

Kreye, Joseph

From: Wadd, Jay
Sent: Tuesday, March 06, 2007 1:45 PM
To: Olin, Rick; Kreye, Joseph
Subject: RE: DOR Response on LRB 2089

Thanks, Rick.

Joe, can you make the changes suggested by Rick?

Thanks,

Jay

From: Olin, Rick
Sent: Tuesday, March 06, 2007 11:59 AM
To: Wadd, Jay; Kreye, Joseph
Subject: DOR Response on LRB 2089

Jay & Joe:

Sherry Gates-Hendrix at DOR returned my call. She was not able to give me a definitive answer as to how to proceed because one of their reviewers is ill and out of the office. However, she seemed to affirm my belief that the two provisions have a comparable intent. I informed her that my inclination was to replace the language on page 3, lines 3 - 5 with the more specific language that is being stricken on page 2, lines 10 - 13. Based on my conversation with her, I recommend that this change be made if Jay (Sen. Hansen) approves. ***Jay, please let Joe know how to proceed.*** Also, I recommend forwarding a copy of the new bill draft to DOR. Let me know if either of you has questions.

Rick



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2089/P1
JK:jld:rs

RMP

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 3-6-07

due Fri. 3-9

Regen

1 AN ACT *to renumber and amend* 70.11 (21) (a); *to amend* 74.35 (2m), 74.35 (5)
2 (d), 76.025 (1), 76.81, 77.54 (26), 79.04 (1) (a) and 79.04 (2) (a); and *to create*
3 70.11 (21) (ab) of the statutes; **relating to:** the property tax exemption for waste
4 treatment facilities.

Analysis by the Legislative Reference Bureau

Under current law, generally, all property purchased or constructed as a waste treatment facility and used to treat industrial wastes or air contaminants is exempt from property taxes. Under current law, "industrial wastes" includes wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be discarded.

Under this bill, all property purchased or constructed as a waste treatment facility and used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants is exempt from property taxes. Under the bill, "industrial waste" includes waste that is collected or generated at the waste treatment facility site and used as fuel on that site.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 70.11 (21) (a) of the statutes is renumbered 70.11 (21) (am) and
2 amended to read:

3 70.11 (21) (am) All property purchased or constructed as a waste treatment
4 facility used for the treatment of exclusively and directly to remove, store, or cause
5 a physical or chemical change in industrial wastes, as defined in s. 281.01 (5), waste
6 or air contaminants, as defined in s. 285.01 (1), but not for other wastes, as defined
7 in s. 281.01 (7), for the purpose of abating or eliminating pollution of surface waters,
8 the air, or waters of the state if that property is not used to grow agricultural products
9 for sale and, if the property's owner is taxed under ch. 76, if the property is approved
10 by the department of revenue. For the purposes of this subsection, "industrial waste"
11 also includes wood chips, sawdust, and other wood residue from the paper and wood
12 products manufacturing process that can be used as fuel and would otherwise be
13 considered superfluous, discarded, or fugitive material. The department of natural
14 resources and department of health and family services shall make
15 recommendations upon request to the department of revenue regarding such
16 property. All property purchased or upon which construction began prior to
17 July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

18 **SECTION 2.** 70.11 (21) (ab) of the statutes is created to read:

19 70.11 (21) (ab) In this subsection:

20 1. "Air contaminants" has the meaning given in s. 285.01 (1).

1 2. "Industrial waste" means waste resulting from any process of industry,
2 trade, or business, or the development of any natural resource, that has no use or
3 monetary or market value, and that would otherwise be discarded, except that
4 "industrial waste" includes waste that is collected or generated at the waste
5 treatment facility site and used as fuel on that site.

6 3. "Used exclusively" means to the exclusion of all other uses except for other
7 use not exceeding 5 percent of total use.

8 **SECTION 3.** 74.35 (2m) of the statutes is amended to read:

9 74.35 (2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than
10 a claim that property is exempt under s. 70.11 (21) (a) or (27), may be made only in
11 an action under this section. Such a claim may not be made by means of an action
12 under s. 74.33 or an action for a declaratory judgment under s. 806.04.

