

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2927/P1dn

JK:.)....

sac

- date -

Representative Moulton:

Please review this draft carefully to ensure that it is consistent with your intent. Once you have had a chance to review this draft, I would be happy to meet again with the interested parties to address their comments or concerns.

I used the standard effective date for sales and use tax modifications, but are you considering having the change apply retroactively so that DOR would have to provide a refund to the affected taxpayers?

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2927/P1dn
JK:sac:rs

September 5, 2013

Representative Moulton:

Please review this draft carefully to ensure that it is consistent with your intent. Once you have had a chance to review this draft, I would be happy to meet again with the interested parties to address their comments or concerns.

I used the standard effective date for sales and use tax modifications, but are you considering having the change apply retroactively so that DOR would have to provide a refund to the affected taxpayers?

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Nelson, Scott
Sent: Thursday, September 12, 2013 10:34 AM
To: Kreye, Joseph
Subject: FW: Bill Draft

2927

Joe,

Everyone seems happy with the draft, but feel it needs to expand its scope to include fertilizer blending. This e-mail explains the issue. I may forward you another if the information is different. Either way, could you please amend the draft to include this process?

Thanks for all your work.

W. Scott Nelson

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

From: Tom Bressner [<mailto:tom@wiagribusiness.org>]
Sent: Monday, September 09, 2013 3:19 PM
To: Nelson, Scott; Smith-Loomans, Sandra; Shawn Pfaff
Subject: Fwd: Bill Draft

Scott, Sandra, Shawn

Here is the response I got back from Jerome Leis from Clifton Larson Allen accounting firm. He thinks it is good, but also feels we need language to cover fertilizer blending as well. Historically, feed manufacturing, grain drying, and fertilizer blending have always been considered types of manufacturing for tax exemption purposes.

Tom

----- Forwarded message -----

From: Leis, Jerome <Jerome.Leis@claconnect.com>
Date: Mon, Sep 9, 2013 at 2:24 PM
Subject: RE: Bill Draft
To: Tom Bressner <tom@wiagribusiness.org>

Looks good to me, appears to be black and white, but you know how words can get twisted. I believe as written this would help a number of feed processing and grain drying facilities moving forward.

Not sure if you are looking to slip this in as well, but.....

One item to point out, this does not address tangible personal property used for mixing fertilizers. Manufacturing by definition takes something and creates another product.

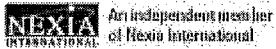
Currently any "hoppers" or load in bins are NOT considered to be part of manufacturing even if they are not part of real estate.



Jerome Leis, CPA, Manager
Outsourcing, CliftonLarsonAllen LLP

Direct --
jerome.leis@CLAconnect.com

Main 608-269-2424 x45627, Fax 608-269-2549
525 Industrial Drive, P.O. Box 329, Sparta, WI 54656
CLAconnect.com



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CliftonLarsonAllen LLP

From: Tom Bressner [mailto:tom@wiagribusiness.org]
Sent: Monday, September 09, 2013 9:58 AM
To: Leis, Jerome; Leis, Jerome
Subject: Fwd: Bill Draft

Jerome

This is the initial language drafted by Joe Kreye of the Legislative Reference Bureau. Do you think this adequately addresses... and fixes... the Cashton situation for future cases?

Tom

----- Forwarded message -----

From: Nelson, Scott <Scott.Nelson@legis.wisconsin.gov>
Date: Fri, Sep 6, 2013 at 10:02 AM
Subject: Bill Draft
To: Tom Bressner <tom@wiagribusiness.org>, "Smith-Loomans, Sandra" <Sandra.Smith-Loomans@legis.wisconsin.gov>, Shawn Pfaff <shawn.pfaff@capitolconsultants.net>

Here is the initial draft from Joe Kreye. Let me know what you think.

W. Scott Nelson

Office of State Senator Terry Moulton

23rd Senate District

608-266-7511



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2927/P1
JK:sac:rs

P2
RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 9-12-13
due Monday 9-16
D-N

1 AN ACT ^{gen cat} to amend 77.54 (6) (a) of the statutes; relating to: the sales and use tax
2 exemption for equipment used in feed/manufacturing. and fertilizer

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.

