

## 2013 DRAFTING REQUEST

### Bill

Received: 8/14/2013 Received By: jkreye  
Wanted: As time permits Same as LRB: -3231  
For: Terry Moulton (608) 266-7511 By/Representing: scott  
May Contact: Drafter: jkreye  
Subject: Tax, Other - sales Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Moulton@legis.wisconsin.gov  
Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov

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### Pre Topic:

No specific pre topic given

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### Topic:

Sales and use tax exemption for agriculture-related businesses

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### Instructions:

See attached

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### Drafting History:

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/4	jkreye 12/3/2013	scalvin 11/13/2013	jfrantze 11/13/2013	_____	lparisi 11/13/2013	lparisi 11/13/2013	State S&L Tax
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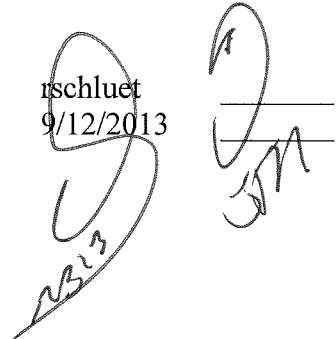
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FE Sent For:

<END>



## Kreye, Joseph

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**From:** Nelson, Scott  
**Sent:** Monday, August 05, 2013 3:21 PM  
**To:** Kreye, Joseph; Kuczenski, Tracy; Tradewell, Becky  
**Cc:** Smith-Loomans, Sandra  
**Subject:** Agriculture/Revenue Drafting Request

As chairman of the Senate Agriculture committee, Senator Moulton has been asked to look into an issue for some Wisconsin agriculture-related businesses. I'd like to set up a meeting next week with whomever handles agricultural tax exemption issues (under 77.54(3)(c)(6), for example), including Representative Nerison's staff and representatives from the Wisconsin Agri-Business Association. Monday afternoon at 1:30 would be ideal and we could meet in our office at 306 South. Please let me know if you are available at that time. If not, Thursday is a possible alternative.

The issue involves Revenue audits of farm-related businesses and their personal property/real estate tax exemptions. I will have a summary of the issue available for you in the next few days, prior to the meeting.

Thanks,

*W. Scott Nelson*

Office of State Senator Terry Moulton  
23rd Senate District  
608-266-7511

agribusiness (specific processing equipment)  
manufacturing = grain drying  
= feed milling  
= fertilizer

2012 different interpretations - conflicting interpretations

DOR analysis - different analysis

need the real property / IRS language from  
the farming exception - connected to  
real property

Department of Revenue - Manufacturing Sales and Use Tax Exemptions

Wisconsin Statute on sales tax is found in Section 77.54 of the Wisconsin Tax Code.

Section 77.54 (6)(a) covers exemptions from sales tax. It states: These are exempted from the taxes imposed by this subchapter

(6) The sales price from the sale of and the storage, use or other consumption of:

- (a) Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s.77.52 (1)(b) or (c) and safety attachments for those machines and equipment.

Feed production, grain drying, and fertilizer blending machinery and equipment have always been considered part of a manufacturing process that is exempt from sales tax in the State of Wisconsin. The manufacturing process includes the handling and conveyance of raw materials and supplies from plant inventory to the work point of the same plant, handling and conveyance of work in progress directly from one manufacturing operation to another in the same plant, and the handling and conveyance of finished products to the first storage on the plant premises. Handling bins used in the manufacturing process have been included in the manufacturing process. Storage bins off site or not directly connected to the feed production process or connected to a grain dryer have not been exempted from sales tax.

In 2012, we had two tax audits conducted on WABA members where the tax auditor is interpreting some of the exemptions differently than has ever been done before. Unfortunately, with much of the tax code written in such a way that it is open to interpretation, it is difficult to convince the auditor that the proceeding determinations are correct. It appears that the standing code has undergone new interpretations. To confuse things even more, the interpretations are not consistent.

In the two cases to date, one has been on feed blending facilities. The other has been on a fertilizer blending operation and a grain drying operation.

In one case, a feed mill completely rebuilt their feed milling operation including state of the art computerized technologies. This includes 28 holding structures above the feed mixer/grinder used for weighing and dropping feed ingredients directly into the mixer. Of the 28 holding structures, 7 of the structures are on the outside, supported with I beams. The other 21 are inside of these seven. The ruling by the DOR Auditor is that the 21 structures in the center are personal property and are eligible for the sales tax exemption. However the 7 structures on the outside are real estate and are not eligible for the exemption, even though all structures do the exact same thing.

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In contrast on a grain drying operation in another part of the state, they exempted the concrete foundations, but not the wet corn holding bins, conveying equipment or the cooling bin after the dryer. At the same company on a fertilizer blending operation, they exempted sales tax on the concrete, but not the blending bin, mixer, or the conveying equipment to the final load out bins. In these cases, if anything is real estate, you would think it would be the non-movable concrete foundations. This is in total disagreement with the determination at the feed mill.

