

## WISCONSIN LEGISLATIVE COUNCIL STAFF

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 99-162**

AN ORDER to create Tax 11.20, relating to the sales and use tax treatment of motor vehicles, machinery and equipment used exclusively and directly in waste reduction and recycling activities.

Submitted by **DEPARTMENT OF REVENUE**

12-02-99 RECEIVED BY LEGISLATIVE COUNCIL.

12-22-99 REPORT SENT TO AGENCY.

RNS:WF:jal;wu

**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 99-162

### Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wisconsin Department of Revenue proposes an order to create Tax 11.20, relating to the sales and use tax treatment of motor vehicles, machinery and equipment used exclusively and directly in waste reduction and recycling activities.

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***Analysis by the Department of Revenue***

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

Statutes interpreted: s. 77.54(5)(c) and (26m), Stats.

**SECTION 1.** Tax 11.20 is created, to address the sales and use tax exemptions for waste reduction and recycling activities.

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**SECTION 1.** Tax 11.20 is created to read:

**Tax 11.20 Waste reduction and recycling. (1) STATUTES.** Section 77.54(5)(c) and (26m), Stats., provides exemptions for sales of and the storage, use or other consumption of certain motor vehicles, machinery and equipment used exclusively and directly in certain waste reduction or recycling activities.

(2) **DEFINITIONS.** In this section and s. 77.54(5)(c) and (26m), Stats.:

(5)

(a) "Amount" means the total number or quantity at hand or under consideration.

(b) "Compost" means to convert to a mixture that consists largely of decayed organic material and is used for fertilizing and conditioning land.

(c) "Energy" means usable power.

(d) "Exclusively" means that the motor vehicles, machinery and equipment are used solely in waste reduction or recycling activities, except that the sales and use tax exemption for these items is not invalidated by infrequent and sporadic use for purposes other than waste reduction or recycling activities.

(e) "Generate" means to bring into existence, to originate by a vital, chemical or physical process or to produce.

*See Parker-Pioneer*

*why even  
use the  
word  
"solely"?*

(2)

(f) "Motor vehicle" means a self-propelled vehicle that is designed for and capable of transporting persons or property, such as an automobile, truck, truck-tractor, forklift or endloader.

*(2) includes 1.01(7)(c)*

*(4)(c) also*

(g) "Recover energy" means to get back usable power such as heat or electricity.

(h) "Recycle" means to process to regain materials for reuse.

(i) "Recycling activity" means any activity necessary to the process of converting solid waste into reusable material.

(j) "Reduce" means to diminish in size, amount, extent or number.

(k) "Reuse" means to use again.

(L) "Solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities. "Solid waste" does not include real property, such as roads, planted *- growing* trees, buildings and lawns.

(3) CONDITIONS FOR EXEMPTION. (a) The exemption from sales and use tax under s. 77.54(5)(c), Stats., shall apply to tangible personal property if all of the following conditions are met:

1. The tangible personal property is a motor vehicle.
2. The motor vehicle is not required to be licensed for highway use.
3. The motor vehicle is used exclusively in conjunction with waste reduction or recycling activities.
4. The motor vehicle is used directly in conjunction with waste reduction or recycling activities.
5. The waste reduction or recycling activity does one or more of the following:
  - a. Reduces the amount of solid waste generated.

- b. Reuses solid waste.
- c. Recycles solid waste.
- d. Composts solid waste.
- e. Recovers energy from solid waste.

(b) The exemption from sales and use tax under s. 77.54(26m), Stats., shall apply to tangible personal property if all of the following conditions are met:

1. The tangible personal property is machinery or equipment or a part for the machinery or equipment and is not a motor vehicle.

2. The machinery or equipment is used exclusively in waste reduction or recycling activities.

3. The machinery or equipment is used directly in waste reduction or recycling activities.

4. The waste reduction or recycling activity does one or more of the following:

- a. Reduces the amount of solid waste generated.
- b. Reuses solid waste.
- c. Recycles solid waste.
- d. Composts solid waste.
- e. Recovers energy from solid waste.



**Note:** Waste reduction and recycling activities do not include the collection, transportation and storage of the solid waste. In addition, supplies used in waste reduction or recycling activities are not within the exemptions provided in s. 77.54(5)(c) and (26m), Stats.



**Note:** In a decision dated June 25, 1992 in the case of *Wisconsin Department of Revenue vs. Parks-Pioneer Corporation* the Wisconsin Court of Appeals, District IV, held that lugger and roll-off boxes, tarps, bands, hoists, scales and hose used by Parks-Pioneer in its business of collecting, preparing, sorting, weighing and processing scrap were not used directly in waste reduction or recycling activities. The Court stated that "The scrap is recycled after it is collected and transported to the plant." Under this interpretation, machinery and equipment used in the collecting, transporting and weighing of recyclable materials do not qualify for exemption under s. 77.54(5)(c) and (26m), Stats. The Court also held that starting fluid is neither a part nor equipment and

therefore is not exempt from Wisconsin sales and use tax under s. 77.54(5)(c) and (26m), Wis. Stats.

(4) MOTOR VEHICLES, MACHINERY AND EQUIPMENT WHICH QUALIFY FOR EXEMPTION. Motor vehicles, machinery and equipment used exclusively and directly in waste reduction or recycling activities which qualify for the exemptions under sub. (3) include the following:

(a) Machinery and equipment in a foundry used to remove contaminants and pulverize sand so that the foundry can reuse the sand.

(b) Machinery and equipment used to remove sludge from coolants so that the coolant may be reused.

(c) Furnaces used to burn solid waste, such as waste oil, for heating a building.

**Example:** Contractor A purchases a furnace which will be installed in Customer B's home. The furnace will be used exclusively to burn waste oil. The heat generated from the burning of the waste oil will be used to heat Customer B's home. Contractor A may purchase the furnace without paying sales or use tax, even though Contractor A is the consumer of the furnace when making the real property improvement.

(d) Machinery and equipment used to chop up branches, after they have been removed from the tree, into small chips which will be reused.

(e) Machinery and equipment used to shred discarded tires so that they can be sold to a third party who burns the tires and uses the heat generated to produce electricity.

(f) Machinery and equipment used to shred waste paper, remove foreign objects from the waste paper, blend the shredded paper with a binding agent, add moisture to the resulting materials and compress the resulting materials into fuel cubes which will be burned in a furnace to heat a building.

(g) Machinery and equipment used to burn and screen contaminated soil after it has been severed from the earth so that the soil can be reused.

5) state says MV used in conjunction with. Also, MV not mentioned in (4)

from sand? 5)

2) inclusion

(h) Cranes and other equipment used to move solid waste from stockpiles to the machinery or equipment which will recycle the materials.

(i) Vapor recovery systems used at gasoline stations which prevent the release of gaseous vapors by converting the vapors to gasoline through temperature changes and returning the liquid to a storage tank for reuse.

(j) Machinery and equipment used to apply sludge to a field for fertilization of the soil.

(k) Machinery and equipment which recovers refrigerant from air conditioning units and puts the refrigerant back into the air conditioning units.

(L) Machinery and equipment used to repair discarded pallets that are solid waste, so that they can be reused or resold.

(m) Balers used by grocery stores, department stores, warehouses and other businesses to compact and bale their solid waste, such as boxes, cans and paper, which will be disposed of as follows:

1. The solid waste will be sold to a recycling company.
2. The solid waste will be sold or given to a trucking company that transports it to a recycler in exchange for a reduction in the transportation charges.
3. The solid waste will be sold to farmers for animal bedding.
4. The solid waste will be sold to a manufacturer and combined with other raw materials to make a new product.
5. The solid waste will be burned by the grocery stores, department stores, warehouses and other businesses as a fuel.

(5) MOTOR VEHICLES, MACHINERY AND EQUIPMENT WHICH DO NOT QUALIFY FOR EXEMPTION. Motor vehicles, machinery and equipment which do not meet the conditions for exemption under sub. (3) because they are not used exclusively and directly in waste reduction or recycling activities include the following:

(a) A can crusher which an individual uses to crush aluminum cans at the individual's personal residence.

