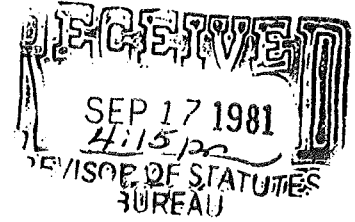


Tax 11.12

CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE) SS

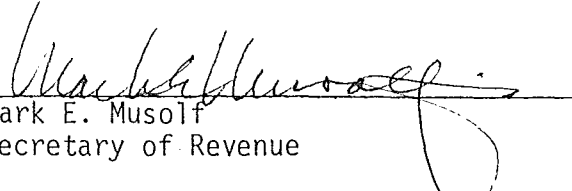


TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mark E. Musolf, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed amendments to rules relating to the sales and use tax status of purchases by persons engaged in farming, was duly approved and adopted by this department on September 17, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 17th day of September, 1981.


Mark E. Musolf
Secretary of Revenue

12-1-81

ORDER OF THE DEPARTMENT OF REVENUE

AMENDING RULE TAX 11.12, FARMING, AGRICULTURE, HORTICULTURE AND FLORICULTURE

Relating to the sales and use tax status of purchases by persons engaged in farming.

Analysis by the Department of Revenue

Rule Tax 11.12 interprets the exemptions applicable to farmers' purchases as provided in ss. 77.52(2)(a)10, 77.54(3), (3m), (27) and (30) of the Wisconsin Statutes. These amendments clarify the Department of Revenue's statutory interpretations and revise the rule as necessary to recognize new legislation.

SECTION 1 adds a reference to new section 77.54(30), Stats. SECTION 2 clarifies the scope of the definitions in the rule. SECTIONS 3 and 4 amend subsection (2) of the rule to define "feed lot". SECTIONS 5 and 7 amend subsections (4)(a)1 and (5)(c) to recognize the new exemptions for fuel oil for the home and electricity provided by Chapter 1, Laws of 1979. SECTION 6 clarifies the sales and use tax status of farm items such as seed, feed, fertilizer, wire and containers. It recognizes that an item may have some nonexempt use and still retain its sales and use tax exemption.

The Wisconsin Tax Appeals Commission and courts have long recognized that a tax exemption must be narrowly construed but need not be given an unreasonable or the narrowest possible construction. The amendment in SECTION 6 recognizes that exempt farm items of necessity may not be used 100% in farming, but in unusual circumstances may be applied to other uses. For example, a horse that is used in tilling the soil on the farm for several years may be used to till the garden of a relative and this temporary nonfarming use would not void the exemption.

These amendments codify the Department's interpretations and provide the same definition of exclusive use as is currently being proposed in amendments to rules Tax 11.16 and 11.40, relating to common and contract carriers and manufacturing, respectively.

Pursuant to authority vested in the Department of Revenue by section 227.014, Wis. Stats., the Department of Revenue proposes to amend the rule interpreting sections 77.52(2)(a)10, 77.54(3), (3m), (27), and (30), Wis. Stats., as follows:

SECTION 1. Section Tax 11.12(title) of the Wisconsin administrative code is amended to read:

Tax 11.12 Farming, agriculture, horticulture and floriculture. (ss. 77.52(2)(a)10 and 77.54(3), (3m), and (27) and (30), Stats.)

SECTION 2. Section Tax 11.12(2)(intro.) of the Wisconsin administrative code is created to read:

Tax 11.12(2)(intro.) In this section and s. 77.54(3), (3m), and (30), Stats.:

SECTION 3. Section Tax 11.12(2)(a) of the Wisconsin administrative code is renumbered Tax 11.12(2)(a)1 and amended to read:

Tax 11.12(2)(a)1 "Farming means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chs. 29 and 94, Stats., "Farming" includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses for sale; and raising sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; operating sporting or recreational facilities (e.g., riding stables or shooting preserves); operating stockyards, slaughterhouses or feed lots as described in subd 2 where livestock is held for a short period of time; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

SECTION 4. Section Tax 11.12(2)(a)2 of the Wisconsin administrative code is adopted to read:

Tax 11.12(2)(a)2 Effective on _____* and thereafter, "feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for such livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

SECTION 5. Section Tax 11.12(4)(a)1 of the Wisconsin administrative code is amended to read:

Tax 11.12(4)(a)1 "Directly". Items used "directly" in farming include a plow and a combine. Items of "indirect" or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, fuel oil for the home, and lawn and garden tractors and, prior to July 1, 1979, fuel oil for residential use.