Since the Department of Revenue has recently decided to create new interpretations to exemptions allowed to the tax code, and that they are so inconsistent that our industry has no way of predicting what is or what is not exempt, we would like to find a legislative fix to this interpretation. We are not

asking for anything new. We only want the tax code to be consistently interpreted the same as it has been for years



State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK ROAD • Mail Stop 624A • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX (608) 266-5718  
<http://www.revenue.wi.gov>

Scott Walker  
Governor

Richard G. Chandler  
Secretary of Revenue

June 5, 2013

Hon. Senator Terry Moulton  
Room 306 South  
State Capitol  
Madison, WI 53707-7882

Hon. Representative Lee Nerison  
Room 310 North  
State Capitol  
Madison, WI 53708

Dear Senator Moulton and Representative Nerison,

In response to your inquiry about sales and use tax implications for real property that may also serve a manufacturing purpose, I wanted to provide you with some background on previous cases and examples that have helped shape the longstanding departmental policy on this subject.

In brief, any item that uses a building wall as part of its structure will generally be real property (according to long-standing case law and DOR guidance). Real property is not subject to sales and use tax. Real property is not a machine or specific processing equipment.

The Legislature can change this result (as it did for those engaged in farming) by defining certain equipment to be tangible personal property "regardless of the extent to which they are fastened to, connected to or built into real property." A similar result for manufacturers generally, or feeding mills and fertilizer blend facilities specifically would require a similar statutory change.

**Background: Real property versus tangible personal property**

The State imposes sales and use tax on the sale of all *tangible personal property* at retail per sec. 77.52(1)(a), Wis. Stats.

Example 1: A homeowner buys freestanding bookshelves from a retail furniture store. The homeowner pays sales tax on those bookshelves as the bookshelves are tangible personal property, and not an attached fixture to the real estate.

There is no sales tax imposed on sale or purchase of *real property* (like a person's home or building or attached fixtures) or a *real property improvement* (like built-in bookshelves in a home).

Example 2: If a homeowner buys built-in bookshelves for their home from a contractor, they are buying an attached fixture not subject to sales tax.

A person who buys tangible personal property and installs it so it becomes a permanent addition to real property is the consumer of the materials used in providing the realty improvement and must pay the tax on the purchase of such materials.

Example 3: A contractor sells and installs built-in bookshelves for a homeowner. The contractor pays sales tax on the purchase of the wood that they use to build the shelves, per sec. 77.51 (2), Wis. Stats.

Similarly, if the homeowner buys the wood to construct built-in bookshelves, the homeowner pays sales tax on the purchase of the wood that they use to build the shelves, per sec. 77.52 (1), Wis. Stats.

- **Case Law and Published Examples Involving a Determination of Real Property Involving Containers.**

In *Dep't. of Revenue v. A.O. Smith Harvestore Prods., Inc.* (1976), fodder containers were determined to be real property. They were: (a) actually physically attached or annexed to a foundation, (b) specially adapted for the purpose (processing fodder) to which the realty was devoted, and (c) a reasonable person would consider them to be a permanent attachment. (Physical attachment is not always required - calf crates that were not physically attached to a barn but were specifically constructed for that particular barn and that would have to be disassembled to enable removal from the barn were determined to be "annexed" to the barn and therefore a fixture to the real estate. *Moore v. Justman* (1988).)

The department continues to apply the common law test stated in *Harvestore* by determining:

- 1) Is it physically attached or annexed to the land, foundation or building? (For example, such as silos attached to foundations, calf crates that are not removable from a building without complete disassembly.)
- 2) Is it specially adapted for this particular real estate? (For example, the calf crates were custom made to sit over the gutters of the barn.)
- 3) Would a reasonable person consider this to be a permanent addition to the real estate given the nature of the item, the degree of attachment/annexation, and the appropriateness of the item for the realty's use?

The department has consistently said in its published guidance that enclosures which use a building wall as part of their enclosure are considered to be part of the building and real estate, because they are physically attached, specially adapted, and a reasonable person would consider them to be a permanent attachment to the building. The following provides some references:

- Paint spray booth or walk-in cold storage units if one or more walls of the booth or unit are also walls of the building, Pub 207, *Sales and Use Tax Information for Contractors*, p. 9.
- Walk-in coolers/cold storage units, where at least one wall is a wall of the building, as stated in Pub 207 *Sales and Use Tax Information for Contractors*, p. 33; Pub 200 *Electrical Contractors*, p. 12; Pub 245 *Sales and Use Tax Information for Schools*, p. 12; and Wisconsin Tax Bulletin 119, p. 24-25 (April 2000).
- Partitions and Moveable Walls (affixed to walls, floor or ceiling of building). Pub 207 *Contractors*, p. 35.

- **Sales Tax Exemption for Machinery and Specific Processing Equipment**

Wisconsin statute (in sec. 77.54(6) (a), Wis. Stats.) provides a sales tax exemption for:

The sales price from the sale of and the storage, use or other consumption of: (a) Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c) and safety attachments for those machines and equipment.

Real property and real property improvements are not subject to sales tax, and therefore not relevant to this exemption. The materials, such as steel, used to construct real property and real property improvements are not a "Machine or specific processing equipment."

