



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-053

AN ORDER to repeal Tax 11.11 (2) (b), 11.11 Note 1 and Note 2, and 12.40 (2); to renumber and amend Tax 11.11 (2) (a) and (4); to amend Tax 6.40 (title), (1), (2) (b) and (3) (a) 1. and (b), 11.11 (title), (2) (title) and (5) (a), 11.11 Note 4, and 12.40 (3) (a) 1. and (b); to repeal and recreate Tax 11.11 (5) (c); and to create Tax 11.11 (2) Note, (2m), (3) Note and (4) (b), relating to property tax exemption for waste treatment facilities.

Submitted by **DEPARTMENT OF REVENUE**

04-19-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-17-02 REPORT SENT TO AGENCY.

RS:WF:tlu;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO



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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. In s. Tax 6.40 (1), the notation ", Stats.," should be inserted after "s. 76.13."
- b. The last two sentences of s. Tax 11.11 (2m) are explanatory in nature and, therefore, should be placed in the note following s. Tax 11.11 (2m). [See s. 1.09 (1), Manual.]
- c. The last sentences in s. Tax 11.11 (5) (c) 1., 2., and 3. are explanatory in nature and, therefore, should be placed in a note. [See s. 1.09 (1), Manual.]

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

- a. In s. Tax 11.11 (4) (b), to what does the word "utilities" refer?
- b. The first sentence of s. Tax 11.11 (5) (c) 1. would be more clear if redrafted in a manner similar to the following: "A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a utility waste treatment facility that has not been approved by the department for a property tax exemption under s. 76.025 (1), Stats." In addition, it is suggested that the word "properly" be deleted from the first sentence of s. Tax 11.11 (5) (c) 1. If the department has approved a property tax exemption for a public utility waste treatment facility, it does not appear that a contractor or subcontractor should be responsible for determining whether the department "properly" did so. Also, s. Tax 11.11 (4) (a) and (5) (a) refers to a "utility waste treatment facility," while s. Tax

11.11 (5) (c) refers to "public utility waste treatment facilities." The entire rule should be reviewed for the use of consistent terminology. Finally, the quotation marks around the word "approval" should be deleted.

c. It is suggested that the first sentence of s. Tax 11.11 (5) (c) 2. and 3. be redrafted in a manner similar to the following: "The department is not authorized to approve the property tax exempt status of [industrial] [municipal] waste treatment facilities."

PROPOSED RULE ORDER OF THE DEPARTMENT OF REVENUE

The Wisconsin Department of Revenue hereby proposes an order to repeal Tax 11.11(2)(b), Tax 11.11 Note 1 and Note 2, and Tax 12.40(2); to renumber and amend Tax 11.11(2)(a) and (4); to amend Tax 6.40(title), (1), (2)(b), (3)(a)1. and (b), Tax 11.11(title), (2)(title) and (5)(a), Tax 11.11 Note 4, and Tax 12.40(3)(a)1. and (b); to repeal and recreate Tax 11.11(5)(c); and to create Tax 11.11(2) Note, (2m), (3) Note, and (4)(b).

Analysis Prepared by the Department of Revenue

Statutory authority: ss. 77.61(9) and 227.11(2), Stats.

Statutes interpreted: ss. 70.11(21) and 77.54(26), Stats.

Tax 6.40 guides administration of the property tax exemption for waste treatment facilities owned by public utilities. Tax 11.11 guides administration of the sales and use tax exemption for waste treatment facilities. Tax 12.40 guides administration of the property tax exemption for industrial waste treatment facilities taxed under Chapter 70, Stats.

Prior to 2001 Wisconsin Act 16, the property tax exemption for industrial waste treatment facilities under s. 70.11(21), Stats., required an approval process whereby application was made to the Department of Revenue. Under 2001 Wisconsin Act 16, owners of industrial waste treatment property that is taxed under Chapter 70, Stats., will no longer be required to apply to the Department of Revenue for the property tax exemption; the application process will continue to be required for public utility property taxed under Chapter 76, Wis. Stats.

Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from sales and use taxation if the waste treatment property is exempt from the property tax. While this provision is unchanged by 2001 Wisconsin Act 16, the sales and use tax exemption will no longer be tied to a Department of Revenue approval process for property taxed under Chapter 70, Stats.

The proposed amendments will repeal the approval procedures required for the property tax exemption in Tax 12.40 and will clarify the different requirements for obtaining sales and use tax exemption for waste treatment facilities in Tax 11.11. The proposed rule also updates Tax 6.40 and Tax 12.40 to conform to a change of address and the renumbering of statutes pursuant to 1995 Act 227 and 1997 Act 35.

Section 1. Tax 6.40 (title), (1), (2)(b), (3)(a)1., and (b) are amended to read:

Tax 6.40 (title) **Waste treatment facilities (industrial/utility). (s. ~~76.02(10)~~ 76.025(1), Stats.)**

(1) STATUTE. The exemption for a waste treatment facility otherwise taxable under s. 76.13^{is} contained in s. ~~76.02(10)~~ 76.025(1), Stats. Stats.)

(2)(b) The completed form "Application for Exemption of Waste Treatment Facility-Utility" should be sent to the Bureau of Utility and Special Taxes, Division of State/Local Finance, Wisconsin Department of Revenue, P.O. Box 8933 8971, Madison, WI 53708.

(3)(a)1. Waste; means that which is left over as superfluous, discarded or fugitive material. In addition, "industrial waste wastes" is are defined by reference to s. 444.01(5) 281.01(5), Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "Air contaminant" is defined by reference to s. 444.30(4) 285.01(1) Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(b) The exemption for industrial waste treatment facilities does not extend to "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development for subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" (s. 444.01(8) 281.01(7), Stats.).

Section 2. Tax 11.11(title) and (2)(title) are amended to read:

Tax 11.11(title) Utility, Industrial or industrial and governmental waste treatment facilities.

(2)(title) INDUSTRIAL UTILITY WASTE TREATMENT EXEMPTION.

Section 3. Tax 11.11(2)(a) is renumbered (2) and amended to read:

Tax. 11.11(2) If an ~~industrial or a~~ utility waste treatment facility that is taxed under ch. 76, Stats. qualifies for property tax exemption under s. 70.11(21)(a) 76.025(1), Stats., as approved by the department, it qualifies for the sales and use tax exemption under s. 77.54(26), Stats.

Section 4. Tax 11.11(2) Note is created to read:

11.11(2) Note: Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for public utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a public utility, including railroads, airlines and pipelines, approved by the department, write or call Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, P.O. Box 8971, Madison, WI 53708; telephone (608) 266-8162. The e-mail address is utility@dor.state.wi.us and web site is www.dor.state.wi.us/contact/slfbust.

Section 5. Tax 11.11(2)(b) is repealed.

Section 6. Tax. 11.11(2m) is created to read:

Tax 11.11(2m) INDUSTRIAL WASTE TREATMENT EXEMPTION. (a) An industrial waste treatment facility is any property taxed under Chapter 70, Stats., that is built, constructed or installed as a unit used for the treatment of liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource.

(b) Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from the sales and use tax under s. 77.54(26), Stats., if the facility qualifies for property tax exemption under s. 70.11(21)(a), Stats. To ascertain whether a manufacturing property would be exempt under s. 70.11(21), Stats., owners may contact the district office of the manufacturing and telco assessment bureau of the department of revenue. To ascertain whether a non-manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

Note: Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities. For more information regarding the property tax exemption for industrial waste treatment facilities write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, P.O. Box 8933, Madison, WI 53708-8933; telephone (608) 266-1147. The web site is www.dor.state.wi.us/contact/slfbmta.