Fertilizer blending

Fertilizer blending,

*
*

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:

fertilizer blending

1 SECTION 1. 77.54 (6) (a) of the statutes is amended to read:

2 77.54 (6) (a) Machines and specific processing equipment and repair parts or
3 replacements thereof, exclusively and directly used by a manufacturer in
4 manufacturing tangible personal property or items or property under s. 77.52 (1) (b)
5 or (c) and safety attachments for those machines and equipment. The exemption
6 under this paragraph applies to machines and specific processing equipment used
7 in a feed milling or grain drying operation, including holding structures used for
8 weighing and dropping feed ingredients directly into a mixer, wet corn holding bins,
9 mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless
10 of the extent to which such items used in a feed milling or grain drying operation are
11 fastened to, connected to, or built into real property.

fertilizer blending

12 SECTION 2. Effective date.

13 (1) This act takes effect on the first day of the 3rd month beginning after
14 publication.

15 (END)

DNote

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2927/P2dn

JK:sac:rs

-date-

Representative Moulton:

* Please review this draft carefully to ensure that it is consistent with your intent. Based on the most current email messages sent by Scott, I am not sure whether wet corn holding bins should be included as manufacturing-related items that are exempt from the sales and use tax. You may also wish to confirm whether it is appropriate to include the grinding, mixing, and saturation bins.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2927/P2dn
JK:sac:rs

Representative Moulton:

Please review this draft carefully to ensure that it is consistent with your intent. Based on the most current e-mail messages sent by Scott, I am not sure whether wet corn holding bins should be included as manufacturing-related items that are exempt from the sales and use tax. You may also wish to confirm whether it is appropriate to include the grinding, mixing, and saturation bins.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2927/P2
JK:sac:rs

lev
see
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

9-23-13
m
regen
Now

1 AN ACT to amend 77.54 (6) (a) of the statutes; relating to: the sales and use tax
2 exemption for equipment used in feed and fertilizer 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 fertilizer blending, 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 fertilizer blending, feed milling, or grain drying operation are fastened to, connected to, or built into real property.

Barman, Mike

From: Nelson, Scott
Sent: Monday, September 23, 2013 4:37 PM
To: LRB.Legal
Subject: Draft Review: LRB -2927/1 Topic: Sales and use tax exemption for agriculture-related businesses

Please Jacket LRB -2927/1 for the SENATE.



RMR

2013 BILL

Provides sales and use tax exemption for the sale of machinery used in feed and fertilizer manufacturing.

NOW
Monday
10-21-13

re you

1 AN ACT to amend 77.54 (6) (a) of the statutes; relating to: the sales and use tax
2 exemption for equipment used in feed and fertilizer 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 fertilizer blending, 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 fertilizer blending, feed milling, or grain drying operation are fastened to, connected to, or built into real property.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2927/2ins
JK:sac&eev:ev

Insert 2 - 12

1 ^λ SECTION 1. 77.54 (6) (d) of the statutes is created to read:

2 77.54 (6) (d) Machines and specific processing equipment; and repair parts,
3 replacements, and safety attachments for such machines and equipment; used
4 exclusively and directly in a fertilizer blending, feed milling, or grain drying
5 operation, including holding structures used for weighing and dropping feed
6 ingredients directly into a mixer, wet corn holding bins, mixers, conveying
7 equipment, and grinding, mixing, and saturation bins, regardless of the extent to
8 which such items used in a fertilizer blending, feed milling, or grain drying operation
9 are fastened to, connected to, or built into real property.

The exemption under this paragraph
applies to repair parts, replacements, and
safety attachments for such machines
and equipment.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-292712
JK:sac&eev:rs

RMR

2013 BILL

due Friday 11-8

fertilizer blending,
feed milling, or grain
drying operation
re you

The exemption also applies to building materials used to construct or repair certain holding structures used in the fertilizer blending, feed milling, or grain drying operation.

1 AN ACT to create 77.54 (6) (d) of the statutes; relating to: the sales and use tax
2 exemption for equipment used in feed and fertilizer 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.