- **Special Language Regarding Items Fastened to, Connected to or Built into Real Property and Used in the Business of Farming**

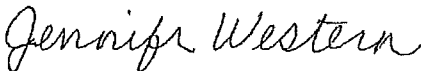
As mentioned previously, special language exists for those engaged in farming that states that grain dryers and grinders and specified other equipment used exclusively in the business of farming are tangible personal property "regardless of the extent to which they are fastened to, connected to or built into real property." See sec. 77.54(3)(c)(6), Wis. Stats.

There is no similar exception for feeding mills, fertilizer blending facilities or other manufacturers specifically on this point. If there was such an exception defining grain mixers as tangible personal property regardless of attachment to real property, then:

- (1) The grain mixers could be considered tangible personal property subject to sales tax.
- (2) As tangible personal property subject to sales tax, the bins could then fall within the scope of the exemption in sec. 77.54(6)(a), Stats., provided they are being used exclusively and directly by a manufacturer in manufacturing tangible personal property or items or property under sec. 77.52 (1) (b) or (c) .

I hope this provides helpful background. Please feel free to contact me if you have further questions or if there is additional information I can be of assistance with.

Sincerely,



Jennifer Western, *Executive Assistant*  
Wisconsin Department of Revenue

## Kreye, Joseph

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**From:** Nelson, Scott  
**Sent:** Thursday, August 22, 2013 10:02 AM  
**To:** Kreye, Joseph  
**Subject:** FW: Dept. of Revenue Sales Tax Exemptions for Manufacturing  
**Attachments:** Attachment #4 new mill diagram.pdf; Milling process.docx

Joe,

More information from Cashton.

How are things going with the drafting for this project?

Thanks,

*W. Scott Nelson*

Office of State Senator Terry Moulton  
23rd Senate District  
608-266-7511

**From:** Tom Bressner [mailto:tom@wiagribusiness.org]  
**Sent:** Wednesday, August 21, 2013 6:49 PM  
**To:** Nelson, Scott; Smith-Loomans, Sandra; Shawn Pfaff  
**Subject:** Fwd: Dept. of Revenue Sales Tax Exemptions for Manufacturing

Scott, Sandra

I received this from Jerome Leis. Jerome is from Clifton Larson Allen, the auditing firm hired by Cashton Farm Supply to do their annual financial audits, do their taxes, etc... As you can see in the attachment, Jerome wrote out an extensive description of the milling process. I will try to go through it and shorten it where possible.

Thanks  
Tom Bressner  
Wisconsin Agri-Business Association

Hi Tom

Attached is the description we gave the State when they first accepted the bins as manufacturing and is a very accurate description of the processes.

We lost the bins, when the auditor discovered the feed manufacturing bins walls were exposed to the elements and this is where the auditor and her supervisor made the determination that the bins were then real estate and could therefore not be manufacturing.



Later discussions with the same field auditor identified that if the bins had another layer of sheet metal on the outside the bins would likely have been deemed personal property and manufacturing.

The whole sticking point does not appear to be the actual process as much as the determination with the State of real versus tangible property.

My suggestion would be to see if Moulton or Nerison can change the wording to identify that real property can be considered manufacturing when related to the new style feed mills where the bins sit on top of the building.

Any questions let me know



**Jerome Leis, CPA, Manager**

Outsourcing, CliftonLarsonAllen LLP

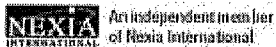
Direct --

[jerome.leis@CLAconnect.com](mailto:jerome.leis@CLAconnect.com)

Main [608-269-2424](tel:608-269-2424) x45627, Fax [608-269-2549](tel:608-269-2549)

525 Industrial Drive, P.O. Box 329, Sparta, WI 54656

[CLAconnect.com](http://CLAconnect.com)



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CliftonLarsonAllen LLP

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**From:** Tom Bressner [mailto:[tom@wiagribusiness.org](mailto:tom@wiagribusiness.org)]  
**Sent:** Monday, August 12, 2013 3:46 PM  
**To:** [organic@cfspecial.com](mailto:organic@cfspecial.com); Leis, Jerome  
**Subject:** Dept. of Revenue Sales Tax Exemptions for Manufacturing

Ernie, Ann, and Jerome

After the better part of a year of trying to get the Department of Revenue to give us an administrative fix to their new interpretations on sales tax exemptions on manufacturing equipment, we have totally given up on making any progress from DOR.

Instead, today, I met with Joe Kreye from the Legislative Reference Bureau. LRB is the division of government that actually writes the language for Legislators when they want to introduce new legislation. Senator Terry Moulton and Representative Lee Nerison are willing to co-sponsor language to force the Department of Revenue to interpret manufacturing exemptions as they always had been prior to 2012. What we are doing now is trying to find the right wording to fix this problem.

Joe feels we need several things:

First, we will need to re-define the definition of "manufacturing" as it pertains to agri-business.

Second, we need to address the difference between tangible property vs. real property.

Third, we need to get a good description of the feed manufacturing process and all the equipment that is part of the process. Or other words - this is what we do and the equipment we use to do it.

Finally, he would like to have any Department of Revenue paperwork they used to support their ruling on failing to exempt your manufacturing equipment.

So, if possible, what we need from you as soon as possible is items three and four. Not being as up on the correct names of all equipment and technology included in your feed milling operation, can you please write a few sentences to describe the entire feed milling process and then list all the equipment involved? Also, could you please share any documentation you received from DOR as to their interpretation of the sales tax exemption issue?