Section 7. Tax 11.11(3) Note is created to read:

11.11(3) Note: For more information regarding the exemption for municipal treatment facilities, write or call Wisconsin Department of Revenue, Bureau of Customer Service, Mail Stop 5-77, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2772. The web site is www.dor.state.wi.us/contact/pcs.html#cust.

Section 8. Tax 11.11(4) is renumbered Tax 11.11(4)(a) and amended to read:

Tax 11.11(4) REPAIR, SERVICE AND OPERATION (a) The repair, service, alteration, cleaning, painting and maintenance of a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2) (2m) and a municipal waste treatment facility described in sub. (3) as well as the repair parts and replacement for those types of facilities and chemicals, supplies and utilities used or consumed in operating those types of facilities are exempt from the sales and use tax.

Section 9. Tax 11.11(4)(b) is created to read:

Tax 11.11(4)(b) Chemicals, supplies and utilities used or consumed in operating a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m) and a municipal waste treatment facility described in sub. (3) are exempt from the sales and use tax.

Section 10. Tax 11.11(5)(a) is amended to read:

Tax 11.11(5)(a) *Exempt purchases.* The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates the property into an approved industrial utility waste treatment facility or who incorporates the property into an industrial waste treatment facility or a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sales. Certification of exempt use shall be made on a Wisconsin sales and use tax exemption certificate, form S-211.

Section 11. Tax 11.11(5)(c) is repealed and recreated to read:

Tax 11.11(5)(c) *Determining exemptions.* 1. 'Public utility property taxed under ch. 76, Stats.' Contractors of public utility waste treatment facilities shall ascertain if the facility has been properly approved by the department of revenue for a property tax exemption under s. 76.025(1), Stats. If there has been no approval, the contractor or subcontractor may be liable for the sales and use tax on its purchases. Contractors may direct questions concerning the property to the department of revenue as provided in sub. (2). X
- 10/16

2. 'Industrial property taxed under ch. 70, Stats.' Approvals are not required for industrial waste treatment facilities. Contractors shall ascertain whether the industrial waste treatment facility they are constructing qualifies for a property tax exemption under s. 70.11(21), Stats. Contractors may direct questions concerning the taxability of the waste treatment facility to the department of revenue as provided in sub. (2m)(b).)

3. 'Municipal waste treatment facilities.' Approvals are not required for municipal waste treatment facilities. Contractors shall ascertain whether municipal waste treatment facility they are constructing qualifies for a property tax exemption under sub. (3). Contractors may direct questions concerning municipal waste treatment facilities to the department of revenue as provided in sub. (3). 9

Section 12. Tax 11.11 Note 1 and Note 2 are repealed.

Section 13. Tax 11.11 Note 4 is amended to read:

11.11 Note: The interpretations in s. Tax 11.11 are effective July 31, 1975 when ss. 70.11(21) and 77.54(26), Stats., were revised, except that (a) the exemptions for chemicals and supplies used or consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979, and (b) the approval process for property and sales tax exemptions for industrial waste treatment facilities, except utilities, was eliminated effective January 1, 2002, pursuant to 2001 Wisconsin Act 16.

Section 14. Tax 12.40(2) is repealed.

Section 15. Tax 12.40(3)(a)1. and (b) are amended to read as follows:

12.40(3)(a)1. Waste; means that which is left over as superfluous, discarded or fugitive material. In addition, "industrial waste" is defined by reference to s. 444.01(5) ~~281.01(5)~~, Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "Air contaminant" is defined by reference to s. 444.30(1) ~~285.01(1)~~, Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(b) The exemption for industrial waste treatment facilities does not extend to "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" (s. 444.01(8) ~~281.01(7)~~, Stats.).

Initial Regulatory Flexibility Analysis

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

This rule 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.

