



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

January 26, 1999

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Room 15 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882


Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Clearinghouse Rule 97-029

Dear Senator Robson and Representative Grothman:

Copies of Clearinghouse Rule 97-029 in final draft form and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats., are enclosed.

Sincerely,


Cate Zeuske
Secretary of Revenue

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i:/rules/1112 Committees - JCRAR

Enclosure

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 97-029
SECTION 227.19(2) AND (3), STATS., REPORT

Need For Proposed Rule

The rule is necessary to:

- Clarify that when buying certain machines farmers may claim exemption only if the retailer does not install the machines.
- Delete a confusing reference to automated livestock feeder bunks in sub. (4)(a)5.b.
- Include additional items as exempt containers for grain, to reflect the change to s. 77.54(3m), Stats., which clarified the department's position relating to these items.
- Delete an incorrect reference to feed carts and non-powered gravity flow feeders as taxable items in sub. (4)(a)7.c.
- Correct two direct statutory quotes.
- Conform language and style to Legislative Council Rules Clearinghouse standards.

(Note: The following items reflect additional changes not included in the proposed order published in Mid-April 1997.)

- Clarify various provisions relating to horses, as to when an exemption applies and when various activities are taxable.
- Reflect a change in the department's position, to provide that raising earthworms is farming.
- Reflect the replacement of the farmer's exemption certificate and the resale certificate with the new multipurpose exemption certificate, Form S-211.

Public Hearing

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

Legislative Council Staff Recommendations

The Legislative Council Staff reviewed the proposed order and had no comment. Additional changes have been made since their review, and these changes are reflected in the last three points under "Need For Proposed Rule" above.

Regulatory Flexibility Analysis

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

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

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.12(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.), 5.b. 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.

Tax 11.12(4)(a)5.b. is amended, to clarify that when buying certain machines, farmers may claim exemption only if they buy the machines without installation by the retailer, even though the machines may later be attached to, fastened to, connected to or built into real property or may become an addition to, component of or capital improvement of real property. It is also amended to delete the reference to "automated livestock feeder bunks, but not ordinary building materials." This reference is confusing because powered feeders may qualify for exemption under s. 77.54(3)(c)9., Stats., whether or not installed by the retailer.

Examples are added following sub. (4)(a)4.c. and 5.b., to clarify the treatment of machines installed into real estate.

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 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.

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, mushrooms 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.) and 5.b. 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:

5.b. Certain machines in addition to those in subd. 4. qualify for the exemption if purchased by farmers directly from retailers without installation by the retailer, even though they are used to make realty improvements after being purchased by the farmer, the machine may be attached to, fastened to, connected to or built into real property or may become an addition to, component of or capital improvement of real property by a person other than the retailer. Machines included are ~~automated livestock feeder bunks, but not ordinary building materials;~~ automatic stock waterers powered by electricity or water pressure and built into a permanent plumbing system; automatic water softeners, such as for milkhouses; barn fans and blowers and other ventilating units; unit heaters and other heating units; water heaters serving

production areas; and water pumps serving production areas.

Note to Revisor: 1) Insert the following example following sub. (4)(a)4.c.:

Example: A plumbing contractor sells and installs a water heater in a farmer's milkhouse, which is used exclusively to heat water for use in farming. A water heater used for this purpose is tangible personal property, even after installation by the plumbing contractor.

The plumbing contractor's charge for the sale and installation of the water heater is taxable.

2) Insert the following example following sub. (4)(a)5.b.:

Example: A farmer buys a water heater, without installation, to use in his milkhouse. The water heater will exclusively serve the production area. The farmer hires a person, other than the retailer of the water heater, to install it.

The farmer's purchase of the water heater and his purchase of the installation service both qualify for exemption.

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 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 11.12.

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: 1/27/99 By: Cate Zeuske
Cate Zeuske
Secretary of Revenue

i.rules\1112 Proposed Order

LRB or Bill No./Adm. Rule No.

TAX 11.12

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Sales and Use Tax of Certain Purchases by Farmers

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