



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-011

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

The “Statutes interpreted” section of the Rule Analysis should include citations to all the statutes interpreted by the proposed rule. In particular, the department should cite current law relating to the exempt status of prosthetic devices.

2. Form, Style and Placement in Administrative Code

a. In the Rule Analysis, should the comparison with rules in adjacent states describe the membership of adjacent states as streamlined sales tax members?

b. Throughout the proposed rule, the department should review the style by which it integrates cross-referential definitions into the administrative code. Currently, the proposed rule uses at least two styles for these definitions. [Compare SECTIONS 2, 4, 7, and 9 of the proposed rule.] The department should ensure that the style used to refer to cross-referential definitions is consistent within the proposed rule as well as consistent with surrounding rule provisions in the existing code. [See, also, s. 1.01 (7) (d), Manual.] For example, in SECTION 7 the proposed rule, could the department define terms by reference to statute, as prescribed by the Manual, and reproduce the statutory text in a note, if desired? Once a term is defined for purposes of a particular rule subdivision, the term may be used without repetition of a cross-reference. For example, in SECTION 9 of the proposed rule, “as defined in s. 77.51 (1ag), Stats” is unnecessary because the term “Advertising and promotional direct mail” is already defined, for purposes of s. Tax 11.70, in SECTION 7 of the proposed rule.

c. The treatment in SECTION 16 of the proposed rule may be integrated into SECTION 14, revising the treatment clause for SECTION 14 to state, “Tax 11.945 (3) (a) 1. to 5. are renumbered Tax 11.945 (3) (a) 2. to 6., and Tax 11.945 (3) (a) 3., 4., 5., and 6. a., as renumbered, are amended to read:”. [s. 1.04 (2) (a) 4., Manual.] The enumeration of provisions treated by the proposed rule should be revised to account for this change.

d. Presuming the department plans to promulgate the proposed rule prior to July 1, 2013, it should consider whether the effective date of the proposed rule is appropriate, given the substance of the notes the proposed rule includes, relating to the effective date of the sales and use tax exemption of advertising and direct promotional mail. Additionally, throughout the rule, in the notes referencing this effective date, the department should use consistent language between the current notes and the proposed amendments. Existing material appears to use the phrase “are effective” in some cases, while the references in the proposed rule generally use the phrase “became effective”. In some instances, “became effective” appears to match the existing language, but it does not appear to match existing language in s. Tax 11.945 (3) (a) 6. a. (Note), as renumbered. Also, notes created in SECTIONS 2 and 9 of the rule use the phrase “is not effective”. The department may wish to reconcile the language of these notes with other notes in the proposed rule.

e. In s. Tax 11.945 (3) (a) 6. a., should the existing reference to subd. 4. be amended to refer to subd. 5.?

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

In SECTION 2 of the proposed rule, the language of sub. (5s) includes the phrase “sale of and the storage, use, or other consumption of”. The first word of this phrase should be changed to “sales” in order to match the statutory language of s. 77.54 (59), Stats.