If we can pull all this information together quickly, Senator Moulton and Representative Nerison would like to introduce this new legislation in the September Legislative Session.

Thank you

Tom Bressner

Wisconsin Agri-Business Association

Cashton Farm Supply, LTD  
Manufacturing Process Summary

The following is a detailed description of the Feed Manufacturing Process at Cashton Farm Supply, LTD, 300 State Hwy 27, Cashton WI 54619.

Raw bulk feed ingredients are stored in the main warehouse on site or trucked in on an as needed basis. The raw, work in process or finished product materials are not stored in the new feed mill or any part there of.

The raw feed ingredients are loaded into the grinding bins, as shown on Attachment 1, area coded 4, through the old elevator, located to the right of the Grain Bin leg, shown on Attachment 1, coded 2. The old elevator was already on the premises, prior to new mill construction. The "dump pit", and "pit conveyor" shown on Attachment 1, coded 1, are not used to load ingredients into the manufacturing process. The new dump pit and pit conveyor were installed only as a back up in the event the old main dump pit and elevator were to break down.

Therefore the process starts at the 100' Grain Bin Leg as shown on Attachment 1, coded 2. The leg conveys raw feed ingredients into the grinding distributor, coded 3 on Attachment 1. The grinding distributor regulates the raw feed ingredients into one of three grinding bins, located in area coded 4 on Attachment 1. Feed ingredients are immediately diverted into the grinder/roller/pelletizer, area coded 4 on Attachment 1 and feed ingredients are either ground into smaller particles or rolled to produce a cracked or flaked product. The loading of the grinding bins through the grinding/rolling/pelletizing process takes various times dependant on the formula but on average takes approximately 1 hour. The ground, rolled or pelletized ingredient is conveyed into the galvanized bucket elevator, coded 5 on Attachment 1. The galvanized bucket elevator conveys ground/rolled ingredients into the "mixing Ingredient distributor," coded 6 on Attachment 1. The mixing ingredient distributor regulates the ground/rolled/pelletized ingredient into one of fourteen mixing bins, area coded 4 on Attachment 1. The three grinding bins and 14 mixing bins make up the 17 bins identified in area coded 4 on Attachment 1.

Grinding/rolling/pelletizing processes require minimum amounts of ingredients to efficiently process the ingredients, therefore the grinding bins are used to regulate the amount of ingredients fed into the grinding/rolling/pelletizing process and are emptied immediately into the grinder/roller/pelletizer as soon as a regulated amount of ingredient is acquired. The grinding bins are emptied several times per day.

Each of the 14 mixing bins regulates an amount of ground, rolled or pelletized feed ingredient that follow a formula. The ground or rolled in-process feed ingredients are then conveyed from the mixing bins to the 3 ton Scale Hopper, area coded 8 on Attachment 1, and transferred immediately into the mixer, area coded 8 on Attachment 1. Ingredients are added to the mixer until the formula proportions

have been fulfilled with all products. The scaling/mixing process averages 1-2 hours dependant on the formula.

The mixing process is implemented through a timed ingredient input procedure. The mixing process cannot run too long or too short or this will produce an inferior grade or non-usable feed product. Therefore, the mixing bins are used to maintain the in-process feed ingredient's composition and convey each product into the mixer at the proper time in the mixing process based on individual formulas. If this timed integration process is not followed, the mixing process will extend beyond the recommended time and cause trace minerals to separate and settle resulting in an over mixed feed that is deemed inferior and unusable. Also, if the mixing process extends beyond recommended processing times, in-process ingredients other than trace elements will loose its grinding or rolled structure through over processing and will be broken down further than required by the feed mixing process.

Common practice procedures in newer feed milling operations have identified that over mixed feed breaks down the individual feed ingredients finer than formula requirements and cannot be processed by the farm animals properly. Improper utilization of the feed by the animals results in lower quality eggs, chickens and milk production. In addition, the over mixed feed has been linked to medical issues in farm animals by veterinarians. Therefore the Mixing bins are used as part of the manufacturing process to regulate the sequence in which the ingredients are added to the mixer in relation to a timed process to maintain ingredient integrity and are NOT used as storage for ingredients in the manufacturing plant. The mixing bins are emptied on average several times per day.

Mixing bins such as Cashton Farm Supply uses to maintain in-process feed ingredient integrity qualify as a "machine" in a manufacturing process and serves to prevent deterioration of the in-process product. This is supported by Thiry Daems Cheese Factory, Inc v Dept of Revenue (Wis. Cir. Ct. Dane County 1986) and Fort Howard Paper Co. v. Dept of Revenue (WTAC 1988).

When the mixing process is completed the raw feed formula is conveyed back into the galvanized bucket elevator, coded 5 on Attachment 1, and conveyed into the saturation/load out distributor, coded 7 on Attachment 1 and distributed into one of 12 saturation/load out bins, area coded 9 on Attachment 1.

