



(FORM UPDATED: 08/11/2010)

## **WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS**

**2009-10**

(session year)

**Joint**

(Assembly, Senate or Joint)

**Committee for Review of Administrative Rules ...**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

**FISCAL ESTIMATE FORM****2009 Session**

☒ ORIGINAL    ☐ UPDATED  
☐ CORRECTED    ☐ SUPPLEMENTAL

**LRB # 09-****INTRODUCTION #**

**Admin. Rule # Chapter Tax 11 Streamlined Sales Tax  
Implementation (permanent)**

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

**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:**

2009 Wisconsin Act 2 adopted statutory changes to bring Wisconsin into conformity with the Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA is the result of an effort by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration. Under the agreement, Wisconsin must use standard definitions for sales tax purposes.

The proposed rule conforms ch. Tax 11 to current law, as modified by the Streamlined Sales and Use Tax Agreement provisions of 2009 Wisconsin Act 2. The rule provides guidance in the application of the law by providing specific examples of items that are both included and excluded from certain SSUTA definitions. The rule provides examples of exempt durable medical equipment, exempt prosthetic devices, and exempt mobility enhancing equipment. The rule also provides several guide lists – including items typically sold by grocers that are subject to the sales tax and items typically sold by grocers that are exempt from the tax.

Since the fiscal effect of conforming Wisconsin law to the SSUTA was included in the fiscal estimate of 2009 Wisconsin Act 2, the rule has no fiscal effect.

(continued on page two)

**Long-Range Fiscal Implications:**

| Agency/Prepared by<br>Wisconsin Department of Revenue | Authorized Signature/Telephone No. | Date     |
|---|------------------------------------|----------|
| Paul Ziegler<br>608 266-5773                          | Paul Ziegler<br>608 266-5773       | 09/01/09 |

**FISCAL ESTIMATE WORKSHEET**

☒ ORIGINAL    ☐ UPDATED  
☐ CORRECTED    ☐ SUPPLEMENTAL

Detailed Estimate of Annual Fiscal Effect

**2009 Session****LRB # 09****INTRODUCTION #**

Admin. Rule #  
Chapter Tax 11  
Streamlined

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

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

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

**NET ANNUALIZED FISCAL IMPACT****STATE****LOCAL**

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency/Prepared by  
Wisconsin Department of Revenue  
Paul Ziegler  
608 266-5773

Authorized Signature/Telephone No.  
Wisconsin Department of Revenue  
Paul Ziegler  
608 266-5773

Date

09/01/09



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 09-090

AN ORDER to. . . , relating to sales and use tax.

Submitted by **DEPARTMENT OF REVENUE**

10-29-2009 RECEIVED BY LEGISLATIVE COUNCIL.

11-23-2009 REPORT SENT TO AGENCY.

RNS:JKR

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-090

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

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

a. In the introductory clause, the creation of ss. Tax 11.32 (7) and 11.985 should be inserted. In addition, s. Tax 11.32 (7) and (9) (title), (a) (intro.) and 2., (b), and (c) should be removed from the list of amended sections in the introductory clause. [s. 1.02 (1), Manual.]

b. In the introductory clause, “2.” should replace “(a) 2.” near the end of line 20 of the introductory clause on page 1.

c. In the introductory clause, “subch. IV of ch. Tax 11 (title)” should replace “Subchapter IV (title)” and “subch. IX of ch. Tax 11 (title)” should replace “Subchapter IX (title).” [s. 1.07 (2), Manual.]

d. Throughout the proposed rule, the agency should compare the current rule language with what is represented in the proposed rule to ensure that the current rule language is accurately represented. In some instances, language in the current rule is missing in the proposed rule or words in the proposed rule that are in the current rule are underlined. For example, the second “Stats.” on line 3 of s. Tax 11.002 (2) (d) in SECTION 4 on page 6 should not be underlined and “-” should be inserted after “resource” in s. Tax 11.11 (2m) (a) (intro.) in SECTION 22 on page 25.