⑤? why not? does it qualify (j) (L) (Company w (4) (c) (d)?

not "direct"?

(b) Dumpsters, bins and covers for dumpsters and bins which are used for storage, collection or transportation of solid waste, such as paper and cans.

(c) Motor vehicles which are required to be licensed for highway use.

(d) Machinery and equipment used to collect solid waste.

**Example:** Hydraulically operated bins mounted on a truck chassis and driven to various locations to pick up solid waste do not qualify for exemption.

(e) A crane purchased separately from the motor vehicle on which it will be mounted and used to pick up and load the solid waste onto the truck for transportation to the recycler's facility.

(f) Shelving in a store that sells used books and other used goods.

(g) Equipment used to collect freon, regardless of whether the freon will be discarded or taken to a recycler for processing.

(h) Balers used by grocery stores, department stores, warehouses and other businesses to compact and bale their solid waste, such as boxes, cans and paper, which will be sent to a landfill.

⑤ Company (4)(m) How do you know when you buy?

(i) Trash compactors used to compact solid waste which is sent to a landfill.

(j) Bulldozers, crawlers, scrapers and other similar equipment used at a landfill to move garbage and rubbish in the landfill.

(k) Paper shredders used in an office to shred confidential records.

(L) Endloaders and other equipment used to remove contaminated soil from the earth, which is real property.

(m) Forklifts and similar type equipment used to unload solid waste from trucks and place them in stockpiles, even if done at a recycling facility, prior to conveying the solid waste to machinery and equipment which will perform a recycling activity.

(n) Scales used at a recycling facility to weigh solid waste, such as aluminum cans, to determine the amount to be paid for the recyclable materials.

(o) Machinery and equipment used to mine or remove existing roads, which are real property, even if the resulting materials will be used as a sub-base for a new road.

(p) Machinery and equipment used to break up existing roads, which are real property, into a manageable size or to dislodge reinforcing steel.

(q) Machinery and equipment used to grind down high or rough spots on a highway, which is real property, even if the materials which are ground off are later reused.

(r) Gauges installed in underground tanks which detect leaks and monitor the level of the materials in the tank.

(s) Machinery and equipment used to pulverize planted trees and bushes, which are real property, into small pieces which will remain on the ground to decompose.

(t) Machinery and equipment used to remove tree stumps which have not been severed from the real estate, by grinding them into small chips and then leaving the chips on the ground to fill the hole and decompose.

(u) Machinery and equipment used to remove branches from standing trees, which are real property, even if the removed branches will be later ground up into chips that are reused.

(v) Machinery and equipment used to remove sludge from a sludge pond.

(w) Chain saws used to cut down standing trees, which are real property.

(x) Furnaces which burn bio-mass pellets that are made out of solid waste.

(y) Lawnmowers which cut and mulch grass, which is real property.

(6) WASTE REDUCTION OR RECYCLING ACTIVITIES THAT RECYCLE OR REUSE SOLID WASTE. (a) In the handling of solid waste as described in par. (b),

*Why?*  
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*included*  
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*(4)(a)*  
*used*  
*(b)*

*(B)*

waste reduction or recycling activities that recycle or reuse solid waste begin with the conveyance of recyclable materials from a holding area, such as an area where the materials are held until they are placed on a conveyor, to the first work point in the recycling facility and end when the finished product, such as a bale of paper, is placed in the finished goods storage area at the facility. Waste reduction and recycling activities do not include the collection, transportation or storage of solid waste.

(b) Various steps which may occur in handling solid waste include the following:

② 1. A company's trucks, which are required to be licensed for highway use, are driven to various locations to pick up mixed paper products. In addition, some persons drop off mixed paper products at the company's facility.

2. A front end loader is used to unload the mixed paper products from the trucks and place the mixed paper products in a holding area.

3. A front end loader picks up the mixed paper products in the holding area and puts them on a conveyor.

4. The conveyor carries the mixed paper past various individuals, who sort the mixed paper based on the paper type and remove contaminants.

5. As each of the types of paper is separated or sorted into specific grades, the various grades are placed in separate holding bins.

6. Once the holding bin is full, that type of paper is placed back on the conveyor.

7. The conveyor carries the paper to a "fluffer" which carries the paper up and then allows the paper to drop, through gravity, back onto the conveyor. The fluffer is used because it results in a more uniformly dense bale of paper.

8. The conveyor carries the paper to a baler/compactor where the paper is compacted and baled. This step is done because the purchaser of the paper products requires that they be sorted and baled before it will accept them.

9. A forklift picks up the baled paper and carries the bale of paper to a storage area.

10. The paper is held in the storage area until such time as enough bales are generated to fill a trailer. Once sufficient bales have accumulated, a forklift picks up the bales and places them in the trailer.

11. The trailer, which is required to be licensed for highway use, is used to transport the bales to various paper manufacturers who will use the baled paper as a raw material to make paper products, such as new cardboard boxes.

(c) The motor vehicles not required to be licensed for highway use, machinery and equipment used exclusively and directly in the waste reduction or recycling activities described in par. (b)3. to 9. qualify for exemption under s. 77.54(5)(c) or (26m), Stats. The motor vehicles, machinery and equipment used in the activities described in par. (b)1., 2., 10. and 11. do not qualify for exemption.

**Note:** Section Tax 11.20 interprets s. 77.54(5)(c) and (26m), Stats.

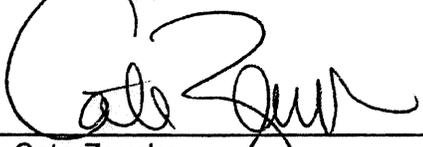
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The rule contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

### Initial Regulatory Flexibility Analysis

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

Dated: 12.1.97

DEPARTMENT OF REVENUE  
  
By: \_\_\_\_\_  
Cate Zeuske  
Secretary of Revenue

Tax 11.20

Bob Stalleck, DOR atty  
T. Ourada

definition excludes some machinery that is currently exempt.

eg - something that ~~is~~ removes old pavement, but does not grind it up for re-use

- devices working directly on road not exempt b/c rd is real property; real property is not w/in definition of solid waste.

stat def = garbage, refuse or sludge.

quest = can real property be considered w/in this definition

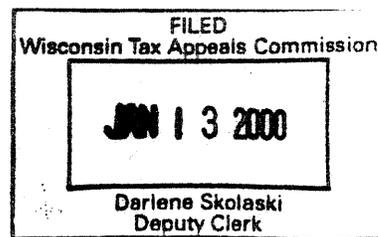
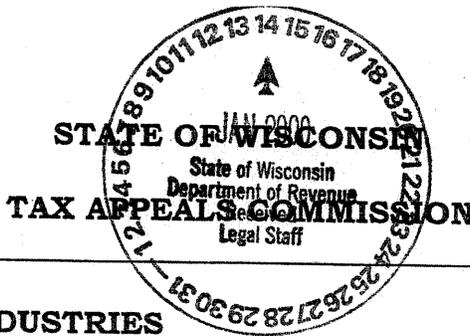
other option = partial exemption

ICRAR suspend

standing ante objection

go forward

1, 11-715



**BROWNING-FERRIS INDUSTRIES  
OF WISCONSIN, INC.**

c/o Attorney James R. Lowe  
Whyte Hirschboeck Dudek, S.C.  
111 E. Wisconsin Ave., Suite 2100  
Milwaukee, WI 53202-4894

DOCKET NO. 97-S-282

Petitioner,

vs.

**DECISION AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE**

P.O. Box 8933  
Madison, WI 53708

Respondent.

**THOMAS M. BOYKOFF, COMMISSIONER, JOINED BY MARK E. MUSOLF, CHAIRPERSON:**

This case was submitted to the Commission on stipulated facts and briefs.

Petitioner, Browning-Ferris Industries of Wisconsin, Inc., is represented by Attorney James R. Lowe of Whyte Hirschboeck Dudek, S.C., of Milwaukee, Wisconsin. Respondent, Wisconsin Department of Revenue ("Department"), is represented by Attorney Linda M. Mintener.