SECTION 6. Section Tax 11.12(4)(b) of the Wisconsin administrative code is amended to read:

Tax 11.12(4)(b) Section 77.54(3m), Stats., exempts: "The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business

enterprise." (Emphasis added.) Effective on * and thereafter, "exclusively" as used in s. 77.54(3m) and in this section means that the items mentioned in s. 77.54(3m) are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for such items will not be invalidated by an infrequent and sporadic use other than in farming.

SECTION 7. Section Tax 11.12(5)(c) of the Wisconsin administrative code is amended to read:

Tax 11.12(5)(c) The exemptions under section 77.54(3), Wis. Stats., do not apply to farmers' purchases of other services which are taxable under section 77.52(2)(a), Wis. Stats., (e.g., telephone, electricity, laundry, dry cleaning, and photographic services and electricity and natural gas, except that beginning November 1, 1979, sales of electricity and natural gas for residential or farm use are exempt if billed during the period November 1 to April 30 each year).

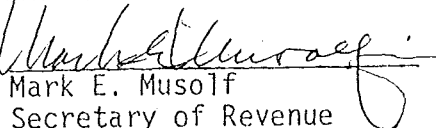
* Revisor to fill in the date of the first day of the month following publication of the bill.

The amendments contained in this order shall take effect as provided in s. 227.026(1)(intro), Wis. Stats.

Dated: September 17, 1981

DEPARTMENT OF REVENUE

By:


Mark E. Musolf
Secretary of Revenue



State of Wisconsin \ DEPARTMENT OF REVENUE

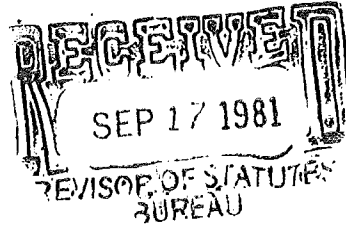
Lee Sherman Dreyfus
Governor

September 17, 1981

Mark E. Musolf
Secretary

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702

Orlan L. Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, WI 53702



Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue amending rule Tax 11.12.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,

Mark E. Musolf
Secretary of Revenue

MEM:jpr

Enclosures

cc: Ms. Vel Phillips, Secretary of State
Prentice Hall, Inc.
Commerce Clearing House, Inc.



State of Wisconsin \ DEPARTMENT OF REVENUE

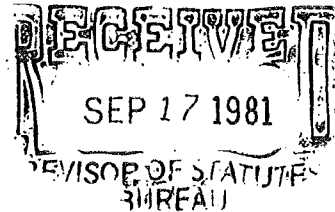
Lee Sherman Dreyfus
Governor

September 17, 1981

Mark E. Musolf
Secretary

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702

Ms. Vel Phillips
Secretary of State
13 West, State Capitol
Madison, WI 53702

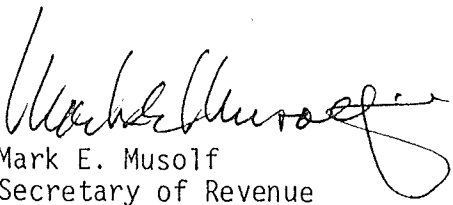


Dear Ms. Phillips:

Enclosed are a Certificate and an Order of the Department of Revenue amending rule Tax 11.12.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,


Mark E. Musolf
Secretary of Revenue

MEM:jpr

Enclosures

cc: Revisor of Statutes