DEPARTMENT OF REVENUE

Date:

4/17/02

By:


Richard G. Chandler
Secretary of Revenue

RB:skr

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State of Wisconsin • DEPARTMENT OF REVENUE

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Scott McCallum
Governor

Richard G. Chandler
Secretary of Revenue

August 13, 2002

The Honorable Judith Robson
Co-Chair, Joint Committees for Review
Of Administrative Rules
State Capitol, Room 15 South
P.O. Box 7882
Madison, WI 53707-7882

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

Dear Senator Robson and Representative Grothman:

Enclosed are copies of Clearinghouse Rule #02-053 in final draft form and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats.

Sincerely,

Richard G. Chandler
Secretary of Revenue

RGC:RB:skr
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Enclosure:

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

The Wisconsin Department of Revenue hereby proposes an order to: **repeal** Tax 11.11(2)(b) and Tax 12.40(2); **renumber and amend** Tax 6.40(3)(a)1. and 3., Tax 11.11(2)(a) and (4) and Tax 12.40(3)(a)1. and 3.; **amend** Tax 6.40(title), (2)(b) and (3)(a)2. and 4., (b) and (c), Tax 11.11(title), (2)(title) and (5)(a) and Tax 12.40(title) and (3)(a)2. and 4., (b) and (c); **repeal and recreate** Tax 11.11(5)(c); and **create** Tax 6.40(3)(d), Tax 11.11(2m) and (4)(b) and Tax 12.40(3)(d); **relating to** waste treatment facilities.

Analysis by the Department of Revenue

Statutory authority: ss. 77.61(9) and 227.11(2), Stats.

Statutes interpreted: ss. 70.11(21), 76.025(1) and 77.54(26), Stats.

Tax 6.40 guides administration of the property tax exemption for waste treatment facilities owned by public utilities. Tax 11.11 guides administration of the sales and use tax exemption for waste treatment facilities. Tax 12.40 guides administration of the property tax exemption for industrial waste treatment facilities taxed under ch. 70, Stats.

Prior to 2001 Wis. Act 16, the property tax exemption for industrial waste treatment facilities under s. 70.11(21), Stats., required an approval process whereby application was made to the Department of Revenue. Under 2001 Wis. Act 16, owners of industrial waste treatment property that is taxed under ch. 70, Stats., are no longer required to apply to the Department of Revenue for the property tax exemption; the application process will continue to be required for public utility property taxed under ch. 76, Stats.

Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from sales and use taxation if the waste treatment property is exempt from the property tax. While this provision is unchanged by 2001 Wis. Act 16, the sales and use tax exemption is no longer tied to a Department of Revenue approval process for property taxed under ch. 70, Stats.

The proposed order clarifies the different requirements for obtaining sales and use tax exemption for waste treatment facilities in Tax 11.11 and repeals the approval procedures required for the property tax exemption in Tax 12.40. The proposed order also: updates format and style in Tax 6.40, 11.11 and 12.40, per Legislative Council Rules Clearinghouse ("Clearinghouse") standards; updates a department address in Tax 6.40 and Tax 12.40 and moves it from the text of the rule to a note in Tax 6.40, per Clearinghouse standards; and alphabetizes definitions and moves a "non-exempt" provision from a definition to a separate paragraph in Tax 6.40 and 12.40, per Clearinghouse standards.

SECTION 1. Tax 6.40 (title) and (2)(b) are amended to read:

Tax 6.40 (title) **Waste treatment facilities (- industrial/utility).**

(2)(b) The completed form "Application for Exemption of Waste Treatment Facility-Utility" should be sent to the Bureau of Utility and Special Taxes, ~~Division of State/Local Finance, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708.~~

Note to Revisor: Insert the following note at the end of Tax 6.40(2)(b):

Note: The address for mailing the application form is Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, Division of State and Local Finance, PO Box 8971, Madison WI 53708-8971.