Based on the stipulated facts, related exhibits, and briefs of the parties, the Commission finds, concludes, and orders as follows:

## **FINDINGS OF FACT**

For its Findings of Fact, the Commission adopts the following stipulated findings, making minor modifications and omitting references to exhibits:

### **Jurisdictional Facts**

1. On or about May 1, 1995, the Department issued a Notice of Field Audit Action and a Notice of Amount Due against petitioner, assessing \$392,140.32 sales and use tax, plus interest, for the period October 1, 1989 through September 30, 1993.<sup>1</sup>

2. On or about June 29, 1995, petitioner filed a petition for redetermination objecting to the Department's assessment.

3. On or about May 29, 1997, the Department denied petitioner's petition for redetermination in its entirety. The Office of Appeals sent to petitioner its Redetermination Notice of Amount Due of \$464,554.24, with interest updated to July 31, 1997.

4. On July 28, 1997, petitioner filed a petition for review ("petition") with the Tax Appeals Commission.

### **General Facts**

5. Petitioner was incorporated as a Wisconsin corporation in 1973. Its corporate headquarters and principal place of business was located at W144 S6350 College Court, Muskego, Wisconsin 53150. Petitioner had

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<sup>1</sup> Facts pertain to the time period October 1, 1989 to September 30, 1993 unless otherwise specified.

operations at four business sites: Green Bay, Germantown (which did business as A-1 Service Company), and two in Madison. One Madison site was a landfill, known as "Madison Prairie Landfill;" the other Madison site was a hauling service known as "Madison Hauling." Petitioner still operates the Germantown site, but, subsequent to the period under review, sold its other locations and merged into BFI Waste Systems of North America, Inc.

6. Petitioner was primarily engaged in the business of collecting discarded materials from its Wisconsin residential and commercial customers and transporting these discarded materials to landfills, recycling centers or material recycling facilities ("Petitioner's Business"). The types of items collected and hauled included trash, garbage, and recyclables.

7. Petitioner was a wholly-owned subsidiary of Browning-Ferris Industries ("BFI").

8. Petitioner held Seller's Permit No. 456398.

9. Petitioner leased or sold compactors to some of its hauling customers. It also provided its customers, without additional charge, bins, dumpsters, and containers. At its Green Bay location, petitioner leased compactors to some of its customers. These customers deposited their recyclable items in bins, dumpsters, and containers that were specifically labeled to collect recyclable items and their nonrecyclable waste items in dumpsters that were specifically labeled to collect waste materials. Petitioner picked up and transported the recyclable items to either recycling centers or

material recycling facilities and the non-recyclable items to landfills.

10. Petitioner does not object to the measure of sales and use tax, but objects only to its liability for the tax in the Stipulated Issues. Petitioner does not object to the sales tax on the sales of fixed assets by Madison Hauling and by Madison Prairie Landfill.

#### **Facts Relating To Intercompany Transfers**

11. BFI and/or its subsidiaries ("BFI affiliates") transferred to petitioner items of tangible personal property, including such items as trucks, tractors, tractor trailers (none of which is exempt from sales/use tax under Wis. Stat. § 77.54(5)(b) or (c)), and containers. These transfers to petitioner, referred to as "intercompany transfers", included all rights to, and ownership of, the transferred assets. The motor vehicles transferred by intercompany transfers were re-titled in petitioner's name with the Wisconsin Department of Transportation. Capital assets transferred were depreciated on petitioner's income/franchise tax returns. The Department contends that those transfers were taxable purchases from BFI and/or BFI affiliates, and petitioner contends they were nontaxable.

12. Petitioner has paid no sales or use tax on the intercompany transfers.

13. BFI and the BFI affiliates which transferred assets to petitioner were separate, legal, corporate entities from petitioner and were not divisions or units of petitioner.

14. Petitioner's bookkeeping entry for the receipt of the intercompany transfers was to debit the specific asset account and credit an intercompany account. The bookkeeping entry for the BFI affiliates/transferors was to credit the specific asset account and to debit the intercompany account.

15. No money was exchanged between the BFI affiliates and petitioner for the intercompany transfers petitioner received from them.

16. Petitioner received no invoice or other bill in connection with its receipt of intercompany assets.

17. Petitioner also transferred motor vehicles, bins, and containers to BFI and/or BFI affiliates. When petitioner transferred these assets, petitioner's bookkeeping entry was to debit the intercompany account and credit the asset account.

18. There was never an elimination of the balance of the intercompany account, nor were payments made to reduce the intercompany account by either petitioner or the BFI affiliates.

19. When petitioner sold its Madison locations to Waste Management of Wisconsin, Inc., on January 1, 1998, the sales price was allocated among the various assets sold, including assets that were received by petitioner pursuant to the intercompany transfers at issue. The sales price allocated to these various assets was petitioner's net book value of those assets.

20. When petitioner sold the assets of its Green Bay location in

April 1997, the sales price was allocated among the various assets sold based upon petitioner's net book value of the assets. Included in the assets sold were assets transferred to petitioner pursuant to its intercompany transfers.

**Facts Relating To Claimed Waste Reduction And Recycling**

21. The tangible personal property at issue is the compactors, bins, and containers in which petitioner's customers collected their disposed recyclable items, which were then picked up by petitioner and transported to either material recycling facilities or recycling centers (both of which were operated by third parties), and motor vehicles and the equipment, attachments, and repairs therefor, used to transport recyclables to processing facilities, as well as various other items.

22. Petitioner paid no sales or use tax when purchasing this tangible personal property.

23. Petitioner hauled waste products with no value to landfill sites for disposal. Petitioner hauled recyclables that could be reused in some capacity to recycling centers and material recycling facilities, not to landfills.

24. Separate bins and trucks were used to collect and transport recyclable items from those used to collect and transport nonrecyclables.

**Facts Relating To Sales Tax On Motor Fuel Tax Refunds**

25. The motor fuel excise tax refunds upon which use tax has been assessed ("motor fuel tax refunds") involve motor fuel for which petitioner paid excise tax under Wis. Stat. Chapter 78 and which was later refunded,

under Wis. Stat. § 78.75, because petitioner did not use the fuel for operation upon the public highways.

26. Petitioner does not object to the full amount of the use tax related to its motor fuel purchases, but objects to the application of use tax to the refunded state excise tax.

27. Petitioner has paid no sales or use tax on its purchase of motor fuel related to the motor fuel tax refunds upon which the use tax has been assessed.

#### **Facts Relating To Sales And Leases Of Compactors**

28. Petitioner sold and rented compactors to some of its hauling and potential customers. Those compactors were stationary hand-fed, shoot-fed compactors that were placed on the premises of petitioner's customers. Customers used these to compress recyclables into recycling containers for petitioner to haul away.

29. More than 99% of petitioner's hauling services customers did not lease or buy compactors from petitioner. A few owned their own compactors and/or dumpsters, and some rented compactors and/or dumpsters from sources other than petitioner.

30. A customer was not required to use or to rent petitioner's compactors to obtain petitioner's hauling services.

31. Most, if not all, of petitioner's compactor lease agreements allowed the customer to purchase the compactor at the termination of the

lease.

32. Petitioner sometimes contracted for its hauling services separately from its compactor rentals and sales, and sometimes both were included on the same contract. Petitioner's hauling contracts did not refer to petitioner's sales or rentals of compactors. Petitioner's contracts for the sale or rental of compactors did not refer to petitioner's hauling services.

33. When a customer rented or bought a compactor from petitioner and purchased petitioner's hauling services, 80-90% of the time petitioner billed for the rental and/or purchase on a separate invoice from the billing for hauling. The rental or sale was always stated separately from the hauling services.

34. Petitioner's sale price for the purchase or lease of compactors was influenced by whether petitioner's hauling services were also purchased by these customers. Petitioner calculated a profit factor into the price it charged for the lease and sale of its compactors.

35. In its internal accounting system, petitioner accounted separately for the revenue attributable to its waste hauling services from the revenue attributable to its sales and/or leases of compactors.