This bill provides a sales and use tax exemption for the sale of specific processing equipment used in a fertilizer blending, 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 fertilizer blending, feed milling, or grain drying operation are fastened to, connected to, or built into real property.

whether

become an addition to, a component of, or a capital improvement of

BILL

grain dryers and holding bins located within towers,

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.

Insert 2-1
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

(am) 4.
1 **SECTION 1.** 77.54 (6) (d) of the statutes is created to read:

Insert 2-8
2 77.54 (6) (d) Machines and specific processing equipment used exclusively and
3 directly in a fertilizer blending, feed milling, or grain drying operation, including
4 holding structures used for weighing and dropping feed ingredients directly into a
5 mixer, wet corn holding bins, mixers, conveying equipment, and grinding, mixing,
6 and saturation bins, regardless of the extent to which *whether* such items used in a fertilizer
7 blending, feed milling, or grain drying operation are fastened to, connected to, or
8 built into real property. The exemption under this paragraph applies to repair parts, *inclusion*
9 replacements, and safety attachments for such machines and equipment.

10 **SECTION 2. Effective date.**

11 (1) This act takes effect on the first day of the 3rd month beginning after
12 publication.

13 (END)

Insert 2-9

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2927/3ins
JK:sac&eev:rs

Insert 2 - 1

1 **SECTION 1.** 77.54 (6) of the statutes is renumbered 77.54 (6) (am).

Insert 2 - 8

2 become an addition to, ^acomponent of, or ^acapital improvement of

Insert 2 - 9

3 **SECTION 2.** 77.54 (6) (am) 5. of the statutes is created to read:

4 77.54 (6) (am) 5. Building materials acquired solely for and used solely in the
5 construction or repair of holding structures used for weighing and dropping feed
6 ingredients into a mixer or for storage of grain, if such structures are used in a
7 fertilizer blending, feed milling, or grain drying operation.

8 **SECTION 3.** 77.54 (6) (bn) of the statutes is created to read:

9 77.54 (6) (bn) The exemptions under par. (am) 4. and 5. apply only to items
10 located on the same parcel of property where the fertilizer blending, feed milling, or
11 grain drying operation activities are conducted, or on an adjoining parcel, including
12 parcels that are separated only by a public road. The exemptions under par. (am) 4.
13 and 5. apply only to persons who are engaged in fertilizer blending, feed milling, or
14 grain drying operations and to contractors providing real property construction
15 activities to such persons.

16 **SECTION 4.** 77.54 (6r) of the statutes is renumbered 77.54 (6) (cn) and amended
17 to read:

18 77.54 (6) (cn) ~~The exemption under sub. (6)~~ exemptions under this subsection
19 shall be strictly construed.

History: 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291; 1999 a. 9, 65, 83; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16, 103, 109; 2003 a. 99, 128; 2005 a. 25, 74, 141, 149, 335, 366, 479; 2007 a. 11, 19, 20, 97, 130; 2009 a. 2, 28, 185, 204, 330; 2011 a. 7, 10, 32, 208, 260; 2013 a. 20.

Kreye, Joseph

From: Nelson, Scott
Sent: Thursday, November 07, 2013 10:01 AM
To: Kreye, Joseph
Subject: FW: Feedback on LRB 2927/2

Joe,

Could you please give me a call when you have a minute this morning so we can put our heads together on a new draft?

Thanks,

W. Scott Nelson

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

From: Tom Bressner [mailto:tom@wiagribusiness.org]
Sent: Thursday, November 07, 2013 7:43 AM
To: Western, Jennifer N - DOR
Cc: Nelson, Scott; Smith-Loomans, Sandra; Ristow, Nathaniel L - DOR (Nate); Kreye, Joseph; shawn@pfaffpublicaffairs.com; Jason Culotta
Subject: Re: Feedback on LRB 2927/2

Scott

I may be overly cautious, but I don't want us to have to re-do this in one or two years because we left a door open for misinterpretation by DOR sales tax field auditors. I still would like to see grain dryers and product ingredient bins involved in the manufacturing process included in the language. Even though Jennifer says it is implied, what would it hurt to add it in for clarity. I also think we need the word "primarily" removed. This can only create nightmares down the road. I guess I am okay on everything else.

