

WISCONSIN LEGISLATIVE COUNCIL STAFF



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 98-128

AN ORDER to repeal Tax 11.09 (6); to amend Tax 11.09 (1), (2) (title) and (4) (e) and 11.28 (2) (b), (c) and (f), (3) (c) 1. b. and (4) (b) and (c); and to create Tax 11.09 (4) (f) and 11.28 (7), relating to medicines and to gifts and other advertising specialties.

Submitted by **DEPARTMENT OF REVENUE**

09-01-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-25-98 REPORT SENT TO AGENCY.

RNS:WF:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-128

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

The amended title to s. Tax 11.09 (2) should be shown with strike-throughs and underscores. [See s. 1.05 (3) (b), Manual.]



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

January 26, 1999

Honorable Fred Risser
President, State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Honorable Scott Jensen
Speaker, State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Clearinghouse Rule 98-128

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 medicines and to gifts and other advertising specialties is in final draft form. The proposed rule order was published in the *Wisconsin Administrative Register* on October 31, 1998. 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. 77.54(14)(f) and 77.57, Stats.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended, to conform language to Legislative Council Rules Clearinghouse standards.

SECTIONS 2, 3 AND 5. Tax 11.09(4)(f) and 11.28(7) are created and Tax 11.09(6) is repealed, to reflect the sales and use tax exemption for certain medicines furnished without charge, as a result of the creation of s. 77.54(14)(f), Stats., by 1997 Wis. Act 27.


SECTION 4. Tax 11.28(2)(b) and (f), (3)(c)1.b. and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).

Honorable Fred Risser
Honorable Scott Jensen
Page 2

Tax 11.28 (2)(c) is amended, to reflect that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.

Tax 11.28(4)(b) is amended, to reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.

Sincerely,


Cate Zeuská
Secretary of Revenue

CZ:MPW:cli
i/rules/1109 Committees – President, Speaker

Enclosure

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 98-128
SECTION 227.19(2) AND (3), STATS., REPORT

Need For Proposed Rule

The rule is necessary to:

- Reflect a new law relating to an exemption for certain medicines furnished without charge.
- Reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.
- Clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).
- Reflect the department's position that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.
- Conform format to Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was not required, pursuant to s. 227.16(2)(e), Stats.

Legislative Council Staff Recommendations

All recommendations of the Legislative Council staff have been incorporated into the proposed order.

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, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.09(6); amend Tax 11.09(1), (2)(title) and (4)(e) and 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c); and create Tax 11.09(4)(f) and 11.28(7), relating to medicines and to gifts and other advertising specialties.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.54(14)(f) and 77.57, Stats.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended, to conform language to Legislative Council Rules Clearinghouse standards.

SECTIONS 2, 3 AND 5. Tax 11.09(4)(f) and 11.28(7) are created and Tax 11.09(6) is repealed, to reflect the sales and use tax exemption for certain medicines furnished without charge, as a result of the creation of s. 77.54(14)(f), Stats., by 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b) and (f), (3)(c)1.b. and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).

Tax 11.28 (2)(c) is amended, to reflect that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.

Tax 11.28(4)(b) is amended, to reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended to read:

Tax 11.09(1) DEFINITION. For the exemption in s. 77.54(14), Stats., "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such that use.

(2)(title) EXAMPLES OF ITEMS WHICH ARE MEDICINES.

(4)(e) Sold to this state or any political subdivision or municipal corporation thereof of the state, for use in the treatment of a human being; or furnished for the treatment of a human

being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof of the state.

SECTION 2. Tax 11.09(4)(f) is created to read:

Tax 11.09(4)(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

SECTION 3. Tax 11.09(6) is repealed.

Note to Revisor: Replace the second note at the end of Tax 11.09 with the following:

Note: The interpretations in s. Tax 11.09 are effective under the general sales and use tax law on and after September 1, 1969, except: The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c) are amended to read:

Tax 11.28(2)(b) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a grand opening or similar event, such as an open house, celebrity appearance or farm days, cannot accept a resale certificate in good faith if the seller is aware, or should be aware, of how the property will be used. In cases where a seller furnishes free property to a retailer for use as gifts at a grand opening or similar event, the seller furnishing the property to the retailer without charge is subject to the sales or use tax on its cost of the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

(c) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable tangible personal property or taxable services, the transaction is completed and the retailer's tax liability accrues at that time.