36. Petitioner used resale exemption certificates to purchase the compactors it leased to its customers, and has paid no sales or use tax on them. Petitioner did not collect or pay to the Department any sales or use tax on its compactor lease or sale receipts.

## APPLICABLE WISCONSIN STATUTES

**77.51 Definitions.** Except where the context requires otherwise, the definitions given in this section govern the construction of terms in this subchapter.

\* \* \*

(14) "Sale", "sale, lease or rental", "retail sale", "sale at retail", or equivalent terms include any one or all of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services ....

### (1993-1994)

(15)(a) "Sales price" means the total amount for which tangible personal property is sold, leased or rented, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

\* \* \*

4. Any tax included in or added to the purchase price including the taxes imposed by ss. 78.01, 87.40, 139.02, 139.03 and 139.31 and the federal motor fuel tax and including also any manufacturers' or importers' excise tax; but not including any tax imposed by the United States, any other tax imposed by this state, or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed on the retailer or consumer, if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts... For the purposes of this subdivision, a tax shall be deemed "imposed upon or with respect to retail sales" only if the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax.

### (1997-1998)

(15)(a) Except as provided in par. (cm), "sales price" means the total amount for which tangible personal property is sold, leased or rented, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

\* \* \*

4. Any tax included in or added to the purchase price including the taxes imposed by s. 78.01 unless the tax is refunded, ss. 78.40, 139.02, 139.03 and 139.31 and the federal motor fuel tax unless the tax is refunded and including also any manufacturers' or importers' excise tax; but not including any tax imposed by the United States, any other tax imposed by this state, or any tax imposed by any municipality of this state upon or which respect to retail sales whether imposed on the retailer or consumer, if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts, and not including the federal communications tax imposed upon the services set forth in s. 77.52(2)(a)5. For the purposes of this subdivision, a tax shall be deemed "imposed upon or with respect to retail sales" only if the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax.

**77.53 Imposition of use tax.**

(1) ... an excise tax is levied and imposed ... on the storage, use or other consumption of tangible personal property *purchased* from any *retailer* ....

(2) Every person storing, using or otherwise consuming in this state tangible personal property ... *purchased from a retailer* is liable for the tax imposed by this section. The person's liability is not extinguished until the tax has been paid to this state, but a receipt with the tax separately stated from a *retailer* engaged in business in this state or from a *retailer* who is authorized by the department, under such rules as it prescribes, to collect the tax and who is regarded as a *retailer* engaged in business in this state for purposes of the tax imposed by this section given to the *purchaser* under sub. (3) relieves the purchaser from further liability for the tax to which the receipt refers.

**77.54 General exemptions.** There are exempted from the taxes imposed by this subchapter:

\* \* \*

**(26m)** The gross receipts from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

#### **CONCLUSIONS OF LAW**

1. Petitioner is liable for use tax on the compactors, bins, and containers it purchased and that were used by its customers to reduce the size of or to collect disposed items, and on motor vehicles and related items used to transport recyclables to processing facilities. These items are not exempt as machinery and equipment used for waste reduction or recycling activities under Wis. Stat. § 77.54(26m).

2. The sales tax applies to petitioner's sales and rentals of compactors to customers of its hauling service. These sales and rentals are not incidental to its hauling services under Wis. Stat. § 77.51(5) and 77.52(2m).

3. The use tax does not apply to the tangible personal property petitioner received by intercompany transfer from separately organized

affiliated entities.

4. Petitioner is liable for use tax on the state motor fuel tax that the Department refunded to petitioner.

### OPINION

#### **Claimed Waste Reduction or Recycling Activities**

To qualify for the sales and use tax exemption in Wis. Stat. § 77.54(26m), the items here under review must be used "exclusively and directly for waste reduction or recycling activities...." The respondent disputes petitioner's contention that these items are used "directly" for such activities.

The petitioner has the burden of showing that the disputed items are clearly within the terms of this tax exemption, and doubts are to be resolved against the exemption and in favor of taxability. *Revenue Dept. v. Greiling*, 112 Wis. 2d 602, 605 (1983).

The Wisconsin Court of Appeals analyzed this exemption language in *Revenue Dept. v. Parks-Pioneer*, 170 Wis.2d 44 (Ct. App. 1992), which involved the taxability of lugger and roll-off boxes used to collect scrap metal from the premises of Parks-Pioneer's suppliers, which it then transported to its own premises for recycling and sale.

The court determined that, even though the items were used "exclusively" for recycling activities, they were not also used "directly" for such activities because they did not perform an "integral function" in those activities since the actual recycling took place after the scrap was collected and

transported to the plant. *Id.*, at 50.

Relying on *Parks-Pioneer*, this commission similarly held in *Ruef's Sanitary Service, Inc. v. WDOR*, Wis. Tax Rep. (CCH) ¶ 400-064 (WTAC 1994) that curb-sorters mounted on motor vehicles and used to collect, sort and transport recyclable materials were not tax exempt because they did not perform an "integral function" in recycling activities and were therefore not "directly" used for recycling.

#### *Bins and Storage Containers*

The bins and storage containers which petitioner sells and leases to its customers are simply receptacles into which recyclable and waste material is placed prior to petitioner's collecting and transporting it to a facility where the actual recycling occurs. These items do not perform an "integral function" in recycling activities and are therefore not "directly" used in recycling activities under the test articulated in *Parks-Pioneer*.

#### *Motor Vehicles*

Petitioner's motor vehicles used to transport recyclables are similarly not used "directly" for recycling because they fail the "integral function" test as well. The items collected are recycled *after* they are transported to the recycling facility by the petitioner's vehicles, just as they were in *Ruef's Sanitary Service, Inc.*

#### *Compactors*

The compactors in question were sold or rented to a few of

petitioner's customers and were used to compress recyclables into recycling containers for petitioner to haul away. The compactors also fail the "integral function" test and are not "directly" used for recycling activities because the actual recycling occurred *after* the compressed items were hauled away.

But petitioner argues that the compactors (as well as the bins, storage containers, and motor vehicles) qualify for the exemption because § 77.54(26m) applies to "waste reduction" or "recycling" activities, and the compactors are used exclusively and directly in "waste reduction" activities. Again, we disagree.

The exemption in § 77.54(26m) applies only to "waste reduction or recycling activities *which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste.*" (Emphasis supplied.) Neither the compactors nor the other items at issue do any of those things. Compressing solid waste does not reduce the amount of waste generated into the waste stream; it simply reduces the volume of solid waste already generated. Compactors perform no integral function in either waste reduction or recycling as defined in the exemption statute. Volume reduction of waste previously generated is not included in the statutory language.

#### **Sales and Leases of Compactors**

Nor do we agree with petitioner that the compactors were merely incidental to petitioner's collection and disposal services provided to its

customers. Each rental or sale of a compactor was a discrete transaction whereby the customer obtained the compactor and was billed for it at a profit to petitioner. The compactors were not included in or incidental to petitioner's hauling and disposal service; they were simply sold at retail to a few of petitioner's hauling customers whose objective was to obtain them for their own use. The language cited by petitioner in Wis. Stat. § 77.51(5) and in Wis. Adm. Code § TAX 11.67(1) contemplates a property transfer subsumed as an element of a service transaction, not a separate sale transaction of the type present here.

#### **Intercompany Transfers**

BFI and its affiliates (other subsidiary corporations of BFI, petitioner's parent corporation) transferred tangible personal property to petitioner. Transferred items included containers, bins, trucks, tractors, and tractor trailers. Upon receipt of the property, petitioner began depreciating the items on its income/franchise tax returns.

Petitioner paid no sales or use tax on the tangible personal property it received by Intercompany Transfers. When petitioner registered the acquired motor vehicles, petitioner stated on the tax form that the sales tax had already been paid. The Department assessed use tax on petitioner's received assets at the net book value at the time of transfer. Petitioner asserts that since no money changed hands, and since there were no retail sales, there were no sales subject to sales or use tax.