Tom Bressner

On Wed, Nov 6, 2013 at 5:14 PM, Western, Jennifer N - DOR <Jennifer.Western@revenue.wi.gov> wrote:

Hi Scott,

Below are some responses to the points. Let me know if you'd like to discuss further.

Jennifer Western, *Assistant Deputy Secretary*
Wisconsin Department of Revenue
E: jennifer.western@wisconsin.gov
On the Web: <http://www.revenue.wi.gov/>

From: Nelson, Scott [mailto:Scott.Nelson@legis.wisconsin.gov]
Sent: Friday, November 01, 2013 11:35 AM
To: Western, Jennifer N - DOR
Cc: Smith-Loomans, Sandra - LEGIS; Ristow, Nathaniel L - DOR (Nate); Kreye, Joseph - LEGIS; tom@wiagribusiness.org; shawn@pfaffpublicaffairs.com

Subject: RE: Feedback on LRB 2927/2

Jennifer,

I shared this with all of the interested parties and with our drafter at LRB and have the following comments for you. After you have some time to consider these comments, I'd like to suggest that we get together with your attorney and the drafter from LRB and see if we can hammer out a final product that everyone can support. I would be happy to host a meeting late next week if that is convenient for you and your staff and provides you with enough time to review our input.

Here is our feedback:

1. Joe Kreye (LRB drafter) had some comments on your suggestion. Here they are:

DOR takes issue with the language that refers to certain items "regardless of the extent to which...such items are fastened to, connected to, or built into real property." That language is similar to language used for the exemption for certain items used in farming under s. 77.54 (3) (c). My assumption when using that language was that the listed items would retain their character as tangible personal property for purposes of the new exemption. DOR is suggesting that that language only exempts that which is already exempt under s. 77.54 (6) (a). But the problem we have under s. 77.54 (6) (a) is that DOR is indicating that the items in question sometimes become real property and, therefore, are NOT exempt under s. 77.54 (6) (a). I also find that to be an odd interpretation in the context of the exemption under s. 77.54 (3) (c).

DOR is suggesting that we replace the "regardless, etc." language with "regardless of whether such items become an addition to, component of, or capital improvement of real property". That may amount to the same thing as the original language, but the suggested language does make clear that it won't make any difference, for purposes of the sales tax exemption, whether the items are considered real property or tangible personal property. In short, it would seem appropriate to use DOR's suggested language.

Sounds like LRB would be amenable to this.

2. The Wisconsin Agri-Business Association reviewed your suggestions and is hoping that we can include "grain dryers" and "holding bins" located within the towers in the list in subsection (am).

Grain dryers and holding bins are covered. If the holding bin or grain dryer is tangible personal property, it would qualify as processing equipment in (am). If real property, the building materials are exempt in (ar).

3. The Association also has concerns about the last sentence of your suggested (d). These businesses do a variety of work and the way that last sentence is worded it would require one of those items to be 50.1% of their total work when that may not be the case for a normal business serving these needs. Since this equipment is fairly specialized, it seems unlikely that someone would possess them and claim the exemption if they weren't engaged in the listed businesses. Including the last sentence seems to create a technicality that isn't necessary to achieve the underlying goal of the bill.

This language limits the exemption to just those persons who are in the business of providing those activities. If persons who are not primarily engaged in those activities are able to obtain the exemption, the fiscal effect would be much greater.

4. Would it be possible to have an immediate effective date on the bill since there isn't really a need to notify vendors and change equipment as is usually the case with the changes Revenue passes on to end users? We assume that you would be able to notify your employees and contractors immediately of a change in the assessment process and it would eliminate a period of time when the old assessment method was in place while the new one was waiting for its effective date.

There would not be a concern with an immediate effective date.

5. Joe has some structural concerns about the sections being drafted. This wouldn't involve any substance and can be discussed when we all get together.

That's all we had after reviewing what you sent us. If you have any questions, feel free to give me a call. I look forward to meeting with you next week at some point to see what sort of progress we have made.

Have a great weekend.