The raw feed must go through a saturation process that allows the oil, molasses or other liquid state products to soak into the feed, the required amount of time to change the raw feed into a "premium feed." The saturation bins are designed to be smaller to enhance the process of saturation. Depending on the oil or molasses content based on a formula the raw feed must saturate in the saturation/load out bins an average of 3 to 4 hours before the raw lower grade feed becomes a "premium grade feed." This identifies the need for 12 bins so that multiple formulas can be processed in a day. The saturation process is timed and required to achieve the premium grade feed that patrons (farmers) require. If the required saturation time is not adhered to a lower grade feed will result due to the oil or molasses being lost by the liquid products sticking to the bin or delivery truck walls. Lower grade feed due to oil or molasses loss results in lower quality eggs, chickens and milk production.

Saturation bins are used for finalization of manufacturing through a timed process that allows the liquid ingredients to saturate into the dry ingredients, creating a "premium grade feed." The Saturation bins are emptied several times per day and are NOT used for storage of inventory. Saturation is an important part of creating a "premium product" not to be confused with a lower grade product and is supported by A. Gabliano Co. V. Dept of Revenue (WTAX 2003). As in the ripening process identified in the A. Gabliano case the feed must also go through a "ripening" process in the Saturation bins to be converted from a lower grade feed to a "premium grade feed." Also, as demonstrated in the A. Gabliano case a tomato converted into a ripened tomato is considered manufacturing, therefore, saturation used to convert lower grade feed into a premium grade feed is also considered manufacturing.

Once saturation has been reached the final premium grade feed is dumped out into delivery trucks and freighted to the individual farm facilities and the client's final storage units. There is NO storage of premium grade bulk feed on the premises. If feed is bagged for resale, the bagged product is stored in the Warehouse NOT the feed mill as there is no storage room on site.

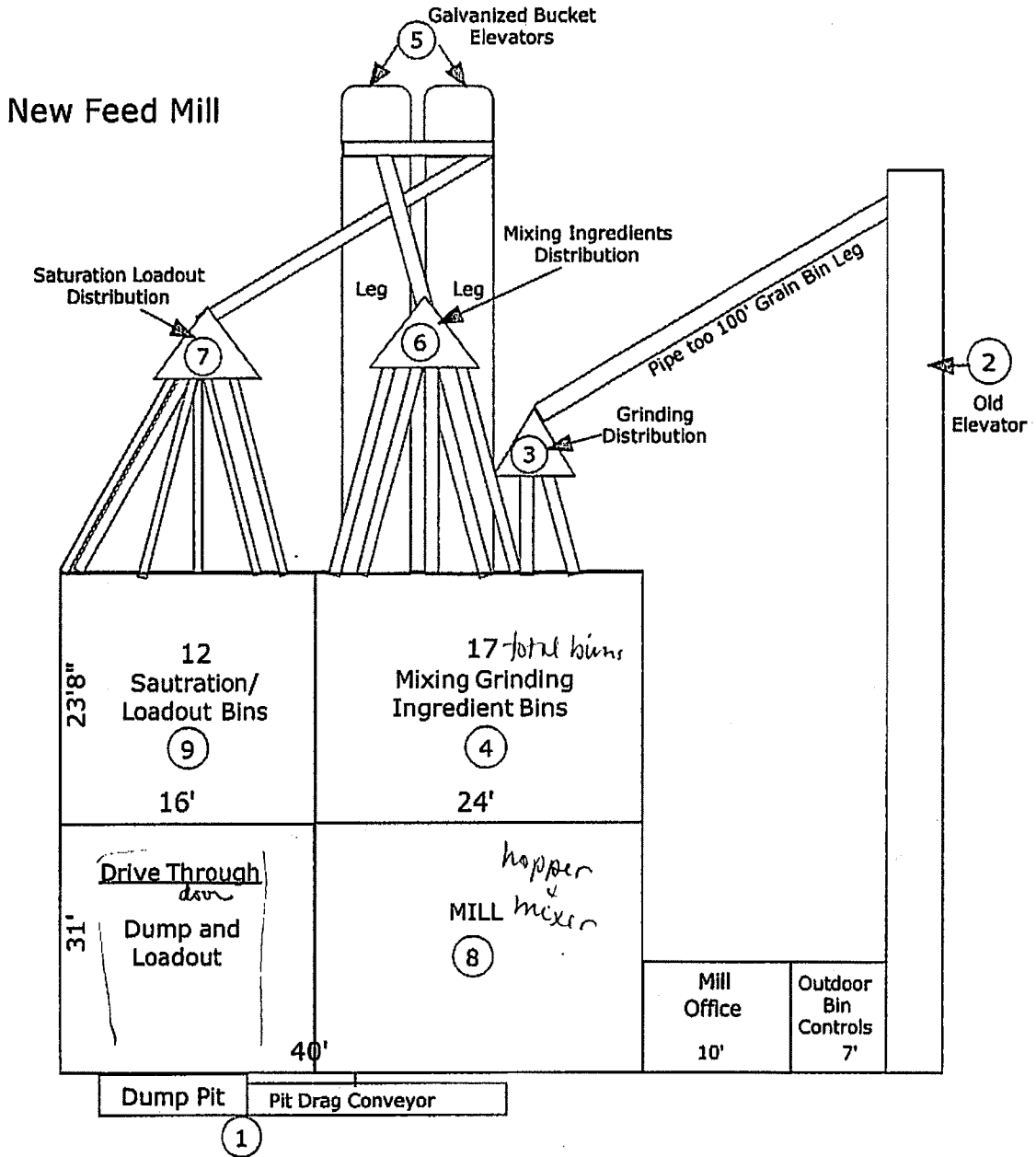
All grinding, mixing and saturation bins are emptied on a short term basis daily related to feed formulas and are not used in any way shape or form for storage of inventory.