"**Use tax**" is defined in Wis. Stat. § 77.51(23) as the tax imposed by Wis. Stat. § 77.53. The principal language imposing the use tax is found, in pertinent part, in Wis. Stat. § 77.53(1) and (2) and reads as follows:

(1) ... an excise tax is levied and imposed ... on the storage, use or other consumption of tangible personal property **purchased** from any **retailer** ....

(2) Every person storing, using or otherwise consuming in this state tangible personal property ... *purchased from a retailer* is liable for the tax imposed by this section. The person's liability is not extinguished until the tax has been paid to this state, but a receipt with the tax separately stated from a *retailer* engaged in business in this state or from a *retailer* who is authorized by the department, under such rules as it prescribes, to collect the tax and who is regarded as a *retailer* engaged in business in this state for purposes of the tax imposed by this section given to the *purchaser* under sub. (3) relieves the purchaser from further liability for the tax to which the receipt refers. [Emphasis supplied.]

"Retailer" is defined in part in § 77.51(13) as:

"**Retailer**" includes:

(a) Every seller who makes any sale of tangible personal property or [a] taxable service." [Emphasis supplied.]

Eleven of the remaining 12 paragraphs<sup>2</sup> of § 77.51(13) define "retailer" using a form of the word "sale" (ex., "making sales" in par. (b), "making the sales" in par. (c), "sells" in par. (d), and "a person selling" in par. (e)).

The definition of "sale" and similar terms begins in § 77.51(14)(intro.), an "inclusive" definition (i.e., uses the word "includes"), as

---

<sup>2</sup> Paragraph K does not use a form of "sale"; it refers to leases and rentals, not sales, of tangible personal property.

follows:

**77.51 Definitions.** Except where the context requires otherwise, the definitions given in this section govern the construction of terms in this subchapter.

\* \* \*

(14) "Sale", "sale, lease or rental", "retail sale", "sale at retail", or equivalent terms include any one or all of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services ....

This language implies a transfer for remuneration or consideration, as do the eleven subsequent paragraphs (ex., "sold to a successful bidder" in par. (a), "for a consideration" in pars. (b) and (h), "payment of the price" in par. (c), and "retail selling price" in par. (d)). We reject the Department's assertion that these transfers fit within § 77.51(14)(intro). This statute lists some aspects of a sale but not all factors, and follows with a list of "sales" which involve a transfer for consideration.

The stipulated facts here state that the transfers of tangible personal property resulted in bookkeeping entries on the receipt of the assets, involved no exchange of money, and resulted in petitioner's receiving no invoice or other bill.

Therefore, we conclude that the use tax imposition language of § 77.51 does not apply to these transfers because no property was "purchased" from a "retailer" within the meaning of § 77.53(1) and (2).

The Department asserts that, rather than exchanging money,

petitioners made bookkeeping entries to show the value of transferred assets. The Department's use tax assessment is imposed on each "net book value" (petitioner's brief, p. 24) entered on petitioner's records. But this is no substitute for remuneration or consideration.

The Department states that the Commission has already determined that transactions between related corporations are not exempt simply due to their relationship. *Wis. Electric Power Co. and Wis. Natural Gas Co. v. WDOR*, Wis. Tax Rep. (CCH) ¶ 200-689 (WTAC 1971). However, that case involved actual billings for services rendered between the related corporations, not simply the transfer of assets without consideration.

The Department also argues that when a transfer of ownership of tangible personal property occurs, § 77.51(14r) deems a purchase and sale to have been made. Not so. That statute merely specifies the time and place of a transaction when a sale or purchase has taken place.

#### **Use Tax On Motor Fuel**

Petitioner purchased motor vehicle fuel and paid the Wisconsin excise tax imposed on these fuel purchases by Wis. Stat. § 78.01(1). When petitioner did not use some of the fuel on public highways, it applied for and received from the Department a refund of the excise tax under Wis. Stat. § 28.75.

Section 77.53(1) imposes the state use tax on the sales price of motor vehicle fuel not subject to the excise tax. It imposes the use tax on

tangible personal property, including the motor vehicle fuel here, purchased from a retailer. During the period under review (October 1, 1989 to September 30, 1993), the measure of the use tax (i.e., the amount upon which the use tax is applied) is the "sales price" (see Wis. Stat. 1993-94 § 77.51(15)(a)4) "*without any deduction* on account of ... any tax included in ... the purchase price including the taxes imposed by ss. 78.01..." [emphasis added].

As an example, assume one gallon of motor vehicle fuel is purchased for \$1.30 which includes 30¢ of excise tax. Further assume that the fuel is used for an off-the-road purpose and that the purchaser applies for and receives a refund of the 30¢ motor vehicle fuel tax. To what amount (\$1.30 or \$1.00) is the use tax applied? The \$1.30. Why? Because the use tax is applied to the sales price (\$1.30) with no reduction for the tax imposed by § 78.01.

Petitioner argues that the measure of the use tax in the above example should be \$1.00, i.e., the purchase price (\$1.30) minus the excise tax (30¢). However, this violates the clear and unambiguous language in 1993-94 § 77.51(15)(a)4 that no deduction to the sales price may be taken for the excise tax.

However, 1993-94 § 77.51(15)(a)4 was amended by 1997 Wisconsin Act 27, secs. 2381m, 2383r, and 9443(18e). The amendment applied to motor vehicle fuel purchases on and after December 1, 1997. It did *not* apply to transactions during the period under review.

The 1997 amendment is reflected in the current version of § 77.51(15)(a)4. The new law provides that, in calculating the measure of the use tax on motor vehicle fuel, the sales price of the motor vehicle fuel is the amount paid, "unless the tax is refunded". Under this added language, the use tax would be calculated on \$1.00 when the fuel tax is refunded, as petitioner asserts. But this is **not** the method of calculating use tax during the period under review.

Petitioner argues that imposing the use tax on an amount that includes motor vehicle fuel excise tax "is illogical and contrary to the entire scheme of Wisconsin's sales and use tax." (Reply brief, p. 13.)<sup>3</sup> Even if that were true, the statute is clear and unambiguous and must be followed.

Petitioner also argues that the Department's Publication 222 (4-98) ("Motor Vehicle Fuel Users: Do You Owe Use Tax?") instructs people to calculate use tax the way petitioner asserts the law should be interpreted. This is true. However, the Publication states that this method should not be used in calculating use tax prior to December 1, 1997 (under the heading "How to Compute Use Tax", exception 1).

Petitioner further argues that the statutory amendment "merely clarified the proper interpretation of the statutes". (Reply brief, p. 13.) No proof is offered to support this position. In fact, the record shows just the opposite.

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<sup>3</sup> The policy argument would have been better made to the legislature and governor, requesting the law be changed. However, retroactive tax statutes are generally not favored.

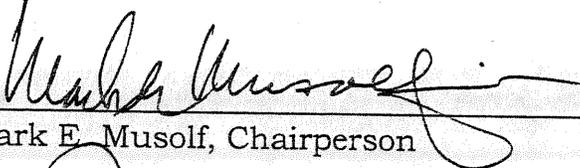
A document prepared for the legislature, summarizing the changes in the bill enacted as 1997 Act 27, shows that the legislature intended this change to be more than a clarification. This document estimates that the amendment would cost \$260,000 in fiscal year 1997-98 and \$450,000 in fiscal year 1998-99.<sup>4</sup> On its face, the new statute has a new meaning that resulted in a state fiscal impact. This contradicts petitioner's assertion that the amendment "merely clarified the proper interpretation of the statutes."

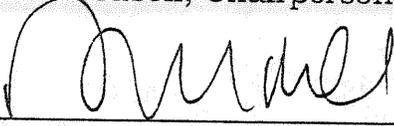
**ORDER**

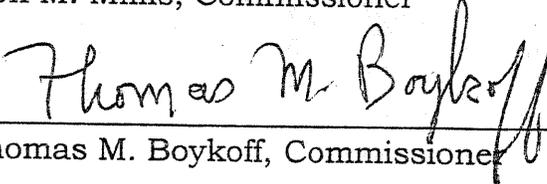
Respondent's action on petitioner's petition for redetermination is modified in accordance with Conclusion of Law 3 and is affirmed as modified.