W. Scott Nelson

Office of State Senator Terry Moulton

23rd Senate District

608-266-7511

From: Western, Jennifer N - DOR [<mailto:Jennifer.Western@revenue.wi.gov>]
Sent: Monday, October 28, 2013 9:15 AM
To: Nelson, Scott
Cc: Smith-Loomans, Sandra; Ristow, Nathaniel L - DOR (Nate)
Subject: Feedback on LRB 2927/2

Dear Scott,

Thank you for providing a copy of LRB 2927/2. Below are a few observations about the language of LRB 2927/2. Then Part II of this email is alternative language that would address each of the points below.

- LRB 2927/2 uses the phrase "regardless of the extent to which such items...are fastened to, connected to, or built into real property," which is similar to the language in sec. 77.54(3)(c), Stats., for certain farm equipment. Using this language, the only items that are exempt, are machines and specific processing equipment that remain tangible personal property when installed. It does not exempt machines and specific processing equipment that become a real property

improvement. The result is that the draft only exempts items that are already exempt under current law (sec. 77.54(6)(a), Stats.).

- If the intent is to provide an exemption that would apply to machines and specific processing equipment that becomes a real property improvement, the phrase "whether such items become and addition to, component of, of capital improvement of real property" in proposed sec. 77.54(6)(am), Stats., accomplishes this objective.
- LRB 2927/2 does not exempt building materials used to construct the holding bins; it only exempts the sale or purchase of the holding bins themselves.
- If the intent is to provide an exemption that would pass through to contractors' purchases of building materials that the contractor uses to construct certain holding structures (buildings), the exemption should be patterned after other exemptions that provide a similar pass-through exemption for contractors (for example, sec. 77.54(41), Stats.). Proposed sec. 77.54(6)(ar), Stats., accomplishes this objective.
- LRB 2927/2 is not clear whether the exemption applies to separate grain storage bins that are used in conjunction with the equipment in the holding structures.
- If the intent is to include separate grain storage bins that are used in conjunction with the equipment in the holding structures, the exemption should make this clear. This can be done by using some of the wording currently in sec. 77.51(10b), Stats., the definition of "plant," to include such structures *only if they are located on the same parcel of property as the machines and equipment used for fertilizer blending, feed milling, and grain drying.*

Part II. If the above meets intent, here is language that could accomplish that purpose. Replace section 1 with the following:

Section 1. 77.54(6)(am), (ar), and (d), of the statutes are created to read:

77.54(6)(am) Machines and specific processing equipment, and repair parts, replacements, and safety attachments therefor, exclusively and directly used in a fertilizer blending, feed milling, or grain drying operation, including wet corn holding bins, mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless of whether such items become an addition to, component of, or capital improvement of real property.

(ar) Building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed ingredients into a mixer or for storage of grain, if such structure is used in a fertilizer blending, feed milling, or grain drying operation.

(d) For purposes of this subsection, "use in a fertilizer blending, feed milling, or grain drying operation" requires that the item be located on the same parcel of property where the fertilizer blending, feed milling, or grain drying operation activities are conducted, or an adjoining parcel of property, including parcels that are separated only by a public road. The exemptions in par. (am) and (ar) only apply to persons who are primarily engaged in fertilizer blending, feed milling, or grain drying operations, and contractors providing real property construction activities for such persons.

Thank you for providing us with the chance to review the draft language.

Sincerely,

Jennifer Western, *Assistant Deputy Secretary*
Wisconsin Department of Revenue
E: jennifer.western@wisconsin.gov
On the Web: <http://www.revenue.wi.gov/>

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2013 BILL

SAV
xref ✓

regen

1 **AN ACT** *to create* 77.54 (6) (d) of the statutes; **relating to:** the sales and use tax
 2 exemption for equipment used in a fertilizer blending, feed milling, or grain
 3 drying operation.

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.

This bill provides a sales and use tax exemption for the sale of specific processing equipment used in a fertilizer blending, 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 whether such

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items become an addition to, a component of, or a capital improvement of real property. The exemption also applies to building materials used to construct or repair certain holding structures used in the fertilizer blending, feed milling, or grain drying operation.