SECTION 2. Tax 6.40(3)(a)1. and 3. are renumbered Tax 6.40(3)(a)3. and 1. and as renumbered are amended to read:

Tax 6.40(3)(a)1. "Facility;" means tangible personal property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

3. "Waste;" means that which is left over as superfluous, discarded or fugitive material. In addition, "~~industrial waste wastes~~" is defined by reference to s. 281.01(5), Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "Air contaminant" is defined by reference to s. 285.01(1), Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

SECTION 3. Tax 6.40(3)(a)2. and 4., (b) and (c) are amended to read:

Tax 6.40(3)(a)2. "Treatment;" means removing, altering or storing waste.

4. "Waste treatment facility;" means tangible personal property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material. ~~Monitoring equipment which is not a component or integral part of a waste treatment facility is not exempt.~~

(b) The exemption for industrial waste treatment facilities does not extend to "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" as provided in s. 281.01(7), Stats.

(c) The exemption ~~also~~ for industrial waste treatment facilities does not apply to conversion of an industrial furnace from one type of fuel to another type of fuel. ~~The exemption does not apply~~ or to the increased height of a smoke stack to diffuse emissions over a wide area or increments to property held for the production of income but which may be indirectly related to pollution abatement. However, the installation of a scrubber or electrostatic precipitator in a smoke stack could qualify for exemption.

SECTION 4. Tax 6.40(3)(d) is created to read:

Tax 6.40(3)(d) The exemption for industrial waste treatment facilities does not apply to monitoring equipment that is not a component or integral part of a waste treatment facility.

Note to Revisor: Replace the note at the end of Tax 6.40 with the following:

Note: Section Tax 6.40 interprets s. 76.025(1), Stats.

SECTION 5. Tax 11.11(title) and (2)(title) are amended to read:

Tax 11.11(title) ~~Industrial or~~ **Utility, industrial and governmental waste treatment facilities.**

(2)(title) ~~INDUSTRIAL UTILITY WASTE TREATMENT EXEMPTION.~~

SECTION 6. Tax 11.11(2)(a) is renumbered Tax 11.11(2) and amended to read:

Tax 11.11(2) If an ~~industrial or~~ a utility waste treatment facility that is taxed under ch. 76, Stats., qualifies for property tax exemption under s. ~~70.11(21)(a)~~ 76.025(1), Stats., as approved by the department, it qualifies for the sales and use tax exemption under s. 77.54(26), Stats.

Note to Revisor: Insert the following note at the end of Tax 11.11(2):

Note: Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines and pipelines, approved by the department, write to Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, P.O. Box 8971, Madison WI 53708-8971; telephone (608) 266-8162; send an e-mail to utility@dor.state.wi.us; or access the department's internet web site at www.dor.state.wi.us/contact/sfbus.

SECTION 7. Tax 11.11(2)(b) is repealed.

SECTION 8. Tax 11.11(2m) is created to read:

Tax 11.11(2m) **INDUSTRIAL WASTE TREATMENT EXEMPTION.** (a) An industrial waste treatment facility is any property taxed under ch. 70, Stats., that is built, constructed or installed as a unit used for the treatment of liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource.

(b) Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from the sales and use tax under s. 77.54(26), Stats., if the facility qualifies for property tax exemption under s. 70.11(21)(a), Stats.

Note: Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities. For more information regarding the property tax exemption for industrial waste treatment facilities of manufacturers write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, PO Box 8971, Madison WI 53708-8971; telephone (608) 266-1147. The web site is www.dor.state.wi.us/contact/sfbsmta. To ascertain whether a non-manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

Note to Revisor: Insert the following note at the end of Tax 11.11(3):

Note: For more information regarding the exemption for municipal treatment facilities, write or call Wisconsin Department of Revenue, Bureau of Customer Service, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902, telephone (608) 266-2772. The web site is www.dor.state.wi.us/contact/pcs.html#cust.