Dated at Madison, Wisconsin, this 13th day of January, 2000.

**WISCONSIN TAX APPEALS COMMISSION**

  
\_\_\_\_\_  
Mark E. Musolf, Chairperson

  
\_\_\_\_\_  
Don M. Millis, Commissioner

  
\_\_\_\_\_  
Thomas M. Boykoff, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"

<sup>4</sup> Legislative Fiscal Bureau, "1997-99 Wisconsin State Budget; Comparative Summary of Budget Provisions Enacted as 1997 Act 27", volume 1, p. 90 (December 1997). This information was available earlier, during the Legislature's consideration of the amendment. Legislative Fiscal Bureau, "1997-99 Wisconsin State Budget; State Assembly; Modifications to Recommendations of the Joint Committee on Finance", September 17, 1997.

**gar-bage** (gär'bij) *n.* [ME., entrails of fowls] 1. spoiled or waste food, as from a market or kitchen, that is thrown away 2. any worthless, unnecessary, or offensive matter [literary *garbage*]

**ref-use** (ref'yōōs, -yōōz) *n.* [ME. < OFr. *refus*, pp. of *refuser*; see prec.] anything thrown away or rejected as worthless or useless; waste; trash; rubbish —*adj.* thrown away or rejected as worthless or useless

**sludge** (sluj) *n.* [var. of *slutch*; *sludge*, mud; akin to ME. *sluchched*, muddy, prob. ult. < IE. base \*(s)lew-, to hang limply, whence MHG. *slote*, mud, ooze & SLEET] 1. mud, mire, or ooze covering the ground or forming a deposit at the bottom of bodies of water 2. spongy lumps of drift ice 3. any heavy, slimy deposit, sediment, or mass, as the waste resulting from oil refining, the mud brought up by a mining drill, the precipitate in a sewage tank, the sediment in a steam boiler or crankcase, etc. —*sludgy*

**ma-te-ri-al** (mə tir'ē əl) *adj.* [LL. *materialis* < L. *materia*, MATTER] 1. of matter; of substance; relating to or consisting of what occupies space; physical [a *material* object, *material* forces] 2. *a*) of the body or bodily needs, satisfactions, etc.; corporeal, sensual, or sensuous [*material* pleasures] *b*) of or fond of comfort, pleasure, wealth, etc. rather than spiritual or intellectual values; worldly [*material* success] 3. important, essential, or pertinent (to the matter under discussion) 4. *Law* important enough to affect the outcome of a case, the validity of a legal instrument, etc. [a *material* witness] 5. *Philos.* of the matter of reasoning, as distinguished from the formal element —*n.* 1. what a thing is, or may be, made of; elements, parts, or constituents [raw *material*] 2. ideas, notes, observations, sketches, etc. that may be worked up or elaborated; data 3. cloth or other fabric 4. [*pl.*] tools, implements, articles, etc. needed to make or do something [writing *materials*] *SYN.*—*material* is applied to anything that is formed of matter and has substance [*material* objects, possessions, etc.]; *physical* applies either to material things as they are perceivable by the senses or to forces that are scientifically measurable [the *physical* world, the *physical* properties of sound]; *corporeal* applies only to such material objects as have bodily form and are tangible [*corporeal* property]; *sensible* is specifically applied to anything that can be known through the senses rather than through the intellect [a *sensible* phenomenon] —*ANT.* *spiritual, mental, psychical*

**ar-ti-cle** (är'ti k'l) *n.* [ME. & OFr. < L. *articulus*, dim. of *artus*, a joint; see ART] 1. one of the sections or items of a written document, as of a constitution, treaty, contract, etc. 2. [*pl.*] the parts of a formal declaration, or of a body of rules, beliefs, etc., considered as a whole 3. a complete piece of writing, as a report or essay, that is part of a newspaper, magazine, or book 4. a thing of a certain kind; separate item [an *article* of luggage] 5. a thing for sale; commodity 6. *Gram.* any one of the words *a*, *an*, or *the* (and their equivalents in other languages), used as adjectives: *a* and *an* are the *indefinite articles* and *the* is the *definite article* —*vt.* -*cl*ed, -*cl*ing 1. [Archaic] to set forth (charges) in an indictment 2. to bind by the articles of an agreement or contract [an *articled* apprentice] —*vi.* [Archaic] to bring charges (*against*)



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# State of Wisconsin • DEPARTMENT OF REVENUE

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*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

December 9, 1999

The Honorable Judy Robson  
State Senator  
PO Box 7882  
Madison, WI 53707-7882

Dear Senator Robson:

Earlier this year the Joint Committee for Review of Administrative Rules directed the Department of Revenue to draft an emergency rule explaining department policies with respect to waste reduction and recycling exemptions. That emergency rule was published in March.

Since that time the department has been developing a more comprehensive permanent administrative rule relating to sales and use tax treatment of machinery and equipment and motor vehicles used exclusively and directly in waste reduction and recycling. That rule has now been finalized and has been referred to the Legislative Council Rules Clearinghouse for their review.

The department would like to use the opportunity to review the proposed rule with legislators, recyclers and other interested parties. We have scheduled a briefing session on proposed rule Tax 11.20 for **Thursday, December 16, 1999 at 11a.m.** The meeting will be held at the Department of Revenue Offices, 125 South Webster Street (GEF 3) Room 207. Staff will describe the proposed rule and answer questions. Copies of the rule will be available at the meeting.

Please feel free to share this invitation with others you think may be interested in attending. I look forward to seeing you.

Sincerely,

A handwritten signature in cursive script that reads "Tom Ourada".

Thomas D. Ourada  
Executive Assistant

TDO:tmb

# Glenn Grothman

STATE REPRESENTATIVE

59TH ASSEMBLY DISTRICT

**Office:**  
Room 125 West, State Capitol • Post Office Box 8952  
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**Home:**  
111 South 6th Avenue  
West Bend, Wisconsin 53095  
(414) 338-8061

February 9, 1999

Senator Judith Robson  
15 South, State Capitol  
Madison, WI 53702

Dear Judy:

I am writing this letter to inform you of a matter that was brought to my attention by one of my constituents.

My constituent, Mr. Bob Lynn, owns a local recycling center. However, during a recent audit, Mr. Lynn was told that the equipment he uses in his recycling business does not qualify for the recycling sales and use tax exemption in s. 77.54 (26m).

The Department of Revenue seems to have interpreted s. 77.54(26m) to exclude the collection phase of recycling.

Currently, the Department of Revenue is acting on a policy that is not an administrative rule. Under the authority of the Joint Committee of Review of Administrative Rules, I believe the DOR should promulgate their current policy as an administrative rule.

Sincerely,



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

GG/mjg



**State of Wisconsin • DEPARTMENT OF REVENUE**

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*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

MAR 26 1999

MAR 26 1999

The Honorable Glenn Grothman, Co-Chair  
Joint Committee for the Review of Administrative Rules  
Room 15 North – State Capitol  
Madison, WI 53702

Dear Representative Grothman:

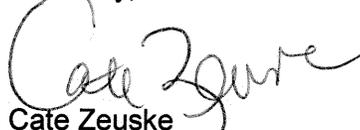
Enclosed you will find the emergency rule relating to the sales and use tax exemption for machinery and equipment used exclusively and directly in waste reduction and recycling activities. The Joint Committee for Review of Administrative Rules (JCRAR) directed the Department of Revenue to prepare this emergency rule pursuant to JCRAR's memo to the Department of Revenue dated February 25, 1999.

The proposed rule does not reflect every interpretation made by the Department of Revenue with respect to the exemption provided in sec. 77.54(26m), Wis. Stats. (1997-98), but does reflect interpretations which have been published in various issues of the *Wisconsin Tax Bulletin*.

In preparing the emergency rule to meet the 30 day requirement pursuant to sec. 227.26(2)(b), stats., the Department of Revenue has not been able to consider other types of processes that may come within the exemption. A permanent rule will be prepared in the near future and it is possible that the permanent rule will contain additional examples of machinery and equipment that may or may not qualify for the exemption.