All legs, distributors, elevators, screw feeders, gates and grinding, mixing and saturation bins are used exclusively in "the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant and conveyance of finished products to the point of first storage on the plant premises."

In conclusion, it is our contention that all milling parts in question and identified on the Audit Proposal Report are exclusively used in a manufacturing process as defined by the State of Wisconsin and qualify as exempt property. This is further supported by the property tax exemption currently provided by the State of Wisconsin due to the Manufacturing exemption on this facility.

# "New generation" Style mill

## Attachment #1



Cashton Farm Supply, Ltd  
 300 State Hwy 27  
 Cashton WI 54619

Revised 6/5/12

↑  
 office building

## Kreye, Joseph

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**From:** Nelson, Scott  
**Sent:** Thursday, August 22, 2013 10:01 AM  
**To:** Kreye, Joseph  
**Subject:** FW: Feed Mill Audit  
**Attachments:** 2013\_08\_14\_09\_10\_03.pdf

Joe,

Here's the information from Cashton Farm Supply. Let me know if you need anything else.

*W. Scott Nelson*

Office of State Senator Terry Moulton  
23rd Senate District  
608-266-7511

**From:** Tom Bressner [<mailto:tom@wiagribusiness.org>]  
**Sent:** Wednesday, August 21, 2013 6:40 PM  
**To:** Nelson, Scott; Smith-Loomans, Sandra; Shawn Pfaff  
**Subject:** Fwd: Feed Mill Audit

Scott, Sandra

I received the following and attachment from the In-house accountant for Cashton Farm Supply. The attachment contains rulings made by the DOR Sales Tax Auditor

Tom Bressner  
Wisconsin Agri-Business Association

Good Morning Tom,

Attached are comments and decisions made by the sales tax audit personnel on the mill and their schedule pertaining to the mill. I am not sure that you have copies of them.

Let me know if you need anything else.

Anne McQuilliams  
Accountant  
The CFS Companies  
[organic@cfspecial.com](mailto:organic@cfspecial.com)  
608-654-5123 F 608-654-5696



# **CORRESPONDENCE/MEMORANDUM**

STATE OF WISCONSIN

Department of Revenue

**DATE:** October 1, 2012

**FILE REF:** 469-1020000429B-03

**TO:** Rick DeBano

**FROM:** Milt Sherman

**SUBJECT:** Cashton Farm Supply, LTD -- LUM

I am in agreement with the auditor's proposed adjustments. Use tax should also be assessed on the purchase price of the steel that was used to construct the mixing and grinding bins. See explanation below.

The "Integrated Plant Facility" concept does not apply for sales and use tax purposes.

Section Tax 11.40(1)(b), Wis. Adm. Code (November 2010 Register), provides that the manufacturing process "begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units to the point of first storage in the same plant."

Section Tax 11.40(2)(c), Wis. Adm. Code (November 2010 Register), provides that machines and processing equipment must be used directly in the step-by-step manufacturing process in order to qualify for exemption from sales and use tax and that machine foundations are real property improvements and do not qualify for exemption.

The auditor is proposing to assess use tax on \$135,710.00 of structural steel used in constructing the building and the structural beams and grid flooring that support the manufacturing equipment. This steel is being consumed in real property construction activities and is subject to sales and use tax pursuant to sec. Tax 11.68(4)(a), Wis. Adm. Code (November 2010 Register).

The auditor is also proposing to assess use tax on \$10,325.00 of steel that was used to construct the safety cage that is used to access the top of the building and the safety railings on the roof of the building that surround the distribution diverters and the bucket elevators. The safety cage and the safety railings are attached to real property and are serving a real property function and therefore, do not qualify for the manufacturing exemption. This steel is subject to sales and use tax pursuant to sec. Tax 11.68(4)(a), Wis. Adm. Code (November 2010 Register).

The auditor is proposing to assess use tax on the steel that was used to construct a leg well that surrounds the bucket elevator leg that is used in the manufacturing process. The leg well is not being used directly in the manufacturing process and therefore, does not qualify for exemption under sec. Tax 11.40(2)(c), Wis. Adm. Code (November 2010 Register). The purchase price of this steel is subject to use tax pursuant to sec. 77.53(1), Wis. Stats. (2009-10).

The vented walls (sides) of the grinding and mixing bins are part of the outside walls of the building that contains the manufacturing equipment. Therefore, the bins are considered to be a real property improvement after installation, even though they are used for manufacturing. Since the bins are considered to be a real property improvement after installation, they do not qualify for the manufacturing exemption. This is similar to the tax treatment of a paint booth. The department has consistently held that, if one or more walls of a paint booth are part of the outside wall of a building, the paint booth is considered to be a real property improvement after installation. Use tax should be

assessed on the purchase price of the steel used to construct the grinding and mixing bins pursuant to sec. Tax 11.68(4)(a), Wis. Adm. Code (November 2010 Register).

