

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 98-144

AN ORDER to amend Tax 11.19 (2) (d) and (f), (5) (intro.) and (b) and (6); and to create Tax 11.70 (3) (m), relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Submitted by **DEPARTMENT OF REVENUE**

09-29-98 RECEIVED BY LEGISLATIVE COUNCIL.
10-15-98 REPORT SENT TO AGENCY.

RNS:WF:kjf



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

March 18, 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 98-144

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 printed material exemptions and the sales and use tax treatment of advertising agencies is in final draft form. The proposed rule order and Notice of Hearing were published in the **Wisconsin Administrative Register** in Mid-February, 1999. A public hearing was held on February 26, 1999.

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: s. 77.54(9a), Stats., s. 77.51(18) and (22)(a), Stats., as amended by 1997 Wis. Act 27, and s. 77.54(43), Stats., as created by 1997 Wis. Act 27

SECTION 1. Tax 11.19(2)(d) and (f) and (5)(intro.) and (b) are amended, to reflect the amendment of s. 77.51(18) and (22)(a), Stats., and the creation of s. 77.54(43), Stats., by 1997 Wis. Act 27. These changes provide a sales tax exemption for raw materials of printed materials transported and used solely outside of Wisconsin. Previously, these materials were only exempt from use tax.

SECTION 2. Tax 11.70(3)(m) is created, to reflect the amendment of s. 77.51(18) and (22)(a), Stats., and the creation of s. 77.54(43), Stats., by 1997 Wis. Act 27.

Sincerely,

A handwritten signature in black ink, appearing to read "Cate Zeuske", written in a cursive style.

Cate Zeuske
Secretary of Revenue

CZ:MPW:cll
e:rules/1119 Committees - President Speaker

Enclosure

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 98-144
SECTION 227.19(2) AND (3), STATS., REPORT

Need For Proposed Rule

The rule is necessary to:

- Reflect law changes relating to providing a sales tax exemption for raw materials of printed materials transported and used solely outside of Wisconsin.
- Clarify that the exemption for governmental units applies only to Wisconsin and federal governmental units.
- Reflect that certificates of exempt status are issued to governmental units.

Public Hearing

A public hearing was requested by Attorney Peter C. Christianson of Quarles & Brady, on behalf of Printing Industries of Wisconsin (PIW). The public hearing was held on February 26, 1999, and was attended by Mr. Christianson and Mr. Niall Power, President and C.E.O. of PIW.

The concern was that in a new example at the end of Tax 11.70(2)(j), printing was characterized as a service rather than a sale of tangible personal property. The trade was concerned that by terming it a service the department was taking the position that it was not manufacturing. That was not the case, and the example was revised to clarify this. Attached to this report are copies of a memorandum presented by Mr. Christianson at the beginning of the hearing, and a copy of the page of the proposed order showing the hand-written changes to the example.

Legislative Council Staff Recommendations

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

Regulatory Flexibility Analysis

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

M E M O R A N D U M

TO: Wisconsin Department of Revenue

FROM: Niall Power, Richard Vande Leest, and
Pete Christianson, for Printing Industries of Wisconsin

RE: Proposed Revisions to Administrative Rules TAX 11.19
and TAX 11.70

DATE: February 26, 1999

This memorandum is submitted on behalf of the more than 150 members of Printing Industries of Wisconsin ("PIW"). For more than 100 years, PIW has been the trade association serving the entire state's graphic arts industry. Its purpose is to promote the general welfare and improvement of business conditions for the printing, graphic arts and allied industries of Wisconsin. Members of PIW are progressive, innovative firms engaged in the design, manufacture and/or sale of printing and related products and services.

The members of PIW are strongly opposed to the characterization of printing as a "service" rather than as "manufacturing". The members of PIW are therefore opposed to the proposed amendment to TAX 11.70, which appears in SECTION 2 of the proposed rule revision, would add a new example which reads as follows:

"2) Assume the same facts as Example 1, except that Company I provides the paper to the printer in addition to the finished art.

"The charge to Company I by the Wisconsin advertising agency for the preliminary art and finished art is subject to Wisconsin sales tax. The Wisconsin printer is selling a printing service, and not tangible personal property, to Company I. The destined for sale requirement is not met and the exemption from tax does not apply."

It is inappropriate to characterize printing as a "service" and not as "manufacturing" for the following reasons:

1. Wis. Stats. s. 77.54 (6m) defines "manufacturing" as "the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing". The transformation of raw materials like rolls of paper and drums of ink into printed materials fits squarely within this definition.

2. Customers supply some or all of the raw materials in a wide variety of manufacturing settings. As noted above, the issue of which party supplies the raw materials has no impact on the nature of the finished product.