If you have any questions concerning this, please do not hesitate to contact me.

Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:CJ:tmb  
Enclosure



**State of Wisconsin • DEPARTMENT OF REVENUE**

SEP 23 1999

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933  
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

September 22, 1999

Honorable Judy Robson  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Rm 115 South State Capitol  
PO Box 7882  
Madison WI 53707-7882

Honorable Glenn Grothman  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Rm 15 North State Capitol  
PO Box 8952  
Madison WI 53708

Re: Emergency Rule Extension - Tax 11.20

Dear Senator Robson and Representative Grothman:

To provide for additional time necessary to promulgate a permanent rule, I am requesting under s. 227.24(2)(a) a second 60-day extension of the emergency rule creating Tax 11.20, relating to waste reduction and recycling. This extension will help to prevent any lapse in coverage until the permanent rule is developed. This emergency rule expires October 23, 1999.

A permanent rule is being developed but has not yet been forwarded to the Legislative Council Rules Clearinghouse. Since the permanent rule is not yet in place, another 60-day extension of the emergency rule is being requested.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

**Analysis**

Statutory authority: ss. 227.11(2)(a) and 227.26(2)(b), Stats.

Statute interpreted: s. 77.54(26m), Stats.

Honorable Judy Robson  
Honorable Glenn Grothman  
Page 2

SECTION 1. Tax 11.20 is created, to address the sales and use tax exemptions for waste reduction and recycling activities.

Thank you for your consideration in this matter.

Sincerely,



Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules\1120 Emergency - Extension2 - JCRAR

Enclosure

cc: Donald J. Schneider, Senate Chief Clerk  
Charles Sanders, Assembly Clerk

**ORDER OF THE DEPARTMENT OF REVENUE  
ADOPTING AN EMERGENCY RULE**

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54(26m), Stats., relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

---

**Analysis by the Department of Revenue**

Statutory authority: ss. 227.11(2)(a) and 227.26(2)(b), Stats.

Statute interpreted: s. 77.54(26m), Stats.

SECTION 1. Tax 11.20 is created, to address the sales and use tax exemptions for waste reduction and recycling activities.

---

**PROMULGATION OF EMERGENCY RULE**

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26(2)(b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54(26m), Stats.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

---

SECTION 1. Tax 11.20 is created to read:

**Tax 11.20 Waste reduction and recycling. (1) STATUTORY EXEMPTION.**

Section 77.54(26m), Stats. exempts the gross receipts from the sale of and the storage, use or other consumption of "...waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles

are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.”

(2) CONDITIONS FOR EXEMPTION. The exemption under sub. (1) shall apply if all of the following conditions are met:

- (a) The item is a piece of machinery or equipment or a part for the machinery or equipment.
- (b) The machinery or equipment is used exclusively in waste reduction or recycling activities.
- (c) The machinery or equipment is used directly in waste reduction or recycling activities.
- (d) The waste reduction or recycling activity does one or more of the following:
  - 1. Reduces the amount of solid waste generated.
  - 2. Reuses solid waste.
  - 3. Recycles solid waste.
  - 4. Composts solid waste.
  - 5. Recovers energy from solid waste.

**Note:** Waste reduction and recycling activities do not include the collection, transportation or storage of the solid waste.

**Note:** In a decision dated June 25, 1992 in the case of *Wisconsin Department of Revenue vs. Parks-Pioneer Corporation* the Wisconsin Court of Appeals, District IV, held that lugger and roll-off boxes, tarps, bands, hoists, scales and hose used by Parks-Pioneer in its business of collecting, preparing, sorting, weighing and processing scrap were not used directly in waste reduction or recycling activities. The Court stated that “The scrap is recycled after it is collected and transported to the plant.” Under this interpretation, machinery and equipment used in the collecting, transporting and weighing of recyclable materials do not qualify for exemption under s. 77.54(26m), Stats.

(3) MACHINERY AND EQUIPMENT WHICH QUALIFY FOR EXEMPTION.

Machinery and equipment used exclusively and directly in waste reduction or recycling activities which qualify for the exemption under sub. (1) include the following:

(a) Equipment in a foundry used exclusively to clean sand so the sand can be reused.

(b) Furnaces designed and used exclusively to burn waste oil and heat a building.

(c) Machinery and equipment used exclusively to pulverize trees and brush into small pieces which remain on the ground to compost.

(d) Machinery and equipment used exclusively to chop up branches, bark, stumps and brush into small chips which will be reused.

(e) A road reclaimer/stabilizer used exclusively to cut and grind up asphalt roads so that the resulting materials can be used as a sub-base for a new road.

(4) MACHINERY AND EQUIPMENT WHICH DO NOT QUALIFY FOR EXEMPTION. Machinery and equipment which do not qualify for the exemption under sub. (1) because they are not used exclusively and directly in waste reduction or recycling activities include the following:

(a) A can crusher which an individual uses to crush aluminum cans at the individual's personal residence.

(b) Dumpsters, bins and covers for dumpsters and bins which are used to collect and transport recyclable materials.

(c) Shelving in a bookstore that sells used books and other goods.

(d) Equipment used to recover freon, but not reuse it.

---

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22(2)(c), Stats.

DEPARTMENT OF REVENUE

Dated: March 22, 1999

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue

e:rules/1120 Emergency - Order

**EMERGENCY RULE**

**1999 Session**

**FISCAL ESTIMATE**

ORIGINAL       UPDATED

**DOA-2048 N(R10/98)**

CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

**TAX 11.20**

Amendment No. if Applicable

**Subject**

**Sales and Use Tax Treatment of Machinery and Equipment Used in Waste Reduction and Recycling Activities.**

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

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**

The proposed order adopts an emergency rule interpreting s. 77.54 (26m), Stats., relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities. This rule clarifies the Department's interpretation of existing statutes and does not change current policy. Therefore, the rule has no fiscal effect.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue John T. Stott, (608) 266-9706	Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i>	3/23/99



**State of Wisconsin • DEPARTMENT OF REVENUE**

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*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

July 26, 1999

Honorable Judy Robson  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Rm 115 South State Capitol  
PO Box 7882  
Madison WI 53707-7882

JUL 27 REC'D

Honorable Glenn Grothman  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Rm 15 North State Capitol  
PO Box 8952  
Madison WI 53708

Re: Emergency Rule Extension - Tax 11.20

Dear Senator Robson and Representative Grothman:

To provide for additional time necessary to promulgate a permanent rule, I am requesting under s. 227.24(2)(a) a 60-day extension of the emergency rule creating Tax 11.20, relating to waste reduction and recycling. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule expires August 24, 1999.

A permanent rule is being developed but has not yet been forwarded to the Legislative Council Rules Clearinghouse. Since the permanent rule cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting An Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

**Analysis**

Statutory authority: ss. 227.11(2)(a) and 227.26(2)(b), Stats.

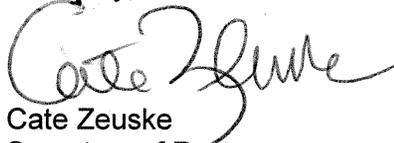
Statute interpreted: s. 77.54(26m), Stats.

Honorable Judy Robson  
Honorable Glenn Grothman  
Page 2

SECTION 1. Tax 11.20 is created, to address the sales and use tax exemptions for waste reduction and recycling activities.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cate Zeuske". The signature is fluid and cursive, with the first name "Cate" being more prominent and the last name "Zeuske" written in a similar style.

Cate Zeuske  
Secretary of Revenue

CZ:MPW:cll

e:rules\1120 Emergency - Extension - JCRAR

Enclosure

cc: Donald J. Schneider, Senate Chief Clerk  
Charles Sanders, Assembly Clerk

**ORDER OF THE DEPARTMENT OF REVENUE  
ADOPTING AN EMERGENCY RULE**

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54(26m), Stats., relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

---

**Analysis by the Department of Revenue**

Statutory authority: ss. 227.11(2)(a) and 227.26(2)(b), Stats.

Statute interpreted: s. 77.54(26m), Stats.