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.** 77.54^X (6) of the statutes is re[✓]numbered 77.54 (6) (am).

2 **SECTION 2.** 77.54 (6) (am) 4. of the statutes is cre[✓]ated to read:

3 77.54 (6) (am) 4. Machines and specific processing equipment used exclusively
4 and directly in a fertilizer blending, feed milling, or grain drying operation, including
5 holding structures used for weighing and dropping feed ingredients directly into a
6 mixer, wet corn holding bins, grain dryers and holding bins located within towers,
7 mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless
8 of whether such items become an addition to, a component of, or a capital
9 improvement of real property. The exemption under this subdivi[✓]sion applies to
10 repair parts, replacements, and safety attachments for such machines and
11 equipment.

12 **SECTION 3.** 77.54 (6) (am) 5. of the statutes is cre[✓]ated to read:

13 77.54 (6) (am) 5. Building materials acquired solely for and used solely in the
14 construction or repair of holding structures used for weighing and dropping feed
15 ingredients into a mixer or for storage of grain, if such structures are used in a
16 fertilizer blending, feed milling, or grain drying operation.

17 **SECTION 4.** 77.54 (6) (bn) of the statutes is cre[✓]ated to read:

Kreye, Joseph

From: Nelson, Scott
Sent: Tuesday, November 12, 2013 4:38 PM
To: Kreye, Joseph
Subject: FW: FW: Here's a copy of the draft you requested

Here's his response. Do what you think is right.

W. Scott Nelson

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

From: Tom Bressner [<mailto:tom@wiagribusiness.org>]
Sent: Tuesday, November 12, 2013 3:52 PM
To: Nelson, Scott
Cc: shawn@pfaffpublicaffairs.com; Smith-Loomans, Sandra; Jason Culotta (jculotta@wmc.org)
Subject: Re: FW: Here's a copy of the draft you requested

Scott

My second suggestion should go in Section 3 77.54 (6) (am) 5. Building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed "OR FERTILIZER" ingredients into a mixer or for storage of grain,...

Tom

On Tue, Nov 12, 2013 at 2:48 PM, Nelson, Scott <Scott.Nelson@legis.wisconsin.gov> wrote:

Tom,

Joe has a question about your second suggestion. Here's what he said:

"With regard to adding "or fertilizer" after "feed", does he mean page 2, line 16, so that it would read "feed or fertilizer milling"? And if that's the case, then shouldn't I change that throughout the draft, not just on that line?"

He says the first suggestion makes sense, so, we will change the draft to reflect that change.

Let me know what you think about "fertilizer".

W. Scott Nelson

Office of State Senator Terry Moulton

23rd Senate District

608-266-7511

From: Tom Bressner [mailto:tom@wiagribusiness.org]

Sent: Tuesday, November 12, 2013 9:02 AM

To: Nelson, Scott

Cc: shawn@pfaffpublicaffairs.com; Smith-Loomans, Sandra; Jason Culotta (jculotta@wmc.org)

Subject: Re: FW: Here's a copy of the draft you requested

Scott

I know we can super-analyze and re-analyze this a million times, but I am trying to find language that accurately protects our industry without creating too much objection from DOR. See what you all think of this:

Currently in line 5 and 6 of the proposed language, it says

... including holding structures used for weighing and dropping feed ingredients directly into a mixer, wet corn holding bins, grain dryers, and holding bins located within towers,...

As I try to put myself in the eyes of a DOR tax auditor, I would like to remove the word "directly". Those bins may drop the ingredients on to a conveyor that drops it in the mixer. I don't want a wrong interpretation down the road because of the word "directly".

Also, since the holding bins located within towers are to drop fertilizer ingredients into a mixer, could we do this...

...including holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer, wet corn holding bins, grain dryers,...

This would eliminate the awkward language about towers, simply stating that fertilizer ingredient holding structures are included with the current language concerning feed holding structures.

Does this make sense, or am I analyzing too much?

In line 15, I also want "or fertilizer" added after the word "feed".