(f) *Gifts originally purchased for resale.* When a person purchases property for resale or for ~~either~~ another exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or ~~either~~ another exempt purpose and does not donate the property to an entity described in s. 77.54(9a), Stats., the purchaser shall be liable for use tax based on the ~~purchaser's cost of the new merchandise or ingredients~~ property.

(3)(c)1.b. A retailer may not use a resale certificate when purchasing taxable tangible personal property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the use tax based on the ~~cost of the property~~.

Note to Revisor: Replace example 2 at the end of sub. (3)(c)1.b. with the following:

2) A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier a resale certificate, the retailer is liable for tax on the key chains given away.

(4)(b) ~~The~~ A sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is ~~providing an advertising service~~ selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

(c) Retailers are subject to the sales and use tax on ~~their cost of~~ taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies.

Note to Revisor: Replace the example at the end of sub. (4)(c) with the following:

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods including rolls, bagels, muffins and bread, ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A's customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods, ground coffee beans and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items not for direct consumption on the premises of the vendor under s. 77.54(20), Stats. Motel A's purchases of the napkins, plastic utensils and paper plates and cups are subject to sales or use tax because no exemption applies.

SECTION 5. Tax 11.28(7) is created to read:

Tax 11.28(7) CERTAIN MEDICINES FURNISHED WITHOUT CHARGE. No sales or use tax is owed on medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

Example: A drug manufacturer furnishes medicine samples to doctors without charge. The medicine samples may not be dispensed without a prescription. The drug manufacturer does not owe sales or use tax on its cost of the ingredients for the medicine samples.

Note to Revisor: 1) Remove example 3 at the end of sub. (2)(a).

2) Replace the two notes at the end of Tax 11.28 with the following:

Note: Section Tax 11.28 interprets ss. 77.51(4)(a) and (14)(k), 77.54(14)(f), 77.56(3) and 77.57, Stats.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; and (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

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: Oct 2, 1998

By: Cate Zeuske
Cate Zeuske
Secretary of Revenue

Proposed Order 1109

LRB or Bill No./Adm. Rule No.
TAX 11.09 and 11.28
 Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
Sales and Use Tax Treatment of Medicines, and of Gifts and Other Advertising Specialties

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

Local: No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase 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
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule interprets the sales and use tax exemption, created in 1997 Wisconsin Act 27, for prescription medicines furnished without charge by health practitioners, and clarifies the sales and use tax treatment of promotional gifts, gift certificates, and coupon and voucher books. These changes have no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) Wisconsin Department Of Revenue Dennis Collier, (608) 266-5773	Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 <i>Yeang-Eng Braun</i>	Date 8/21/98
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TITLE: Expand Exemption for Certain Farm Machines

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Section 77.54(3)(a), Wis. Stats. (1997-98), provides, in part, an exemption from Wisconsin sales or use tax for machines used exclusively and directly in farming except for the following:

1. Motor vehicles licensed for highway use.
2. Personal property attached to, fastened to, connected to, or built into real property.

An exception applies to the following which may be attached to, fastened to, connected to, or built into real property and still qualify for the machine exemption:

- Auxiliary power generators
- Bale loaders
- Barn cleaners and elevators
- Conveyors
- Feed elevators and augers
- Grain dryers and grinders
- Milk coolers
- Milking machines, including piping, pipeline washers and compressors
- Powered feeders, excluding platforms and troughs constructed from ordinary building materials
- Silo unloaders

3. Personal property used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that personal property makes to the production process in that building or real property.

Under this exemption, a farmer could purchase a machine from a vendor without installation and purchase the machine without tax even though the farmer may install the machine later or hire someone else to install it. However, if the vendor installs the machine (i.e., attaches it to the real estate) the farmer may not claim exemption on the charge for the sale and installation of the machine (with the exception of the bullet items in 2. above).

RECOMMENDATION FOR ACTION:

Revise sec. 77.54(3), Wis. Stats. (1997-98), to allow exemption for machines that remain tangible personal property upon installation, even though attached to, fastened to, connected to, or built into real property.

Note: For items that become real property when installed, the tax treatment will remain the same. Therefore, a contractor who sells and installs property that becomes real property when installed is the consumer of the property and shall pay tax on its purchase of the property (e.g., roofs, walls, floors, heating and cooling components, general wiring and plumbing, etc.). In addition, the sale of a building that functions as a machine (e.g., greenhouse) will continue not to qualify for exemption.

FISCAL/ADMINISTRATIVE IMPACT

The farming exemption for machinery will be less complicated and more equitable.

DRAFTING INSTRUCTIONS

See Recommendation.

EFFECTIVE DATE OR INITIAL APPLICABILITY

First day of second month beginning after publication.

PERSON TO CONTACT: Vicki Gibbons
(608) 266-3873

PREPARED BY: Vicki Gibbons
February 26, 1999

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.09(6); amend Tax 11.09(1), (2)(title) and (4)(e) and 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c); and create Tax 11.09(4)(f) and 11.28(7), relating to medicines and to gifts and other advertising specialties.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.54(14)(f) and 77.57, Stats.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended, to conform language to Legislative Council Rules Clearinghouse standards.

SECTIONS 2, 3 AND 5. Tax 11.09(4)(f) and 11.28(7) are created and Tax 11.09(6) is repealed, to reflect the sales and use tax exemption for certain medicines furnished without charge, as a result of the creation of s. 77.54(14)(f), Stats., by 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b) and (f), (3)(c)1.b. and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).

Tax 11.28 (2)(c) is amended, to reflect that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.

Tax 11.28(4)(b) is amended, to reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.

SECTION 1. Tax 11.09(1), (2)(title) and (4)(e) are amended to read:

Tax 11.09(1) DEFINITION. For the exemption in s. 77.54(14), Stats., "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such that use.

(2)(title) ~~EXAMPLES OF~~ ITEMS WHICH ARE MEDICINES.

(4)(e) Sold to this state or any political subdivision or municipal corporation ~~thereof~~ of the state, for use in the treatment of a human being; or furnished for the treatment of a human

being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof of the state.

SECTION 2. Tax 11.09(4)(f) is created to read:

Tax 11.09(4)(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

SECTION 3. Tax 11.09(6) is repealed.

Note to Revisor: Replace the second note at the end of Tax 11.09 with the following:

Note: The interpretations in s. Tax 11.09 are effective under the general sales and use tax law on and after September 1, 1969, except: The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.

SECTION 4. Tax 11.28(2)(b), (c) and (f), (3)(c)1.b. and (4)(b) and (c) are amended to read:

Tax 11.28(2)(b) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a grand opening or similar event, such as an open house, celebrity appearance or farm days, cannot accept a resale certificate in good faith if the seller is aware, or should be aware, of how the property will be used. In cases where a seller furnishes free property to a retailer for use as gifts at a grand opening or similar event, the seller furnishing the property to the retailer without charge is subject to the sales or use tax on ~~its cost~~ of the property donated, unless the property is exempt from use tax under s. 77.56(3), Stats., because it is donated to an entity exempt from sales or use tax under s. 77.54(9a), Stats.

(c) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable tangible personal property or taxable services, the transaction is completed and the retailer's tax liability accrues at that time.

(f) *Gifts originally purchased for resale.* When a person purchases property for resale or for ~~either~~ another exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or ~~either~~ another exempt purpose and does not donate the property to an entity described in s. 77.54(9a), Stats., the purchaser shall be liable for use tax ~~based on the purchaser's cost of the new merchandise or ingredients~~ property.

Note to Revisor: Insert the following note at the end of sub. (2)(f):

Note: The amount subject to tax is the sales price as described in s. Tax 11.32, except that the fair market value may be used if the requirements of s. 77.57, Stats., are met.

(3)(c)1.b. A retailer may not use a resale certificate when purchasing taxable tangible personal property which the retailer knows, or should know, is to be given away to customers without the customers being required to purchase other property to receive the free property. If the property that is given away was acquired without tax for resale, the retailer shall report the use tax ~~based on the cost of the property~~.

Note to Revisor: Replace example 2 at the end of sub. (3)(c)1.b. with the following:

2) A retailer purchases key chains that are subsequently given away to customers, regardless of whether the customer makes a purchase. If the retailer purchased the key chains without Wisconsin sales or use tax by giving its supplier a resale certificate, the retailer is liable for tax on the key chains given away.

(4)(b) ~~The~~ A sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is ~~providing an advertising service~~ selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

(c) Retailers are subject to the sales and use tax on ~~their cost~~ of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person unless an exemption applies.

Note to Revisor: Replace the example at the end of sub. (4)(c) with the following:

Example: Motel A provides a free breakfast with the purchase of lodging. Motel A purchases fruit, milk, cereal, bakery goods including rolls, bagels, muffins and bread, ground coffee beans, frozen juice, napkins, plastic utensils, and paper plates and cups from a vendor. Motel A prepares the coffee and juice. The food and beverages are placed on a table in the lobby. Motel A's customers may take as much or as little as they want of the food and beverage items.

Motel A's purchases of fruit, milk, cereal, bakery goods, ground coffee beans and frozen juice are not subject to Wisconsin sales or use tax because they are exempt food items not for direct consumption on the premises of the vendor under s. 77.54(20), Stats. Motel A's purchases of the napkins, plastic utensils and paper plates and cups are subject to sales or use tax because no exemption applies.

SECTION 5. Tax 11.28(7) is created to read:

Tax 11.28(7) CERTAIN MEDICINES FURNISHED WITHOUT CHARGE. No sales or use tax is owed on medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

Example: A drug manufacturer furnishes medicine samples to doctors without charge. The medicine samples may not be dispensed without a prescription. The drug manufacturer does not owe sales or use tax on its cost of the ingredients for the medicine samples.

Note to Revisor: 1) Remove example 3 at the end of sub. (2)(a).

2) Replace the two notes at the end of Tax 11.28 with the following:

Note: Section Tax 11.28 interprets ss. 77.51(4)(a) and (14)(k), 77.54(14)(f), 77.56(3) and 77.57, Stats.

Note: The interpretations in s. Tax 11.28 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wis. Act 31; and (b) The exemption for certain medicines furnished without charge became effective October 14, 1997, pursuant to 1997 Wis. Act 27.


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: 2-26-99

By: 
Cate Zeuske
Secretary of Revenue

Proposed Order 1109

**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 11.12(4)(a)5.c.; renumber Tax 11.12(2)(e); renumber and amend Tax 11.12(2)(d) and (f); and amend Tax 11.12(1), (3), (4)(a)(intro.) and 7.c. and (b)(intro.), 1. and 6.(title), a., b., c. and e., (5), (6)(b)1. and (7)(b), relating to the sales and use tax treatment of farmers.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.54(3), (3m) and (33), Stats.

SECTION 1. Tax 11.12(1) is amended, to conform language to Legislative Council Rules Clearinghouse (Clearinghouse) standards.

SECTION 2. Tax 11.12(2)(d), (e) and (f) are renumbered Tax 11.12(2)(f), (d) and (e), to alphabetize the definitions in conformity with Clearinghouse standards.

As renumbered, Tax 11.12(2)(e) is amended, to clarify that "farm work stock" includes horses used exclusively in farming to check on or herd livestock but does not include horses used for racing, pleasure riding or show.

As renumbered, Tax 11.12(2)(f) is amended, to reflect a change in department position. The department's position is that raising earthworms is farming.

SECTION 3. Tax 11.12(3) is amended, to reflect the discontinuance of the use of Form S-206. Farming exemptions are now claimed on a multipurpose exemption certificate, Form S-211.

Tax 11.12(4)(a)(intro.) is amended, to correct a direct statutory quote.

SECTION 4. Tax 11.12(4)(a)5.c. is repealed, to remove misleading information regarding machines installed into real estate.

SECTION 5. Tax 11.12(4)(a)7.c. is amended, to delete feed carts and non-powered gravity flow feeders from the list of taxable items, as this position is incorrect, and to conform language to Clearinghouse standards.

Tax 11.12(4)(b)(intro.) is amended, to update a direct statutory quote.

Tax 11.12(4)(b)1. is amended, to conform language to Clearinghouse standards.

Tax 11.12(4)(b)6.(title) and a. are amended, to include feeders and feed carts as exempt containers for grain if used to hold hay, silage or feed which contains grain, and to include plastic bags, plastic sleeves and plastic sheeting as exempt containers for grain if used

to store or cover hay or silage. This change reflects the repeal and recreation of s. 77.54(3m), Stats., by 1997 Wis. Act 27, which clarified the department's position relating to these items.

Tax 11.12(4)(b)6.b., c. and e. are amended, to reflect the discontinuance of the use of farmer's exemption certificates. Farming exemptions are now claimed on a multipurpose exemption certificate, Form S-211.

Tax 11.12(5)(a) is amended, to clarify that an exemption may be claimed when having draft horses or horses used exclusively in farming for breeding or to check on or herd livestock shod, but not when having horses ridden for pleasure shod.

Tax 11.12(5)(b) is amended, to clarify that fees for breeding farm livestock or farm work stock and charges for artificial insemination of farm livestock or farm work stock and medical and hospitalization services furnished by veterinarians are not taxable.

Tax 11.12(5)(c) is amended, to clarify that breeding or artificial insemination of animals other than farm livestock or farm work stock are taxable services.

