

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

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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 99-100

AN ORDER to repeal and recreate Tax 11.64, relating to background music and other cable television system services.

Submitted by **DEPARTMENT OF REVENUE**

06-15-99 RECEIVED BY LEGISLATIVE COUNCIL.

07-13-99 REPORT SENT TO AGENCY.

RNS:LR:jal;ksm

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)]

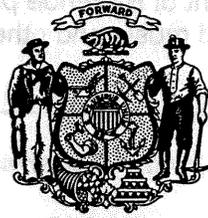
Comment Attached YES NO

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CLEARINGHOUSE RULE 99-100

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

In s. Tax 11.64 (2) (b), the word "taxable" prior to "background music" in the second sentence should be deleted. It is not necessary to reiterate that providing this background music is a taxable service because this is stated in the introduction to this subsection.

3. Conflict With or Duplication of Existing Rules

The analysis by the Department of Revenue indicates that provisions relating to cable television system services would be moved from s. Tax 11.66 to s. Tax 11.64, as repealed and recreated by this proposed order. However, it does not appear that s. Tax 11.66 (3) (d), which relates to cable television system services, was repealed.

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
REPEALING AND RECREATING RULES

The Wisconsin Department of Revenue proposes an order to repeal and recreate Tax 11.64, relating to background music and other cable television system services.

Analysis by the Department of Revenue

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

Statutes interpreted: s. 77.52(2)(a)12. and (am) and (2m)(a), Stats.

SECTION 1. Tax 11.64 is repealed and recreated to:

- Change the title to "Cable television system services, including background music services," to properly reflect the content of the section.
- Properly classify background music services regularly amplified and transmitted simultaneously to 50 or more subscribers as taxable cable television system services. These services are classified as cable television system services under the definition provided in s. 77.52(2)(am), Stats., and are thus taxable under s. 77.52(2)(a)12., Stats. The treatment of these services as nontaxable in Tax 11.64(2) is incorrect.
- Move provisions relating to cable television system services from Tax 11.66 to this section, because these services are taxed separately from telecommunications services, and the background music services described in this section are "cable television system" services, as defined in s. 77.52(2)(am), Stats.

The treatment of background music services regularly amplified and transmitted simultaneously to 50 or more subscribers as taxable is a new policy which will become effective on the effective date of the rule order. This treatment is consistent with the definition of cable television system in s. 77.52(2)(am), Stats.

SECTION 1. Tax 11.64 is repealed and recreated to read:

Tax 11.64 **Cable television system services, including background music services.** (1) DEFINITION. "Cable television system" means any facility which, for a fee, regularly amplifies and transmits by wire, coaxial cable, lightwave or microwave, simultaneously to 50 or more subscribers, programs broadcast by television or radio stations or originated by themselves or any other party. "Cable television system" does not include a master antenna system which serves one residential, commercial or

government building or complex of buildings under common ownership or control if that facility does not provide any broadcast signals other than those which may be viewed in that facility.

(2) TAXABLE SERVICES. Gross receipts, including installation charges, from the following services are taxable:

(a) Providing television programming which is amplified and transmitted by wire, coaxial cable, lightwave or microwave simultaneously to 50 or more subscribers.

Examples: 1) Gross receipts from providing cable television service are taxable, including charges for basic service, movie channels and other premium channels.

2) Gross receipts from providing direct-to-home satellite service are taxable.

(b) Providing background music programming which is amplified and transmitted by wire, coaxial cable, lightwave or microwave simultaneously to 50 or more subscribers.

This taxable background music includes programming provided to business, industry and others from a central studio over telephone circuits or by FM radio.

Note: Federal Public Law 104-104 exempts the provider of direct-to-home satellite service from the requirement to collect and remit local taxes, including county and stadium taxes, on the service. However, it does not exempt the consumer or "customer" of the direct-to-home satellite service from liability for any applicable local use taxes. Even though direct-to-home satellite service providers are not required to collect and remit local taxes on direct-to-home satellite service, the providers may voluntarily collect and remit the local taxes for the convenience of their customers. For more information, see *Wisconsin Tax Bulletin* 99, page 29. A copy may be obtained from Wisconsin Department of Revenue, Administration Technical Services, P.O. Box 8933, Madison, WI 53708-8933.

(3) PURCHASES BY SERVICE PROVIDERS. Persons providing cable television system services are the consumers of, and shall pay sales or use tax on, tangible personal property used by them in providing the service. Personal property used by these service providers includes personal property furnished to customers, if the personal property is incidental to the service provided, determined as follows:

(a) Personal property is incidental to cable television system services if the subscriber's main purpose or objective is to receive the cable television system service and the service may only be obtained by using the personal property furnished by the service provider.

(b) Personal property is not incidental to cable television system services if the subscriber has the option of using its own equipment to receive the cable television system service. In this situation, if the service provider charges the subscriber for personal property furnished in addition to the service, the service provider is leasing or renting the personal property to the subscriber. A service provider who leases or rents personal property to a subscriber may claim a resale exemption on its purchase of this personal property.

Examples: 1) Company A provides cable television system services to subscribers for a monthly fee. To receive the service, Company A's customers must use receiving equipment furnished by Company A. Company A does not make a separate charge for the receiving equipment.

Sales or use tax applies to Company A's purchases of this equipment. The receiving equipment furnished by Company A to the subscribers is incidental to the cable television system services provided by Company A.

2) Assume the same facts as in Example 1, except Company A makes a separate charge to its subscribers for the receiving equipment.

Even though there is a separate charge for the receiving equipment, sales or use tax applies to Company A's purchases of this equipment. The receiving equipment is incidental to the cable television system services provided by Company A.

3) Company B provides cable television system services to subscribers for a monthly fee. For an additional fee, Company B will lease receiving equipment to the subscriber to receive the background music provided by Company B. Subscribers have the option of using their own equipment, equipment leased by Company B or equipment leased from a third party to receive the background music programming.

Company B may claim a resale exemption on its purchases of the receiving equipment. This equipment is not incidental to the cable television system services because Company B's subscribers are not required to lease or rent the equipment from company B to receive the services.

Note: Section Tax 11.64 interprets s. 77.52(2)(a)12. and (am) and (2m)(a), Stats.

Note: The interpretations in s. Tax 11.64 became effective October 1, 1975, pursuant to Chapter 39, Laws of 1975, except that the interpretations relating to background music services became effective on [Revisor to insert effective date].

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

Although this proposed rule order may affect a number of small businesses, it is not expected to have a significant economic impact on any particular small business.

DEPARTMENT OF REVENUE

Dated: _____

6-12-99

By: _____



Cate Zeuske
Secretary of Revenue

e:rules\1164 Proposed Order