Tom

On Mon, Nov 11, 2013 at 10:23 AM, Nelson, Scott <Scott.Nelson@legis.wisconsin.gov> wrote:

Here is the new draft. Please review it as soon as possible and let me know if you have any feedback or notice anything that you think should be changed. I'd like to get a final draft to Revenue by Thursday since I think we are pretty close to what we want in a draft.

Thanks,

W. Scott Nelson

Office of State Senator Terry Moulton

23rd Senate District

608-266-7511

From: Kreye, Joseph
Sent: Monday, November 11, 2013 9:58 AM
To: Nelson, Scott
Subject: Here's a copy of the draft you requested

Joseph T. Kreye

Senior Legislative Attorney

Legislative Reference Bureau

608 266 2263



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2927/3
JK:sac&eev:cs

RMR

pb

2013 BILL

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Wolby
-gen cat

1 AN ACT to renumber 77.54 (6); to renumber and amend 77.54 (6r); and to
2 create 77.54 (6) (am) 4., 77.54 (6) (am) 5. and 77.54 (6) (bn) of the statutes;
3 relating to: the sales and use tax exemption for equipment used in a fertilizer
4 blending, feed milling, or grain drying operation.

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.

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p

or fertilizer

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equipment, and grinding, mixing, and saturation bins, regardless of whether such items become an addition to, a component of, or a capital improvement of real property. The exemption also applies to building materials used to construct or repair certain holding structures used in the fertilizer blending, feed milling, or grain drying operation.

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:

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2 **SECTION 2.** 77.54 (6) (am) 4. of the statutes is created to read:

or fertilizer

3 77.54 (6) (am) 4. Machines and specific processing equipment used exclusively
4 and directly in a fertilizer blending, feed milling, or grain drying operation, including
5 holding structures used for weighing and dropping feed/ingredients directly into a
6 mixer, wet corn holding bins, grain dryers and holding bins located within towers,
7 mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless
8 of whether such items become an addition to, a component of, or a capital
9 improvement of real property. The exemption under this subdivision applies to
10 repair parts, replacements, and safety attachments for such machines and
11 equipment.

8

12 **SECTION 3.** 77.54 (6) (am) 5. of the statutes is created to read:

13 77.54 (6) (am) 5. Building materials acquired solely for and used solely in the
14 construction or repair of holding structures used for weighing and dropping feed
15 ingredients into a mixer or for storage of grain, if such structures are used in a
16 fertilizer blending, feed milling, or grain drying operation.

15

17 **SECTION 4.** 77.54 (6) (bn) of the statutes is created to read:

or fertilizer

Kreye, Joseph

From: Nelson, Scott
Sent: Tuesday, December 03, 2013 2:04 PM
To: tom@wiagribusiness.org; shawn@pfaffpublicaffairs.com; Smith-Loomans, Sandra; Jason Culotta (jculotta@wmc.org)
Cc: Kreye, Joseph
Subject: FW: DOR

Revenue agreed to the proposed wording with a slight modification for consistency. I don't believe it changes anything. Tom, do you agree? If that is the case, Joe, could you please have this drafted as soon as you can and send it to me (along with a PDF version to distribute)?

Thanks, everyone! Double check to make sure this is what we want. If it is, then, we can circulate it for co-sponsorship with a short deadline and have it ready for a joint hearing on the 10th, as planned. Sandra, you may want to double-check the co-sponsorship memo to see if any changes are warranted.

Let me know if there are any issues.

W. Scott Nelson

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

From: Western, Jennifer N - DOR [<mailto:Jennifer.Western@revenue.wi.gov>]
Sent: Tuesday, December 03, 2013 1:32 PM
To: Nelson, Scott
Cc: Ristow, Nathaniel L - DOR (Nate)
Subject: RE: DOR

Hi Scott, the text provided is workable. We would just suggest adding the red text (below) for consistency.

Jennifer Western, *Assistant Deputy Secretary*
Wisconsin Department of Revenue
E: jennifer.western@wisconsin.gov
P: (608) 266-6466
On the Web: <http://www.revenue.wi.gov/>

From: Nelson, Scott [<mailto:Scott.Nelson@legis.wisconsin.gov>]
Sent: Tuesday, December 03, 2013 11:00 AM
To: Western, Jennifer N - DOR
Subject: FW: DOR

Jenny,

Here is the response from WABA. Does this proposed addition change the Department's position on this? Seems to narrow the focus rather than expand it. Let me know what you think.