e. The proposed rule contains multiple notes and examples. The agency should consider consolidating the information in multiple notes into a single note, if possible.

f. In SECTION 8, "in this state" on line 6 of s. Tax 11.04 (1) on page 8 should be underlined. [s. 1.06, Manual.]

g. In SECTION 11, is the time-share property language in s. Tax 11.05 (2) (i) on page 10 part of the exception in the paragraph or is it part of the taxable receipts? The agency should clarify this provision.

h. In SECTION 17, the period at the end of the second note following s. Tax 11.05 (4) (b) (intro.) on pages 13 to 14 should not be underlined. [s. 1.06 (4), Manual.]

i. In SECTION 71, the language "and digital goods under s. 77.52 (1) (d), Stats." in the second note following s. Tax 11.15 (6) (b) on pages 43 to 44 should be underlined.

j. In SECTION 102, "The sales price" in s. Tax 11.27 (4) (a) on page 57 should be underlined.

k. Throughout the proposed rule, every unit should end with a period, except for introductory material that ends with a colon. [s. 1.03 (1) (b), Manual.] An example of where this was not done correctly is s. Tax 11.28 (3) (a) 1. to 3. and 4. a. and b. on pages 60 and 61. Also see SECTION 114.

l. The orders of SECTIONS 119 and 220 on page 78 should be reversed. [s. 1.04, Manual.]

m. In SECTION 128, how is example 4 on page 84 being amended?

n. Section Tax 11.51 (4) (d) (intro.) on page 117 is incorrectly drafted as introductory material since it does not end in a colon and lead into the units that follow. [s. 1.03 (2) (h), Manual.]

o. In SECTION 205, the hyphen should be deleted from "In-this section" in s. Tax 11.71 (1) (intro.) on page 171.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Throughout the proposed rule, statutory language is repeated regularly. The agency might consider using references to statutory sections only and not repeating the statutory language. If statutory language is repeated, references to "this subsection" or other similar phrases that are in the statutory language should be changed to reflect the language's inclusion in the proposed rule. For example, the reference to "par. (c)" in s. Tax 11.12 (4) (a) (intro.) in SECTION 27 on page 28 is not appropriate for inclusion in the rule language. The agency should consider putting the quoted statutory language in a note. In any case, it should not be italicized.

b. Throughout the proposed rule, when citing language in state and federal law, the language need not be italicized or surrounded by quotation marks. For example, see s. Tax 11.08 (2) (a) in SECTION 18 on page 15.

c. Throughout the proposed rule, "s." and "ss." should replace "sec." and "secs." respectively when referring to statutory sections. [s. 1.07 (2), Manual.] For example, see s. Tax 11.001 (2) (a) in SECTION 1 on page 4.

d. Throughout the proposed rule, "Stats." should follow any reference to a statutory section. [s. 1.07 (2), Manual.] For example, see s. Tax 11.05 (2) (gm) in SECTION 10 on page 10.

e. Throughout the proposed rule, a comma should be included before any reference to "Stats." [s. 1.07 (2), Manual.] For example, see s. Tax 11.001 (2) (bg) and (bn) in SECTION 2 on page 5.

f. Throughout the proposed rule, some references to Wisconsin Acts and Web sites in the notes appear to be incorrect. For example, the reference to 2007 Wisconsin Act 141 in the second note following s. Tax 11.05 (4) (b) (intro.) in SECTION 17 on pages 13 to 14 appears to be incorrect. Is the correct reference 2005 Wisconsin Act 141? Also, the Web site in the note following s. Tax 11.11 (1) in SECTION 21 on page 25 appears to be incorrect.

g. In SECTION 8, it appears that a cemetery company or corporation should be listed in s. Tax 11.04 (1) on page 8. Section 77.54 (9a) (i), Stats., provides an exemption for sales to a cemetery company or corporation.

h. In SECTION 17, the reference to s. 77.52 (1) (d), Stats., that is in s. Tax 11.05 (4) (a) on page 12 should be removed. Section 77.52 (1) (d), Stats., is not referenced in s. 77.54 (9a), Stats.