Tax 11.12(6)(b)1. is amended, to clarify that the boarding of horses used for racing, pleasure riding or show is taxable, and to reflect the discontinuance of the use of resale certificates. Exemptions for resale are now claimed on a multipurpose exemption certificate, Form S-211.

Tax 11.12(7)(b) is amended, to clarify that taxable sales by farmers include sales of horses for use in pleasure riding.

The third note at the end of Tax 11.12 is removed, because it is obsolete.

SECTION 1. Tax 11.12(1) is amended to read:

Tax 11.12(1) STATUTES. Section 77.54(3) and (3m), Stats., provides exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture ~~and~~ or floriculture as a business enterprise.

SECTION 2. Tax 11.12(2)(d), (e) and (f) are renumbered Tax 11.12(2)(f), (d) and (e), and as renumbered Tax 11.12(2)(e) and (f) are amended to read:

Tax 11.12(2)(e) "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase includes horses used exclusively in farming to check on or herd livestock. The phrase does not include dogs, ~~riding horses, racing horses~~

used for racing, pleasure riding or show or laboratory animals. The food for animals which are not farm work stock is taxable unless the animals are livestock as defined in par. (i).

Example: Dog and cat food is taxable.

(f) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "farming" includes raising earthworms, pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses and llamas for sale; and raising ginseng, muchrooms and sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; ~~raising earthworms~~; operating sporting or recreational facilities, such as riding stables or shooting preserves; operating stockyards, slaughterhouses or feed lots as described in par. (g); lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

SECTION 3. Tax 11.12(3) and (4)(a)(intro.) are amended to read:

Tax 11.12(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. ~~The standard "farmer's exemption certificate," form S-206, provides for continuous use under certain conditions.~~ The certificate shall be used only for categories of items listed on it. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4)(a)(intro.) Section 77.54(3)(a), Stats., exempts: "The gross receipts from the sales of

and the storage, use or other consumption of tractors and machines, including accessories, attachments and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to or built into real property or that becomes an addition to, component of or capital improvement of real property and excluding tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that that personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine.” For purposes of this section:

SECTION 4. Tax 11.12(4)(a)5.c. is repealed.

SECTION 5. Tax 11.12(4)(a)7.c. and (b)(intro.), 1. and 6.(title), a., b., c. and e., (5),(6)(b)1. and (7)(b) are amended to read:

Tax 11.12(4)(a)7.c. Non-powered applicators for insecticides, cattle chutes, farrowing crates, ~~feed carts,~~ fire extinguishers, flood gates, ~~non-powered gravity flow feeders,~~ saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations, or “oilers,” snowmobiles; and stationary salt and mineral feeders.

(b)(intro.) Section 77.54(3m), Stats., exempts: “The gross receipts from sales ~~of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise~~ the sale of and the storage, use or other consumption of the following items if they are used

exclusively by the purchaser or user in the business of farming; including dairy farming, agriculture, horticulture, floriculture and custom farming services:

- (a) Seeds for planting.
- (b) Plants.
- (c) Feed.
- (d) Fertilizer.
- (e) Soil conditioners.
- (f) Animal bedding.
- (g) Sprays, pesticides and fungicides.
- (h) Breeding and other livestock.
- (i) Poultry.
- (j) Farm work stock.
- (k) Baling twine and baling wire.
- (L) Containers for fruits, vegetables, grain, hay, silage and animal wastes.
- (m) Plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or

silage. "Exclusively" as used in s. 77.54(3m), Stats., and in this section means that the items mentioned in s. 77.54(3m), Stats., are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for such those items will not be invalidated by an infrequent and sporadic use other than in farming. For purposes of this section:

1. 'Seeds for planting.' "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and ~~vegetable seeds~~ vegetables; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

6.(title) 'Containers for fruits, vegetables, grain, hay, silage and animal wastes and

plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage.

a. "Containers for fruits, vegetables, grain, hay, silage and animal wastes and plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains, hay, silage or animal wastes. The phrase ~~does not include~~ includes feeders and feed carts designed if used to hold various ~~green and dry feeds~~ hay, silage or feed which contains grain.

b. A complete corn crib or grain bin may be purchased "knocked-down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install the bin permanently into real estate is a consumer of the bin, not its seller. The contractor, dealer or installer, not being a farmer, may not furnish a farmer's an exemption certificate claiming a farming exemption on the bin's purchase. Being the consumer, not a seller, the contractor shall pay the sales tax to the supplier or report the use tax or sales tax pursuant to s. Tax 11.14(2)(c) on the purchase price directly to the department. A farmer who utilizes the farmer's exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. Farmers may purchase animal waste containers or the component parts thereof of animal waste containers without tax, by issuing their supplier a properly completed "single purchase" ~~farmer's~~ exemption certificate.

e. Milk cans are not covered by the farmer's farming exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

(5) SERVICES FURNISHED TO FARMERS. (a) The repair, service, alteration, fitting,

cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under s. 77.54(3) and (3m), Stats., are also exempt from the sales and use tax under s. 77.52(2)(a)10., Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses or horses used exclusively in farming for breeding or to check on or herd livestock shod, but not when having riding horses ridden for pleasure shod.