Thanks,

W. Scott Nelson

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

From: Tom Bressner [mailto:tom@wiagribusiness.org]
Sent: Tuesday, December 03, 2013 10:19 AM
To: Nelson, Scott; Smith-Loomans, Sandra; Shawn Pfaff; Jason Culotta
Subject: DOR

Scott

Here is my issue and always has been one of my issues:

Grain Drying is a necessary part of being in the grain handling, grain storage, and grain merchandising business. However, the income generated from drying grain will NEVER be 50% of their business. Rule of thumb, for a company that is only in grain, grain merchandising income will generally be at least 50% of their income and at least 75% of their total revenue, jointly grain drying and grain storage will make up the rest. So never in a million years will grain drying be the primary source of revenue or income for a grain elevator.

Can we offer the five word addition that I have put in capital letters below? Also, to move this forward, instead of emails here and there, will every approve of me calling Jen and talking through this to find a solution over the phone?

We suggest that the last sentence in sec. 77.54(6)(bn) be revised to read as follows: "...The exemptions under par. (am) 4. and 5. apply only to persons who are primarily engaged in fertilizer blending, feed milling, or grain handling operations which include grain drying operations, or primarily engaged in any combination of fertilizer blending, feed milling, or GRAIN HANDLING OPERATIONS WHICH INCLUDE grain drying operations, and to contractors providing real property construction activities to such persons."

Thanks

Tom

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2927/A
JK:sac&eev:ft

5
RMK

2013 BILL

in 12-3-13

Today

-gencat

1 AN ACT to renumber 77.54 (6); to renumber and amend 77.54 (6r); and to
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BILL

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14 fertilizer ingredients into a mixer or for storage of grain, if such structures are used
15 in a fertilizer blending, feed milling, or grain drying operation.

16 **SECTION 4.** 77.54 (6) (bn) of the statutes is created to read:

Barman, Mike

From: Kreye, Joseph
Sent: Monday, December 09, 2013 9:19 AM
To: Barman, Mike
Subject: FW: Here's a copy of the draft you requested

Mike,

Would you put in a request for a fiscal estimate on 2927/5?

Thanks,

Joe

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
608 266 2263

From: Nelson, Scott
Sent: Monday, December 09, 2013 9:17 AM
To: Kreye, Joseph
Subject: RE: Here's a copy of the draft you requested

Joe,

What do I need to do to request a fiscal estimate for this? Revenue is waiting for us to request it and I haven't done that in quite a while.

W. Scott Nelson

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

From: Kreye, Joseph
Sent: Wednesday, December 04, 2013 2:19 PM
To: Nelson, Scott
Subject: Here's a copy of the draft you requested

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
608 266 2263

Memo

To: Senator Moulton

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-2927

Version: " / 5 "

Orig.

Fiscal Estimate Prepared By: (agency abbr.) DOR

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 12 / 09 / 2013

* * * * *

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

> **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file "guts" ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.

> **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 SB 448

Barman, Mike

From: Barman, Mike
Sent: Monday, December 09, 2013 11:06 AM
To: Sen.Moulton
Cc: Nelson, Scott
Subject: LRB-2927/5 (un-introduced) (Tech. Memo & FE by DOR - attached - for your review)



TM-2927_DOR.p...



FE-2927_DOR.pdf

Drafter: JK
Subject: Tax, Other - sales

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Memo

To: Senator Moulton

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-2927

Version: " /5 "

Fiscal Estimate Prepared By: (agency abbr.) DOR ... Corrected FE

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 12 / 10 / 2013

* * * * *

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

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- > **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013

SB 448

Barman, Mike

From: Barman, Mike
Sent: Tuesday, December 10, 2013 9:22 AM
To: Sen.Moulton
Cc: Nelson, Scott
Subject: LRB-2927/5 (un-introduced) (CORRECTED FE by DOR - attached - for your review)



FE-2927_DORcor...

Drafter: JK
Subject: Tax, Other - sales

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov