

STATE OF WISCONSIN

REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS

2007 SENATE BILL 122

[Introduced by Senators Hansen, Cowles, Decker, Plale, A. Lasee, Breske, Wirch, Roessler, Coggs, Carpenter, Schultz, Taylor, Risser and Erpenbach; cosponsored by Representatives Kaufert, Tauchen, Montgomery, Soletski, Hintz, Nelson, Van Roy, Seidel, Roth, Molepske, A. Ott, Schneider, Grigsby, Bies, Richards, Townsend, Fields, Gottlieb, Sinicki, Hixson, Musser, Black, Stratchota, Hahn, Albers, Ballweg and Nygren.]

General Nature of Proposal

Generally, current law exempts from property taxes all property purchased or constructed as a waste treatment facility and used to treat industrial wastes or air contaminants if certain conditions are met.

2007 Senate Bill 122 exempts from property taxes all property purchased or constructed as a waste treatment facility “used exclusively” and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants if certain conditions are met.

Under Senate Bill 122, “industrial waste” means waste resulting from any process of industry, trade, or business, or the development of any natural resource that, generally, has no use or monetary or market value and that 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.

Additionally, Senate Bill 122 defines the phrase “used exclusively” to mean to the exclusion of all other uses except:

- a. For other use not exceeding 5% of total use.
- b. To produce energy for a manufacturing process, if the industrial waste would otherwise be considered superfluous, discarded, or fugitive material.

In the definition of “industrial waste,” the phrase “no use or monetary or market value” does not apply to industrial waste used to produce energy for a manufacturing process, under paragraph b.

Senate Bill 122 initially applies to property tax assessments as of January 1, 2007.

Legality Involved

There are no questions of legality involved.

Fiscal Effect Upon the State and Its Subdivisions

The Department of Revenue describes the fiscal effect of 2007 Senate Bill 122 as indeterminate. In its analysis, the department states:

Current law provides a property tax exemption for waste treatment plants and pollution abatement equipment. The exemption applies to all property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes or air contaminants if certain requirements are met.

The Department historically implemented the exemption to include property used exclusively and directly in the treatment of waste that had no value.

In 2004, the Tax Appeals Court (TAC) expanded the definition of property that qualifies for the exemption in its ruling on *The Newark Group, Inc. v. The Wisconsin Department of Revenue*. The circuit court subsequently concurred with the TAC ruling. Under the Newark decision, exempt waste treatment property may include an entire manufacturing facility if waste treatment is performed at the site. Consequently, the exemption may include all real estate, buildings, improvements, and equipment of a production process.

The bill would limit the waste treatment exemption to property used exclusively and directly for treatment of waste that has no monetary or market value. Exclusive use would be defined as 95% use for waste treatment, and would include property to produce energy for a manufacturing process if the waste would otherwise be considered superfluous, discarded or fugitive material. The bill is effective for property tax assessments as of January 1, 2007.

Under the bill, the types of property that had been exempt prior to the Newark decision are expected to remain exempt. Assuming a technical change is made to the bill as indicated below, the types of property that had been excluded from the exemption prior to the decision, and thus subject to property tax unless otherwise exempt, are expected to be excluded from the waste treatment exemption.

The impact of the bill's reference to energy production within the exclusive use definition is unclear. To provide clarity and more closely mirror the pre-Newark exemption, it could be amended so the exemption would apply to property used to produce heat or steam from fuel that is 95% or more industrial waste.

Under the Newark decision and other property assessment cases successfully challenged to date, approximately \$34 million of property is exempt from annual property taxes. The Board of Assessors denied claims for an additional \$135 million of property that may still be appealed to the circuit courts. How much of that property would be exempted is unclear at this time. The Department anticipates that additional appeals will be filed as more claims for exemption under the Newark decision are successful.

Assuming the suggested technical amendment is made to the bill, the bill would return \$34 million of property to the tax rolls beginning with 2007 assessments. It would also avert or deny additional claims for property tax exemptions under the decision.

In addition, the bill is expected to avert reductions in state sales tax revenue that may occur as a result of the Newark decision. Under current law, a sales tax exemption exists for purchases of materials used for the construction or operation of waste treatment facilities. By reversing the Newark decision, the bill narrows the number of properties qualifying as waste treatment facilities, and thereby limits the products and materials to which the sales tax exemption may be applied.

Public Policy Involved

The Joint Survey Committee on Tax Exemptions finds that there is good public policy concerning the tax exemptions in Senate Bill 122. However, the committee recommends that the bill be amended to recognize the issues related to Senate Substitute Amendment 1.

5/30/07

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