3. The issue of who supplied the raw materials should have no bearing whatsoever on whether a particular activity is characterized as a "service" or as "manufacturing". The fundamental nature of the finished product does not change when a magazine publisher furnishes the paper and ink rather than purchase it from the printer.

4. A customer may choose to provide the paper and/or ink for a variety of reasons. The customer has complete control over the quality of the raw materials when it supplies them. In addition, the customer may be able to obtain a better price. Finally, a customer which is dependent on its printer for paper when paper is in short supply may be foreclosed from selecting a different printer. Finally, such arrangements are also desirable from the printer's perspective because the amount of working capital needed to operate the business is reduced when the customer supplies some or all of the raw materials.

5. The manufacturing process is identical in both circumstances. What the printer does with the raw materials supplied by the customer is no different than what the printer does with raw materials which it supplies for the project. It is therefore inappropriate to characterize printing done with the customer's raw materials as a "service" and to characterize printing done with the printer's raw materials as "manufacturing".

Tax 11.70(3)(m) Raw materials processed, fabricated or manufactured into, attached to or incorporated into printed materials that are transported and used solely outside Wisconsin.

Example: Company A, located in Wisconsin, publishes catalogs it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the catalogs for Company A. The catalogs are transported and used solely outside Wisconsin.

The paper purchased by Company A for the catalogs is exempt from Wisconsin sales or use tax.

Note to Revisor: 1) At the end of sub. (2)(b), change the word "Example" to "Examples."

2) In the second example at the end of sub. (2)(c), add the words "by the advertising agency" at the end of the fourth sentence, after "are produced"; also renumber the example from 2 to 3 and add the following new examples:

2) Assume the same facts as Example 1, except that Company C mails 90% of the flyers to customers outside Wisconsin and 10% to customers in Wisconsin.

Ten percent of the total charge to Company C by the advertising agency for the flyers, including the preliminary art, finished art and flyers, is subject to tax.

4) Assume the same facts as Example 3, except that 5 dubs are mailed by the advertising agency to radio stations outside Wisconsin.

Fifty percent of the entire charge by the advertising agency for the production of the master tape and dubs is subject to tax. The remaining 50% is not subject to tax because that portion of the sale took place outside Wisconsin.

3) In the example at the end of sub. (3)(j), change "an advertising agency" to "a Wisconsin advertising agency"; also, change the word "Example" to "Examples," number the example 1, and add the following new example:

2) Assume the same facts as Example 1, except that Company I provides the paper to the printer, in addition to the finished art.

The charge to Company I by the Wisconsin advertising agency for the preliminary art and finished art is subject to Wisconsin sales tax. The printer is selling a printing service, and not tangible personal property, to Company I. The destined for sale requirement is not met and exemption from tax does not apply. *Even though Company I is furnishing a printing service,*

however, it is still considered to be engaged in manufacturing, and its machinery and equipment qualify

4) In the first note at the end of Tax 11.70, change the zip code from "53708" to "53708-8902."

5) Replace the second note at the end of Tax 11.70 with the following:

for exemption under s. 77.54(6)(a), Stats.

Note: Section Tax 11.70 interprets ss. 77.51(14)(intro.) and (h) and (14r), 77.52(1) and (2) and 77.54(2), (2m), (6)(b), (25) and (43), Stats.

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: amend Tax 11.19(2)(d) and (f), (5)(intro.) and (b) and (6); and create Tax 11.70(3)(m), relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Analysis by the Department of Revenue

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

Statutes interpreted: s. 77.54(9a), Stats., s. 77.51(18) and (22)(a), Stats., as amended by 1997 Wis. Act 27, and s. 77.54(43), Stats., as created by 1997 Wis. Act 27

SECTION 1. Tax 11.19(2)(d) and (f) and (5)(intro.) and (b) are amended, to reflect the amendment of s. 77.51(18) and (22)(a), Stats., and the creation of s. 77.54(43), Stats., by 1997 Wis. Act 27. These changes provide a sales tax exemption for raw materials of printed materials transported and used solely outside of Wisconsin. Previously, these materials were only exempt from use tax.

Tax 11.19(6) is amended, to clarify that the exemption for governmental units applies only to Wisconsin governmental units, and to reflect that certificate of exempt status numbers are being given to governmental units.

SECTION 2. Tax 11.70(3)(m) is created, to reflect the amendment of s. 77.51(18) and (22)(a), Stats., and the creation of s. 77.54(43), Stats., by 1997 Wis. Act 27.

SECTION 1. Tax 11.19(2)(d) and (f), (5)(intro.) and (b) and (6) are amended to read:

Tax 11.19(2)(d) Section 77.54(2m), Stats., provides an exemption for the "gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred with charge to the recipient." This exemption applies to newspapers, shoppers guides and periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51(8), Stats.

