exempt from the sales and use tax. In contrast, the sales and use tax exemption for recycling machinery and equipment under s. 77.54 (26m), Stats., provides that the test is whether the machinery and equipment is “exclusively and directly used for waste reduction or recycling activities.” The Wisconsin Court of Appeals has found this difference in language between the two statutory sections significant in relation to how “directly” motor vehicles or machinery and equipment have to be used in recycling or waste reduction activities in order to qualify for exemption. [*Wisconsin Department of Revenue v. Parks-Pioneer Corporation*, 170 Wis. 2d 44, 487 N.W.2d 63 (Ct. App. 1992).] Section Tax 11.20 (4) (intro.) should be revised to reflect this difference. This comment is also applicable to s. Tax 11.20 (5) (intro.).

d. It is suggested that the phrase “from sand and to” be substituted for the second occurrence of the word “and” in s. Tax 11.20 (4) (a).

e. It is suggested that the department renumber and place s. Tax 11.20 (6) (a) before s. Tax 11.20 (4) and (5). Section Tax 11.20 (6) (a) contains the department’s interpretation of when the recycling or waste reduction process begins and ends for activities that recycle or reuse solid waste. Section Tax 11.20 (6) (a) is therefore helpful in understanding the specific examples in s. Tax 11.20 (4) and (5) of motor vehicles, machinery and equipment which do or do not qualify for a sales and use tax exemption under s. 77.54 (5) (c) and (26m), Stats.

f. In many instances, s. Tax 11.20 (4) and (5) provide that motor vehicles, machinery and equipment are or are not exempt from the sales tax under s. 77.54 (5) (c) and (26m), Stats., depending upon how material or substances upon which the machinery and equipment is used are eventually disposed of. For example, s. Tax 11.20 (4) (d) provides that machinery and equipment used to chop up branches, after they have been removed from the tree, into small chips which will be reused, are exempt from the sales and use tax. Presumably, if the chips are not reused, the machinery and equipment does not qualify for the tax exemption. Similarly, s. Tax 11.20 (4) (m) provides that balers used by certain entities are exempt if the baled material is sold or transferred for purposes relating to recycling or is reused. Presumably, the machinery

and equipment is not exempt from the tax if the material is not used in the manner specified in par. (m). In addition, s. Tax 11.20 (5) (h), (i) and (j) provide that certain equipment used to process or compact waste is not exempt from the sales and use tax if the material or substances upon which the equipment is used are sent to a landfill.

The determination of whether the gross receipts from the sale or use of motor vehicles, machinery and equipment is made at the time of the sale. Because the test for whether many of the items under s. Tax 11.20 are or are not exempt depends upon how the material upon which they are used is ultimately disposed of, the department should consider adding language to s. Tax 11.20 to allow taxpayers to notify the department if activities subsequent to the purchase of the motor vehicle, machinery or equipment change the tax status of the purchase.