13 **SECTION 4.** 74.35 (5) (d) of the statutes is amended to read:

14 74.35 (5) (d) No claim may be made under this section based on the contention
15 that the tax was unlawful because the property is exempt from taxation under s.
16 70.11 (21) (a) or (27).

17 **SECTION 5.** 76.025 (1) of the statutes is amended to read:

18 76.025 (1) The property taxable under s. 76.13 shall include all franchises, and
19 all real and personal property of the company used or employed in the operation of
20 its business, excluding property that is exempt from the property tax under s. 70.11
21 (39) and (39m), such motor vehicles as are exempt under s. 70.112 (5) and treatment
22 plant and pollution abatement equipment exempt under s. 70.11 (21) (a). The
23 taxable property shall include all title and interest of the company referred to in such
24 property as owner, lessee or otherwise, and in case any portion of the property is
25 jointly used by 2 or more companies, the unit assessment shall include and cover a

1 proportionate share of that portion of the property jointly used so that the
2 assessments of the property of all companies having any rights, title or interest of
3 any kind or nature whatsoever in any such property jointly used shall, in the
4 aggregate, include only one total full value of such property.

5 **SECTION 6.** 76.81 of the statutes is amended to read:

6 **76.81 Imposition.** There is imposed a tax on the real property of, and the
7 tangible personal property of, every telephone company, excluding property that is
8 exempt from the property tax under s. 70.11 (39) and (39m), motor vehicles that are
9 exempt under s. 70.112 (5), property that is used less than 50% in the operation of
10 a telephone company, as provided under s. 70.112 (4) (b), and treatment plant and
11 pollution abatement equipment that is exempt under s. 70.11 (21) (a). Except as
12 provided in s. 76.815, the rate for the tax imposed on each description of real property
13 and on each item of tangible personal property is the net rate for the prior year for
14 the tax under ch. 70 in the taxing jurisdictions where the description or item is
15 located. The real and tangible personal property of a telephone company shall be
16 assessed as provided under s. 70.112 (4) (b).

17 **SECTION 7.** 77.54 (26) of the statutes is amended to read:

18 **77.54 (26)** The gross receipts from the sales of and the storage, use, or other
19 consumption of tangible personal property which becomes a component part of an
20 industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that
21 would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or
22 tangible personal property which becomes a component part of a waste treatment
23 facility of this state or any agency thereof, or any political subdivision of the state or
24 agency thereof as provided in s. 40.02 (28). The exemption includes replacement
25 parts therefor, and also applies to chemicals and supplies used or consumed in

1 operating a waste treatment facility and to purchases of tangible personal property
2 made by construction contractors who transfer such property to their customers in
3 fulfillment of a real property construction activity. This exemption does not apply
4 to tangible personal property installed in fulfillment of a written construction
5 contract entered into, or a formal written bid made, prior to July 31, 1975.

6 **SECTION 8.** 79.04 (1) (a) of the statutes is amended to read:

7 79.04 (1) (a) An amount from the shared revenue account or, for the
8 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats.,
9 determined by multiplying by 3 mills in the case of a town, and 6 mills in the case
10 of a city or village, the first \$125,000,000 of the amount shown in the account, plus
11 leased property, of each public utility except qualified wholesale electric companies,
12 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production
13 plant, exclusive of land," "general structures," and "substations," in the case of light,
14 heat and power companies, electric cooperatives or municipal electric companies, for
15 all property within a municipality in accordance with the system of accounts
16 established by the public service commission or rural electrification administration,
17 less depreciation thereon as determined by the department of revenue and less the
18 value of treatment plant and pollution abatement equipment, as defined under s.
19 70.11 (21) (a), as determined by the department of revenue plus an amount from the
20 shared revenue account or, for the distribution in 2003, from the appropriation under
21 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a
22 town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total
23 original cost of production plant, general structures, and substations less
24 depreciation, land and approved waste treatment facilities of each qualified
25 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the

1 department of revenue of all property within the municipality. The total of amounts,
2 as depreciated, from the accounts of all public utilities for the same production plant
3 is also limited to not more than \$125,000,000. The amount distributable to a
4 municipality under this subsection and sub. (6) in any year shall not exceed \$300
5 times the population of the municipality.

