

Joint Committee for Review of Administrative Rules

Office of Sen. Joseph Leibham
Office of Rep. Glenn Grothman
Phone 608-266-2056
Phone 608-264-8486

- **TAX 11.12 (7) (a)**

Report to the Legislature

Administrative Rule Tax 11.12 (7) (a)

The Joint Committee for Review of Administrative Rules

Produced pursuant to s. 227.26(2)(g), Stats

Section Tax 11.12(7)(a), promulgated by the Department of Revenue, (DOR)

provides for the imposition of a tax on the sale of game birds to a game farm if the primary reason for the purchase of the game birds is for hunting.

Description of the Problem

At the request of thirty-seven legislators, the Joint Committee for Review of Administrative Rules (JCRAR) investigated the taxing of game bird sales under s. Tax 11.12(7)(a). Recently, a DOR audit discovered that game farms were not paying sales tax on the purchase of their game birds. As a result, the DOR ordered the game farms to pay four years of back taxes plus interest. The game farms then produced a 1989 DOR memo including the following statement: "Game farms and shooting preserves which transfer birds to their customers as part of a recreational facility and which pay the sales tax on their receipts from the operation can purchase the birds without tax by giving a Resale Certificate to the seller." Consequently, the DOR rescinded its request for back taxes and interest. However, the DOR notified the game farms of its intention to prospectively apply a rule requiring the imposition of a sales tax on the purchase of game birds by game farms. As a result of this notice, the thirty-seven legislators sent a letter requesting JCRAR to hold a hearing and suspend s. Tax 11.12(7)(a).

Arguments in Favor of Suspension

- *Requiring game farms to pay sales tax on the purchase of game birds would result in double taxation. The game farms already charge a sales tax to the hunters who hunt the game birds.*
- *It is confusing and inconsistent for the DOR to change its policy regarding the taxing of the purchase of game birds.*
- *Requiring an additional tax could hurt the small businesses of these small game farmers.*

Arguments Against Suspension

- *The DOR should continue to be the authority as to which transactions require the collection of a sales tax.*
- *The collection of this sales tax would result in more revenue for the state.*
- *To not collect sales tax from game farms on the purchase of game birds is inconsistent with other tax policies.*

Action by Joint Committee for Review of Administrative Rules

On November 7, 2002 the Joint Committee for Review of Administrative Rules held a public hearing and an executive session on s. Tax 11.12(7)(a). The committee unanimously passed a motion, pursuant to s. 227.26(2)(d), Stats., and for the reasons set forth in s. 227.19(4)(d)6., Stats., to suspend s. Tax 11.12(7)(a). This action suspends the ability of DOR to collect sales tax on the sale of game birds to game farms when the birds are primarily used for hunting.

On November 7, 2002, JCRAR voted unanimously to introduce LRB 0723/1 and LRB 0722/1, which would create a sales and use tax exemption for the sale of game birds to game farms and game clubs.