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CLEARINGHOUSE RULE 96-091

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. It is suggested that the quotation marks surrounding the terms “grand opening” and “farm days” in s. Tax 11.28 (2) (b) be deleted. This comment is also applicable to the quotation marks surrounding the word “points” in s. Tax 11.28 (2) (e), the word “free” in s. Tax 11.28 (3) (c) 1. and the term “cents-off” in s. Tax 11.28 (3) (c) 2.

b. The second sentence of s. Tax 11.28 (3) (e) is explanatory in nature and, therefore, should be placed in a note to the rule if the department believes that the sentence is necessary.

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

In s. Tax 11.28 (2) (b), the correct statutory reference is to s. 77.56 (3), Stats., rather than s. 77.55 (3), Stats.

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

a. In s. Tax 11.28 (3) (c) 1. b., it is suggested that the phrase “because the retailer did not know at the time of purchase whether the property would be sold or given away” be deleted. The retailer owes a use tax on property acquired without payment of the sales tax which is later given away regardless of whether the retailer knew at the time of purchase whether the property would be sold or given away. Therefore, the phrase in the quoted language is inaccurate and should be deleted. In addition, it is suggested that the term “that is given away” be inserted after the first occurrence of the word “property” in the second sentence of s. Tax 11.28 (3) (c) 1. b.

b. The department should consider redrafting s. Tax 11.46 (3) (c). As drafted in Clearinghouse Rule 96-091, the paragraph appears to be inconsistent with the general intent of s. 77.54 (20) (c), Stats., and also would be difficult to administer.

Section 77.54 (20) (c), Stats., exempts “food,” “food products” and “beverages” from the sales tax but subjects to the sales tax the gross receipts from sales of meals, food, food products and beverages sold “for direct consumption on the premises.” In addition, certain food, food products and beverages sold which can be consumed immediately rather than taken by the purchaser and used to prepare meals are subject to the sales tax. These items include meals and sandwiches, heated food or heated beverages, soda fountain items and candy, chewing gum and confections. Although the dividing lines between items that are taxable and items that are exempt may be difficult to ascertain under some circumstances, it appears that the intent of the statutory language is to exempt from the tax food, food products and beverages which are purchased by the consumer and later used to prepare meals but to tax items which are more in the nature of food purchased from a restaurant or which are suited for immediate consumption.

Section Tax 11.46 (3) (c) would exempt sales of food, food products and beverages sold at summer camps, but only if the food, food products and beverages are to be consumed at a location outside the boundaries of the camp. Most campers who purchase food, food products and beverages to be used to prepare a meal are going to prepare the meal at their campsite. Therefore, s. Tax 11.46 (3) (c) appears to be inconsistent with the general statutory scheme of s. 77.24 (20) (c), Stats., by subjecting to the sales tax sales of these items used to prepare meals. In addition, it would be difficult for the operators of camp stores to administer this rule. For example, a camper who purchases a loaf of bread from a camp store will have to be asked whether he or she intends to consume the bread within the boundaries of the camp in order to determine whether the sale is taxable. It is suggested that the department review s. Tax 11.46 (3) (c) in light of these concerns.