SECTION 1. Tax 11.20 is created, to address the sales and use tax exemptions for waste reduction and recycling activities.

---

**PROMULGATION OF EMERGENCY RULE**

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26(2)(b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54(26m), Stats.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

---

SECTION 1. Tax 11.20 is created to read:

**Tax 11.20 Waste reduction and recycling. (1) STATUTORY EXEMPTION.**

Section 77.54(26m), Stats. exempts the gross receipts from the sale of and the storage, use or other consumption of "...waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles

are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.”

(2) CONDITIONS FOR EXEMPTION. The exemption under sub. (1) shall apply if all of the following conditions are met:

- (a) The item is a piece of machinery or equipment or a part for the machinery or equipment.
- (b) The machinery or equipment is used exclusively in waste reduction or recycling activities.
- (c) The machinery or equipment is used directly in waste reduction or recycling activities.
- (d) The waste reduction or recycling activity does one or more of the following:
  1. Reduces the amount of solid waste generated.
  2. Reuses solid waste.
  3. Recycles solid waste.
  4. Composts solid waste.
  5. Recovers energy from solid waste.

**Note:** Waste reduction and recycling activities do not include the collection, transportation or storage of the solid waste.

~~**Note:** In a decision dated June 25, 1992 in the case of *Wisconsin Department of Revenue vs. Parks-Pioneer Corporation* the Wisconsin Court of Appeals, District IV, held that lugger and roll-off boxes, tarps, bands, hoists, scales and hose used by Parks-Pioneer in its business of collecting, preparing, sorting, weighing and processing scrap were not used directly in waste reduction or recycling activities. The Court stated that “The scrap is recycled after it is collected and transported to the plant.” Under this interpretation, machinery and equipment used in the collecting, transporting and weighing of recyclable materials do not qualify for exemption under s. 77.54(26m), Stats.~~

(3) MACHINERY AND EQUIPMENT WHICH QUALIFY FOR EXEMPTION.

Machinery and equipment used exclusively and directly in waste reduction or recycling activities which qualify for the exemption under sub. (1) include the following:

(a) Equipment in a foundry used exclusively to clean sand so the sand can be reused.

(b) Furnaces designed and used exclusively to burn waste oil and heat a building.

(c) Machinery and equipment used exclusively to pulverize trees and brush into small pieces which remain on the ground to compost.

(d) Machinery and equipment used exclusively to chop up branches, bark, stumps and brush into small chips which will be reused.

(e) A road reclaimer/stabilizer used exclusively to cut and grind up asphalt roads so that the resulting materials can be used as a sub-base for a new road.

(4) MACHINERY AND EQUIPMENT WHICH DO NOT QUALIFY FOR EXEMPTION. Machinery and equipment which do not qualify for the exemption under sub. (1) because they are not used exclusively and directly in waste reduction or recycling activities include the following:

(a) A can crusher which an individual uses to crush aluminum cans at the individual's personal residence.

(b) Dumpsters, bins and covers for dumpsters and bins which are used to collect and transport recyclable materials.

(c) Shelving in a bookstore that sells used books and other goods.

(d) Equipment used to recover freon, but not reuse it.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22(2)(c), Stats.

DEPARTMENT OF REVENUE

Dated: March 22, 1999

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue

e:rules/1120 Emergency - Order

**EMERGENCY RULE**

**1999 Session**

**FISCAL ESTIMATE**

ORIGINAL     UPDATED

**DOA-2048 N(R10/98)**

CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

TAX 11.20

Amendment No. if Applicable

**Subject**

Sales and Use Tax Treatment of Machinery and Equipment Used in Waste Reduction and Recycling Activities.

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

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**

The proposed order adopts an emergency rule interpreting s. 77.54 (26m), Stats., relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities. This rule clarifies the Department's interpretation of existing statutes and does not change current policy. Therefore, the rule has no fiscal effect.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue  John T. Stott, (608) 266-9706	Yeang-Eng Braun  (608) 266-2700 <i>Yeang Eng Braun</i>	3/23/99



State of Wisconsin • DEPARTMENT OF REVENUE

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(608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson  
Governor

Cate Zeuske  
Secretary of Revenue

March 24, 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

MAR 25

MAR 25 1999

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

Dear Senator Robson and Representative Grothman:

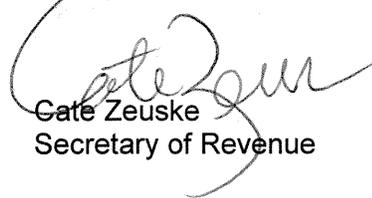
Pursuant to previously requested procedures, I am forwarding an advance copy of an emergency rule which the Department of Revenue intends to adopt effective March 27, 1999.

The rule pertains to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

The emergency rule is necessary to implement the direction of the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26(2)(b), Stats., dated February 25, 1999.

If you have any questions or require further information, please let me know.

Sincerely,



Cate Zeuske  
Secretary of Revenue

CZ:MPW:cil  
e:rules/1120 Emergency - JCRAR

Enclosure

**ORDER OF THE DEPARTMENT OF REVENUE  
ADOPTING AN EMERGENCY RULE**

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54(26m), Stats., relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

---

**Analysis by the Department of Revenue**

Statutory authority: ss. 227.11(2)(a) and 227.26(2)(b), Stats.

Statute interpreted: s. 77.54(26m), Stats.

SECTION 1. Tax 11.20 is created, to address the sales and use tax exemptions for waste reduction and recycling activities.

---

**PROMULGATION OF EMERGENCY RULE**

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26(2)(b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54(26m), Stats.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

---

SECTION 1. Tax 11.20 is created to read:

**Tax 11.20 Waste reduction and recycling. (1) STATUTORY EXEMPTION.**

Section 77.54(26m), Stats. exempts the gross receipts from the sale of and the storage, use or other consumption of "...waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles

are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.”

(2) **CONDITIONS FOR EXEMPTION.** The exemption under sub. (1) shall apply if all of the following conditions are met:

- (a) The item is a piece of machinery or equipment or a part for the machinery or equipment.
- (b) The machinery or equipment is used exclusively in waste reduction or recycling activities.
- (c) The machinery or equipment is used directly in waste reduction or recycling activities.
- (d) The waste reduction or recycling activity does one or more of the following:
  - 1. Reduces the amount of solid waste generated.
  - 2. Reuses solid waste.
  - 3. Recycles solid waste.
  - 4. Composts solid waste.
  - 5. Recovers energy from solid waste.

**Note:** Waste reduction and recycling activities do not include the collection, transportation or storage of the solid waste.

**Note:** In a decision dated June 25, 1992 in the case of *Wisconsin Department of Revenue vs. Parks-Pioneer Corporation* the Wisconsin Court of Appeals, District IV, held that lugger and roll-off boxes, tarps, bands, hoists, scales and hose used by Parks-Pioneer in its business of collecting, preparing, sorting, weighing and processing scrap were not used directly in waste reduction or recycling activities. The Court stated that “The scrap is recycled after it is collected and transported to the plant.” Under this interpretation, machinery and equipment used in the collecting, transporting and weighing of recyclable materials do not qualify for exemption under s. 77.54(26m), Stats.

(3) **MACHINERY AND EQUIPMENT WHICH QUALIFY FOR EXEMPTION.**

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(d) Equipment used to recover freon, but not reuse it.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22(2)(c), Stats.

DEPARTMENT OF REVENUE

Dated: March 22, 1999

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue

e:rules/1120 Emergency - Order

EMERGENCY RULE

1999 Session

FISCAL ESTIMATE

ORIGINAL  UPDATED

DOA-2048 N(R10/98)

CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

TAX 11.20

Amendment No. if Applicable

Subject

Sales and Use Tax Treatment of Machinery and Equipment Used in Waste Reduction and Recycling Activities.

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

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

The proposed order adopts an emergency rule interpreting s. 77.54 (26m), Stats., relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities. This rule clarifies the Department's interpretation of existing statutes and does not change current policy. Therefore, the rule has no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue

John T. Stott, (608) 266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

*Yeang Eng Braun*

Date

3/23/99