(f) Section ~~77.51(18) and (22)~~ 77.54(43), Stats., provides ~~that storage and use for purposes of imposing Wisconsin use tax does not include the keeping, retaining or exercising~~

~~any right or power over a sales and use tax exemption for raw materials for used for the processing, fabricating or manufacturing into, attachment of, attaching to or incorporation into incorporating into, printed materials to be that are transported outside Wisconsin and thereafter used solely outside Wisconsin.~~

(5)(intro.) Wisconsin sales and use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53(1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

(b) The resulting printed materials will be ~~shipped outside Wisconsin for use~~ transported and used solely outside Wisconsin.

(6) EXEMPT PURCHASERS. Sales of printed material to federal and Wisconsin governmental units, and Wisconsin public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54(9a) or 77.55(1), Stats. Sales to federal and Wisconsin governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained or the governmental unit's certificate of exempt status number is recorded on the bill of sale. Sales to ~~persons~~ nonprofit organizations holding a certificate of exempt status can be shown to be exempt by recording the certificate of exempt status number on the bill of sale.

Note to Revisor: 1) In sub. (3), all quoted statutory material should be in italics.

2) Replace the first note at the end of Tax 11.19 with the following:

Note: Section Tax 11.19 interprets ss. 77.51(8) and (13h), 77.52(2)(a)11., 77.54(2m), (9a), (15), (25) and (43) and 77.55(1), Stats.

3) In the second note at the end of Tax 11.19, remove the word "and" before part (i) and add the following at the end of the note:

; and (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

SECTION 2. Tax 11.70(3)(m) is created to read:

Tax 11.70(3)(m) Raw materials processed, fabricated or manufactured into, attached to or incorporated into printed materials that are transported and used solely outside Wisconsin.

Example: Company A, located in Wisconsin, publishes catalogs it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the catalogs for Company A. The catalogs are transported and used solely outside Wisconsin.

The paper purchased by Company A for the catalogs is exempt from Wisconsin sales or use tax.

Note to Revisor: 1) At the end of sub. (2)(b), change the word "**Example**" to "**Examples.**"

2) In the second example at the end of sub. (2)(c), add the words "by the advertising agency" at the end of the fourth sentence, after "are produced"; also renumber the example from 2 to 3 and add the following new examples:

2) Assume the same facts as Example 1, except that Company C mails 90% of the flyers to customers outside Wisconsin and 10% to customers in Wisconsin.

Ten percent of the total charge to Company C by the advertising agency for the flyers, including the preliminary art, finished art and flyers, is subject to tax.

4) Assume the same facts as Example 3, except that 5 dubs are mailed by the advertising agency to radio stations outside Wisconsin.

Fifty percent of the entire charge by the advertising agency for the production of the master tape and dubs is subject to tax. The remaining 50% is not subject to tax because that portion of the sale took place outside Wisconsin.

3) In the example at the end of sub. (3)(j), change "an advertising agency" to "a Wisconsin advertising agency"; also, change the word "**Example**" to "**Examples,**" number the example 1, and add the following new example:

2) Assume the same facts as Example 1, except that Company I provides the paper to the printer, in addition to the finished art.

The charge to Company I by the Wisconsin advertising agency for the preliminary art and finished art is subject to Wisconsin sales tax. The printer is selling a printing service, and not tangible personal property, to Company I. The destined for sale requirement is not met and exemption from tax does not apply. Even though Company I is furnishing a printing service, however, it is still considered to be engaged in manufacturing, and its machinery and equipment qualify for exemption under s. 77.54(6)(a), Stats.

4) In the first note at the end of Tax 11.70, change the zip code from "53708" to "53708-8902."

5) Replace the second note at the end of Tax 11.70 with the following:

Note: Section Tax 11.70 interprets ss. 77.51(14)(intro.) and (h) and (14r), 77.52(1) and (2) and 77.54(2), (2m), (6)(b), (25) and (43), Stats.

6) In the third note at the end of Tax 11.70, remove the word "and" before part (c) and add the following at the end of the note:

; and (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 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

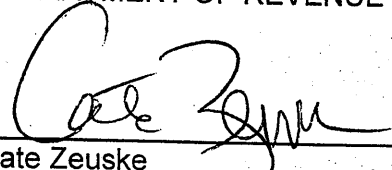
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

March 15, 1999

By: _____


Cate Zeuske
Secretary of Revenue

e.rules\1119 Proposed Order

LRB or Bill No./Adm. Rule No.

TAX 11.19 and 11.70

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Printed Materials

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be Possible to Absorb
Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
- Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule reflects the creation of a sales tax exemption for printed materials by 1997 Wisconsin Act 27. It also clarifies the exemption for sales to governmental units. It has 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

Yeang-Eng Braun

Date

9/22/98