6 **SECTION 9.** 79.04 (2) (a) of the statutes is amended to read:

7 79.04 (2) (a) Annually, except for production plants that begin operation after
8 December 31, 2003, or begin operation as a repowered production plant after
9 December 31, 2003, the department of administration, upon certification by the
10 department of revenue, shall distribute from the shared revenue account or, for the
11 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any
12 county having within its boundaries a production plant, general structure, or
13 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
14 76.29 (2), except property described in s. 66.0813 unless the production plant or
15 substation is owned or operated by a local governmental unit that is located outside
16 of the municipality in which the production plant or substation is located, or by an
17 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
18 municipal electric company under s. 66.0825 an amount determined by multiplying
19 by 6 mills in the case of property in a town and by 3 mills in the case of property in
20 a city or village the first \$125,000,000 of the amount shown in the account, plus
21 leased property, of each public utility except qualified wholesale electric companies,
22 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production
23 plant, exclusive of land," "general structures," and "substations," in the case of light,
24 heat and power companies, electric cooperatives or municipal electric companies, for
25 all property within the municipality in accordance with the system of accounts

1 established by the public service commission or rural electrification administration,
2 less depreciation thereon as determined by the department of revenue and less the
3 value of treatment plant and pollution abatement equipment, as defined under s.
4 70.11 (21) (a), as determined by the department of revenue plus an amount from the
5 shared revenue account or, for the distribution in 2003, from the appropriation under
6 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 6 mills in the case of
7 property in a town, and 3 mills in the case of property in a city or village, of the total
8 original cost of production plant, general structures, and substations less
9 depreciation, land and approved waste treatment facilities of each qualified
10 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
11 department of revenue of all property within the municipality. The total of amounts,
12 as depreciated, from the accounts of all public utilities for the same production plant
13 is also limited to not more than \$125,000,000. The amount distributable to a county
14 under this subsection and sub. (6) in any year shall not exceed \$100 times the
15 population of the county.

16 **SECTION 10. Initial applicability.**

17 (1) This act first applies to the property tax assessments as of January 1, 2007. ✓

18 (END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2089/lins
JK:jld:rs

Insert 3 - 5

1 ~~NO~~ "Industrial waste" includes wood chips, sawdust, and other wood residue from
2 the paper and wood products manufacturing process that can be used as fuel and
3 would otherwise be considered superfluous, discarded, or fugitive material. ✓

2089
Kreye, Joseph

From: Wadd, Jay
Sent: Thursday, March 15, 2007 11:11 AM
To: Kreye, Joseph; Olin, Rick; Grosz, Scott
Subject: FW: Newark suggestions

I think this is the last written comments to review. This comes from DOR in response to the analysis of /1 that I asked Bill and Scott for. DOR's comment is in blue

From: Gates-Hendrix, Sherrie L - DOR
Sent: Thursday, March 15, 2007 9:22 AM
To: Wadd, Jay
Subject: RE: Newark suggestions

Jay --

I inserted a comment below for your review.

Talk to you later.

Sherrie

From: Wadd, Jay [mailto:Jay.Wadd@legis.wisconsin.gov]
Sent: Wednesday, March 14, 2007 4:53 PM
To: Gates-Hendrix, Sherrie L - DOR
Subject: FW: Newark suggestions

Here is analysis from Legislative Council.....

From: Grosz, Scott
Sent: Wednesday, March 14, 2007 4:33 PM
To: Wadd, Jay
Subject: Newark suggestions

Jay,

The following is a brief summary of the thoughts that Bill Ford and I had with regard to the Newark draft, LRB-2089/1.