(b) ~~Breeding fees, Fees for breeding farm livestock or farm work stock~~ and charges for artificial insemination of ~~animals and veterinarians' services~~ farm livestock or farm work stock and medical and hospitalization services furnished by veterinarians are not taxable.

(c) The exemptions under s. 77.54(3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52(2)(a), Stats., including telephone, laundry, dry cleaning and photographic services and breeding or artificial insemination of animals other than farm livestock or farm work stock.

(6)(b)1. 'Boarding animals'. The boarding of dogs, cats, ~~riding horses, ponies~~ used for racing, pleasure riding or show or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed resale exemption certificate claiming an exemption for resale.

Note to Revisor: In sub. (6)(a)1. and 2. and (b)2., insert the periods inside the close quotation marks.

(7)(b) Horses for use in racing, pleasure riding or show.

Note to Revisor: Remove the third note at the end of Tax 1.1.12.

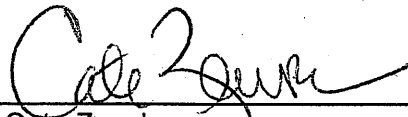
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

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: 2-26-99

By: 
Cate Zeuske
Secretary of Revenue

i.rules\1112 Proposed Order



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
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Secretary of Revenue

February 26, 1999

✓ Representative Michael Lehman
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Representative Wayne Wood
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Dear Representatives Lehman and Wood:

This letter is in response to our discussion on Tuesday, February 16, 1999, regarding Clearinghouse Rule Orders 97-029 and 98-128.

The following changes have been made to the rule orders:

- **Clearinghouse Rule 97-029 relating to farming (Attachment 1)**

1. Sections 2 and 5, pages 3 and 8

It is clarified that although horses may not be work stock, they are exempt if they are livestock (i.e., used to breed horses for sale or for further breeding).

2. Section 3, page 4

The words "that that" are not changed to "which that" as suggested, since the language currently in the rule is a direct statutory quote (sec. 77.54(3)(a), Wis. Stats.).

2. Section 3, pages 4 and 5

Changes that were to be made to clarify that certain machines sold without installation are exempt, while those same machines when sold installed are taxable, have been deleted. Accordingly, the portion of the Analysis section of the rule relating to the changes originally proposed has also been deleted.

See Attachment 3 for information regarding the legislative change you wished to pursue.

- **Clearinghouse Rule 98-128 relating to medicines and gifts (Attachment 2)**

Section 4, page 3 is changed to provide greater detail as to how the amount subject to tax is computed.

You had also expressed some concern about the changes in Clearinghouse Rule 97-029 regarding the tax treatment of (1) earthworm raising as farming and (2) the breeding of horses as farming.

Representative Lehman
Representative Wood
February 26, 1999
Page Two

1. The department's legal staff gave the opinion that earthworm raising is farming whether the earthworms are maintained for producing castings and cocoons or for sale as bait. Raising earthworms for a purpose other than for sale or for producing a useful product (e.g., laboratory testing) is not farming.

This treatment is consistent with raising fish or chickens. Breeding for purposes of producing other fish and chickens to further breed is farming, as is the raising of fish for food and raising of chickens to produce eggs that will be sold as food.

2. Both prior to and after the changes in the above mentioned rule order, the breeding of horses for sale is considered farming. In addition, the breeding of horses that will in turn be used for further breeding is also considered farming. The horses in question are considered farm livestock. Therefore, feed, medicines, etc. for such livestock may be purchased without tax.

Both prior to and after the proposed rule change, farming exemptions will not be denied for horses produced from a breeding operation that are raced prior to their sale with the intention that such racing will increase the value of the horse.

Lastly, a business solely in the business of racing that may breed horses to race (i.e., not to sell) is not considered farming either before or after the proposed rule changes.

If you have any questions regarding this memo and revised rule order, please contact me.

Sincerely,



Tom Ourada
Executive Assistant

Attachments