i. In SECTION 33, the subdivisions in s. Tax 11.12 (4) (b) on page 31 should be labeled as 1. to 13., not as (a) to (m). [s. 1.03, Manual.]

j. In SECTION 42, the reference to s. 77.51 (15), Stats., in the note following s. Tax 11.13 (2) (b) on page 34 should be removed. Section 77.51 (15), Stats., was repealed by 2009 Wisconsin Act 2.

k. In SECTION 138, "sub. (1) (a)" should replace "sub. 1 (a)" in s. Tax 11.41 (3) (a) on page 91. [s. 1.07 (2), Manual.]

l. In SECTION 151, it appears that the references to sub. (3) (ar) on page 110 and sub. (3) (g) 1. on pages 112 and 114 in s. Tax 11.51 (2) are incorrect. Those subsections do not exist in the proposed rule.

m. In SECTION 151, the subdivision paragraphs in s. Tax 11.51 (3) (b) 1. on page 115 should be labeled as a. to c., not as (a) to (c). Subdivision 1. a. should not be divided further. Instead, the provisions under subd. 1. a. could be incorporated into subd. 1. a. [s. 1.03 (2), Manual.]

n. In SECTION 151, it appears that the language "2 or more food ingredients mixed or combined by a retailer for sale as a single item" in s. Tax 11.51 (4) (d) 1. a. on page 117 is not consistent with similar language in s. 77.51 (10m), Stats.



o. In SECTION 161, it appears that “s. Tax 11.19 (4) (b)” should replace “s. Tax 11.19 (6) (b)” in s. Tax 11.56 (4) (b) 1. on page 127.

p. In SECTION 194, “S. 77.52” should replace “S. 77.51” in s. Tax 11.68 (8) (title) on page 157.

q. In SECTION 268, is the language in s. Tax 11.88 (4) (d) on page 202 consistent with the similar statutory language?

r. In SECTION 279, the subdivisions in s. Tax 11.945 (1) (c) on page 208 should be labeled as 1. to 4., not as a. to d. [s. 1.03 (2), Manual.]

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

a. In the rule summary, “its” should replace “their” on line 1 on page 4.

b. In SECTION 6, “department’s” should replace “department of revenue’s” in s. Tax 11.002 (3) (a) 1 on page 6. Section Tax 11.001 (2) (b) defines “department” as the Wisconsin Department of Revenue.

c. In SECTION 8, “items, property, or goods” should replace “items or property” in s. Tax 11.04 (5) on page 9.

d. In SECTION 9, the comma after “sales of” in s. Tax 11.05 (2) (b) on page 9 should be moved to after “**beverages**”.

e. In SECTION 18, “in” should replace “at” in s. Tax 11.08 (2) (b) 1. on page 15 to be consistent with uses of the definition in the proposed rule.

f. In SECTION 24, “items” should replace “item” in s. Tax 11.11 (5) (c) 1. on page 26.

g. In SECTION 81, is the repetition of the word “braces” in s. Tax 11.18 (2) (b) on page 50 correct?

h. In SECTION 105, “that entitles” should replace “the entitles” in s. Tax 11.28 (2) (c) 2. on page 60.

i. In SECTION 130, the comma at the end of s. Tax 11.39 (2) (a) 5. should be deleted on page 87.

j. In SECTION 146, the box between “\$100,000” and “\$500,000” in the example following s. Tax 11.48 (3) (b) on page 101 should be replaced with the appropriate symbol.

k. In SECTION 151, it appears that “sale” should replace “retail sale” in s. Tax 11.50 (1) on page 105.

l. In SECTION 188, “its” should replace “their” in s. Tax 11.68 (2) (a) on page 153.

m. In SECTION 204, the comma after “items” in s. Tax 11.70 (7) (a) 2. on page 170 should be removed.

n. In SECTION 268, "Secretary of Housing and Urban Development" should replace "Secretary" in s. 11.88 (1) (a) 2. on page 200.

o. In SECTION 277, "it" should replace "they" in s. Tax 11.93 (1) on page 206.