SECTION 9. Tax 11.11(4) is renumbered Tax 11.11(4)(a) and amended to read:

Tax 11.11(4)(a) The repair, service, alteration, cleaning, painting and maintenance of a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2) (2m) and a municipal waste treatment facility described in sub. (3) as well as the repair parts and replacement for those types of facilities and chemicals, supplies and utilities used or consumed in operating those types of facilities are exempt from the sales and use tax.

SECTION 10. Tax 11.11(4)(b) is created to read:

Tax 11.11(4)(b) Chemicals and supplies, including fuel and electricity, used or consumed in operating a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m) and a municipal waste treatment facility described in sub. (3) are exempt from the sales and use tax.

SECTION 11. Tax 11.11(5)(a) is amended to read:

Tax 11.11(5)(a) *Exempt purchases.* The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates the property into an approved industrial utility waste treatment facility or who incorporates the property into an industrial waste treatment facility or a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sales. Certification of exempt use shall be made on a Wisconsin sales and use tax exemption certificate, form S-211.

SECTION 12. Tax 11.11(5)(c) is repealed and recreated to read:

Tax 11.11(5)(c) *Determining exemptions.* 1. 'Utility property taxed under ch. 76, Stats.' A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a utility waste treatment facility that has not been approved by the department for a property tax exemption under s. 76.025(1), Stats.

Note: Contractors may direct questions concerning the property to the department as provided in sub. (2).

2. 'Industrial property taxed under ch. 70, Stats.' Approvals are not required for industrial waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a facility that is determined to not qualify for a waste treatment facility property tax exemption under s. 70.11(21), Stats.

Note: Contractors may direct questions concerning the taxability of the waste treatment facility to the department as provided in sub. (2m).

3. 'Municipal waste treatment facilities.' Approvals are not required for municipal waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a facility that is determined not to be a municipal waste treatment facility as provided in sub. (3).

Note: Contractors may direct questions concerning municipal waste treatment facilities to the department as provided in sub. (3).

Note to Revisor: Remove the first two notes at the end of Tax 11.11, and replace the last note with the following:

Note: The interpretations in s. Tax 11.11 are effective July 31, 1975 when ss. 70.11(21) and 77.54(26), Stats., were revised, except: (a) The exemptions for chemicals and supplies used or consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979; and (b) the approval process for property and sales tax exemptions for industrial waste treatment facilities, except utilities, were eliminated effective January 1, 2002, pursuant to 2001 Wis. Act 16.

SECTION 13. Tax 12.40(title) is amended to read:

Tax 12.40(title) **Waste treatment facilities (- industrial).**

SECTION 14. Tax 12.40(2) is repealed.

SECTION 15. Tax 12.40(3)(a)1. and 3. are renumbered Tax 12.40(3)(a)3. and 1. and as renumbered are amended to read:

Tax 12.40(3)(a)1. "Facility;" means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

3. "Waste;" means that which is left over as superfluous, discarded or fugitive material. In addition, "*industrial waste wastes*" is defined by reference to s. 281.01(5), Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "*Air contaminant*" is defined by reference to s. 285.01(1), Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

SECTION 16. Tax 12.40(3)(a)2. and 4., (b) and (c) are amended to read:

Tax 12.40(3)(a)2. "Treatment;" means removing, altering or storing waste.

4. "Waste treatment facility" means tangible personal property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material. ~~Monitoring equipment which is not a component or integral part of a waste treatment facility is not exempt.~~

(b) The exemption for industrial waste treatment facilities does not extend to "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" (as provided in s. 281.01(7), Stats.)-

(c) The exemption also for industrial waste treatment facilities does not apply to conversion of an industrial furnace from one type of fuel to another type of fuel. The exemption does not apply or to the increased height of a smoke stack to diffuse emissions over a wide area or increments to property held for the production of income but which may be indirectly related to pollution abatement. However, the installation of a scrubber or electrostatic precipitator in a smoke stack could qualify for exemption.