One of the issues in Newark was that the Tax Appeals Commission applied the s. 70.11 (21) exemption to certain peripheral property, including parking lots. In the draft, the phrase "exclusively and directly" appears to be an effective way to deny the exemption for property that bears only a limited or incidental relationship to the actual abatement activities. Analysis by taxpayers that would be affected by the revised exemption could be useful to determine whether the scope of the revision is appropriate.

The draft limits the definition of industrial waste to waste that has no use or monetary or market value. This phrase reverses the finding by the TAC that the definition of waste does not include consideration of the value of the material asserted to be waste. The phrase suggested by the city of Milwaukee, "if that property is not used to manufacture or to grow products," could have a similar practical effect. However, a difference between the two phrases would arise if a court determined it to be possible for a material to be without use or value, but incorporated in a manufacturing process. In that case, the language suggested by the city of Milwaukee would narrow the exemption more than LRB-2089/1.

Under the "exclusively and directly" phrase and the new definition of "waste," it may be reasonable for a court to determine that the revised law generally would exclude from the exemption property related to activities that incorporate discarded materials into a manufacturing process. A court may determine that the "exclusively and directly" and "no use or monetary or market value" phrases reverse the TAC finding that a taxpayer was not required to satisfy a "primary purpose" test. Since the TAC considered the "primary purpose" test, it may be beneficial to incorporate that phrase into the draft in order to clarify the legislative intent of the revisions.

We understand the point they are making in trying to address a specific comment in the decision. It would have

to be done very carefully because requiring the primary purpose of the facility to be waste treatment could confuse and lessen the exclusive and direct use requirement for the property that would be exempt, since primary does not necessarily mean exclusive. It seems that the Senator's intent is that the property be used more than primarily for waste treatment so you would need to work very carefully in this area.

The phrase "remove, store, or cause a physical or chemical change in" addresses the issue raised in Newark regarding the ambiguity of the word "treatment." Again, responses from interested taxpayers may provide guidance as to whether the proposed revision is appropriate.

In general, application of the revisions proposed by the draft to the facts of Newark could result in the denial of the exemptions for Newark since a positive monetary value and a use (as a production input) could be assigned to the paper products. If value and use were found to exist, the products would not qualify as industrial waste under the revisions proposed by the draft. In Newark, the parties did not challenge that paper products could be assigned a positive value, but whether that determination was relevant to the definition of waste. Analysis by the taxpayers that would be affected by the revised exemption could be useful to determine whether the "use" or "zero monetary value" requirements would be considered excessive or would remove the exemptions in situations not contemplated by the draft's author.

It may be appropriate to introduce the draft as it exists and use the legislative process to determine whether taxpayers who use or wish to use s. 70.11 (21), Stats., think the draft creates undesirable consequences beyond the intent to reverse the outcome in Newark. The process of amending and improving the draft may benefit from increased and diverse taxpayer input through introduction and public hearing.

Please contact me if you have additional questions.

Scott

Scott Grosz
Staff Attorney
Wisconsin Legislative Council
ph. (608) 266-1307

Kreye, Joseph

From: Grosz, Scott
Sent: Friday, March 16, 2007 3:41 PM
To: Kreye, Joseph
Subject: 70.11 (21) edits

Attachments: Hansen - newark drafting edits.doc

Joe,

Here is a summary of the revisions we discussed this afternoon.

Scott



Hansen - newark
drafting edits...

Changes to 2089/1 (March 15, 2007)

70.11 (21) (ab) 2.

2. "Industrial waste" means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no use or monetary or market value, except as provided in 3. b., and that ~~would be otherwise discarded.~~ "Industrial waste" includes wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded, or fugitive material. The classification of waste as industrial waste ends when the waste has a use or monetary or market value.

70.11 (21) (ab) 3.

3. "Used exclusively" means to the exclusion of all other uses except:
- a. for other use not exceeding 5 percent of total use.
 - b. to produce energy for a manufacturing process so long as the industrial waste would otherwise be considered superfluous, discarded, or fugitive material.