**Additional Audit Issue**

The manufacturing process for the ingredients that are stored in the storage bins begins when the ingredients are conveyed from the storage bins to the place where the manufacturing begins. Conveyance of the ingredients to the storage bins is not part of the manufacturing process pursuant to sec. Tax 11.40(1)(b), Wis. Adm. Code (November 2010 Register).

The auditor stated that the "old dump pit" is used to receive ingredients delivered to the mill site. If any of these ingredients are stored in storage bins prior to being used in manufacturing, any machinery and equipment used to transfer the ingredients to the storage bins would not qualify for the manufacturing exemption, since the machinery and equipment is not being used exclusively and directly in manufacturing. If the "new dump pit" is going to be used in transferring ingredients to storage bins, use tax should be assessed on the purchase price of the pit drag conveyor, transfer conveyor, pit tunnel steel, and bar grate cover pursuant to sec. 77.53(1), Wis. Stats. (2009-10).

WISCONSIN DEPARTMENT OF REVENUE  
INCOME, SALES & EXCISE TAX DIVISION

Cashton Farm Supply LTD  
456-1020004299-03

EXPLANATIONS OF ADJUSTMENTS ON EXHIBIT C

ADJ #    EXPLANATION

Tax Measured by Sales

None

Tax Measured by Purchases

Untaxed purchases of tangible personal property or taxable services which are stored, used or otherwise consumed in Wisconsin are subject to Wisconsin sales and use tax pursuant to s. 77.53(2),(12) and 77.57, Wis. Stats. (2007-2008).

It is presumed that all purchases of tangible personal property are subject to Wisconsin use tax until the contrary is established pursuant to s. 77.53(2), Wis. Stats. (2007-2008).

1.    An adjustment is made to include untaxed purchases of capital items in the measure of use tax. The adjustment was determined by a 100% examination of all capital purchase invoices.



Per the Large Unagreed Memo process, it has been determined that portions of the mill are considered real property, and as such, sales tax is due on the purchase of the materials from Tom-Cin Metals. These portions are: siding girts and trim, steel I beams, steel safety railings, leg well, new dump pit, mixing bins and grinding bins. As explained in the ruling response provided to the taxpayer's representative, the walls of the mixing and grinding bins are the walls of the structure and as such, are considered real property.

In addition, the buyer's claims for refund for items properly included as capital assets are also allowed on this schedule.

See Schedule 1.

2.    Approximately one-third of each year's purchases were examined as a sample. These invoices were from the time period of October 1, 2008 to September 30, 2011 due to the fire that destroyed records prior to July 2008. The year in which a vendor's file was examined was determined by the year in which that portion of the alphabet was assigned.

The sum of the additional measure of tax found on the examined invoices represents the average annual additional measure of tax. This amount is then multiplied by four to arrive at the total additional measure of tax over the audit period. This total is allocated to the various periods of the audit based on gross sales.

In addition, buyer's claims for refund for items properly included as routine purchases have been allowed on this schedule.

See Schedule 2.

CASHTON FARM SUPPLY LTD

SCHEDULE 1  
PROPOSED

CAPITAL ASSETS PURCHASED WITHOUT TAX, BUYERS CLAIMS ALLOWED

W/P REF

VENDOR NAME	LOCATION	INVOICE DATE	INVOICE #	INVOICE AMOUNT	STATE ADJUSTMENT	COUNTY ADJUSTMENT	STADIUM CNTY N ADJUSTMENT	N DESCRIPTION	W/P REF
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FYE 9/30/2008									
PC CONNECTION	ONLINE	08/28/2008	43846357	\$367.83	\$367.83	\$367.83	\$0.00	HP LASERJET P2016 PRINTERS	U3.1
TOTAL - TO EXHIBIT C AND CT				\$367.83	\$367.83	\$367.83			

FYE 9/30/2009	VENDOR NAME	LOCATION	INVOICE DATE	INVOICE #	INVOICE AMOUNT	STATE ADJUSTMENT	COUNTY ADJUSTMENT	STADIUM CNTY N ADJUSTMENT	N DESCRIPTION	W/P REF
	TOM-CIN METALS				\$901,791.11	\$29,090.00	\$29,090.00	\$0.00	SIDING GIRTS AND TRIM	U11
	TOM-CIN METALS					\$108,620.00	\$108,620.00	\$0.00	STEEL I BEAMS	U11
	TOM-CIN METALS					\$10,325.00	\$10,325.00	\$0.00	STEEL SAFETY RAILINGS	U11
	TOM-CIN METALS					\$12,348.12	\$12,348.12	\$0.00	LEG WELL	U11
	TOM-CIN METALS					\$30,595.00	\$30,595.00	\$0.00	NEW DUMP PIT	U11
	TOM-CIN METALS					\$110,911.38	\$110,911.38	\$0.00	MIXING BINS	U11
	TOM-CIN METALS					\$24,651.50	\$24,651.50	\$0.00	GRINDING BINS	U11
	EOFFICE DIRECT				\$139.98	\$139.98	\$139.98	\$0.00	METAL BOOKCASES	U3.1
	EOFFICE DIRECT				\$879.98	\$879.98	\$879.98	\$0.00	3 DRAWER LATERAL FILE	U3.1
	EOFFICE DIRECT				\$424.95	\$424.95	\$424.95	\$0.00	BURGUNDY SWIVEL TASK CHAIR	U3.1
	EOFFICE DIRECT				\$975.98	\$975.98	\$975.98	\$0.00	SHELF DIVIDERS, LATERAL FILES	U3.1
	BIZ CHAIR				\$158.97	\$158.97	\$158.97	\$0.00	COUNTER STOOLS W/TRACTOR SEATS	U3.1
	AMAZON.COM				\$219.17	\$219.17	\$219.17	\$0.00	OKIDATA ML188 PRINTER	U3.1
	UNKNOWN VENDOR				\$1,815.00	\$1,815.00	\$1,815.00	\$0.00	ACIER VERTON CORE2 QUAD COMPUTER .	U3.1
	LACROSSE TRUCK CENTER				\$6,721.11	(\$6,370.72)	(\$6,370.72)	\$0.00	MISSING INVOICE	
	OREILLY/ FIRST CALL AUTO PARTS	MO			\$2,051.96	(\$1,944.99)	(\$1,944.99)	\$0.00	RECONDITION/REPAIR - FERT TRUCK -	U5.17
	W.W. GRAINGER INC	IL			\$1,952.81	(\$1,851.00)	(\$1,851.00)	\$0.00	BCR RECD	
	TOTAL - TO EXHIBIT C AND CT				\$319,988.31	\$319,988.31	\$319,988.31	\$0.00	AIR DRYER USED IN MFG - BCR RECD	U5.23
								\$0.00	VIBRATOR USED IN MFG - BCR RECD	U5.37

FYE 9/30/2010

NONE

FYE 9/30/2011

NONE

## Kreye, Joseph

---

**From:** Nelson, Scott  
**Sent:** Tuesday, August 27, 2013 9:33 AM  
**To:** Kreye, Joseph  
**Subject:** FW: Central Wisconsin Coop Sales Tax Issue

Joe,

Here is the latest information I received from the WABA about our drafting request. Is there anything else you would like from them to move things along?

Also, did you receive my e-mail about a tax-free education expense account?

*W. Scott Nelson*

Office of State Senator Terry Moulton  
23rd Senate District  
608-266-7511

**From:** Tom Bressner [<mailto:tom@wiagribusiness.org>]  
**Sent:** Monday, August 26, 2013 4:43 PM  
**To:** Nelson, Scott; Smith-Loomans, Sandra; Shawn Pfaff  
**Subject:** Central Wisconsin Coop Sales Tax Issue

Scott, Sandra, Shawn

Moments ago, I spoke with Frank Brenner, General Manager of the Central Wisconsin Coop of Stratford. This is the company that had the DOR Sales Tax issue on fertilizer and grain drying. I had asked Frank for a copy of the Letter Ruling they received from the DOR. However, Frank just told me that DOR told them it was a "Private Letter Ruling", and that if Central Wisconsin Coop wanted access to it, they would have to contest the DOR decision and go to court. So, CWC does not have a copy of anything from DOR. The CWC Board of Directors just wanted the thing over with and paid it.

The accountant that CWC uses for their year end audits and tax work is Jim Halvorsen, CPA with the Clifton Larson Allen accounting firm out of Marshfield. Jim's phone number is 715-387-6341. He may be able to give us some clarification if needed, but I don't know how much.

What do you want me to do from here? Do we have enough information from Cashton to move forward?

Thanks  
Tom Bressner  
Wisconsin Agri-Business Association



.....  
JK sac

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

in Thursday  
9-5

D-N

due Friday  
9-6

gen cat

LPS: make change  
to "By/Representing"  
on request sheet

1 **AN ACT** ...; **relating to:** the sales and use tax exemption for equipment used in  
2 feed manufacturing.

***Analysis by the Legislative Reference Bureau***

Current law provides a sales and use tax exemption for machines and specific processing equipment used by a manufacturer in manufacturing tangible personal property. The exemption, however, does not apply, generally, to tangible personal property that is fastened to, connected to, or built into real property. Under current law, the sale of machines and specific processing equipment used to manufacture feed is exempt from the sales and use tax unless such items become part of real property.

Current law also provides a sales and use tax exemption for tangible personal property and equipment used in farming. That exemption applies to certain tangible personal property such as conveyors, feed elevators and augers, and grain dryers and grinders, regardless of the extent to which such property is fastened to, connected to, or built into real property. Under current law, a feed manufacturer is not considered to be engaged in the business of farming.

Under this bill, the sales and use tax exemption for machines and equipment used in manufacturing applies to machines and specific processing equipment used in a feed milling or grain drying operation, including holding structures used for weighing and dropping feed ingredients directly into a mixer, wet corn holding bins, mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless of the extent to which such items used in a feed milling or grain drying operation are fastened to, connected to, or built into real property.