SECTION 17. Tax 12.40(3)(d) is created to read:

Tax 12.40(3)(d) The exemption for industrial waste treatment facilities does not apply to monitoring equipment that is not a component or integral part of a waste treatment facility.

Note to Revisor: Replace the note at the end of Tax 12.40 with the following:

Note: Section Tax 12.40 interprets s. 70.11(21), Stats.

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

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: 8/13/02 By: Richard G. Chandler
Richard G. Chandler
Secretary of Revenue

RB:skr
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FISCAL ESTIMATE FORM

2001 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 01-
INTRODUCTION #
Admin. Rule # Chapter Tax 6, 11 and 12

Subject
 Exemption Application Process for Waste Treatment Property

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 checked="" type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

Local: No Local Government Costs

- | | | |
|--|---|---|
| 1. <input checked="" type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities
<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | |

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

Tax 6.40 guides administration of the property tax exemption for waste treatment facilities owned by public utilities. Tax 11.11 guides administration of the sales and use tax exemption for waste treatment facilities. Tax 12.40 guides administration of the property tax exemption for industrial waste treatment facilities taxed under Chapter 70, Wis. Stats.

Prior to 2001 Wisconsin Act 16, the property tax exemption for industrial waste treatment facilities under sec. 70.11(21), Wis. Stats., required an approval process whereby application was made to the Department of Revenue. Under 2001 Wisconsin Act 16, owners of industrial waste treatment property that is taxed under Chapter 70, Wis. Stats., will no longer be required to apply to the Department of Revenue for the property tax exemption; the application process will continue to be required for public utility property taxed under Chapter 76, Wis. Stats.

Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from sales and use taxation if the waste treatment property is exempt from the property tax. While this provision is unchanged by 2001 Wisconsin Act 16, the sales and use tax exemption will no longer be tied to a Department of Revenue approval process for property taxed under Chapter 70, Wis. Stats.

As a result of Act 16, the Department of Revenue will realize minor savings associated with the formal granting of property tax exemptions for industrial waste treatment facilities. However, it is anticipated that the Department will continue to receive the same number of inquiries regarding the qualifications for a property tax exemption. In addition, the elimination of the approval process for property tax exemptions will increase the department's administrative costs associated with the determination of sales and use tax exemptions of affected property. These costs include taxpayer assistance and confirmation with local assessors of the property tax status of the property.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Rebecca A Boldt	Brian Pahnke,  (608) 266-2700	4/12/02

There will be a minor increase in local government costs associated with the determination by the local assessor of property tax exemptions for non-manufacturing waste treatment facilities.

The proposed amendments to Chapter Tax 11.11 and 12.40 are required to bring the rules into conformity with current law as affected by 2001 Wisconsin Act 16. The proposed rule also updates Tax 6.40 and Tax 12.40 to conform to a change of address and the renumbering of statutes pursuant to 1995 Act 227 and 1997 Act 35. The proposed amendments have no fiscal effect independent of the fiscal effect of the statutory changes upon which they are based.

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FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2001 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

Admin. Rule #

INTRODUCTION #

Subject

Exemption Application Process for Waste Treatment Property

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringe (FTE Position Changes)	\$ (FTE)	\$ - (- FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ See text of fiscal note.

\$See text of fiscal note.

NET CHANGE IN REVENUES

\$

\$

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

Authorized Signature/Telephone No.

Date

Wisconsin Department of Revenue

Brian Pahnke

Rebecca A Boldt

(608) 266-2700

DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 02-053

SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to update Chapter Tax 11.11 and 12.40 in accordance with 2001 Wisconsin Act 16 under which the application for property tax exemption is no longer required for certain types of waste treatment facilities. The rule also updates Tax 6.40 to conform to address changes.

Public Hearing

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

Legislative Council Staff Recommendations

All corrections regarding form, style, clarity, grammar and use of plain language identified in the Clearinghouse Rule comments have been made.

Regulatory Flexibility Analysis

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

RB:skr

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