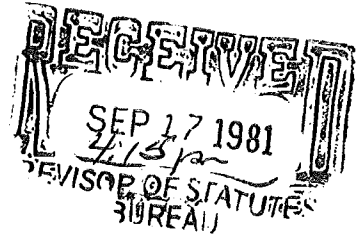


70% 11.40

CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE) SS

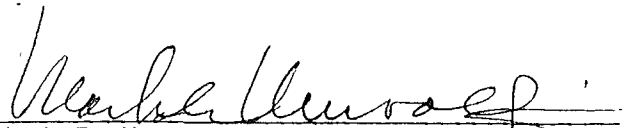


TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

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 definition for sales and use tax purposes of "exclusive" use of machines and processing equipment purchased by manufacturers, 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

10-1-81

ORDER OF THE DEPARTMENT OF REVENUE

AMENDING RULE TAX 11.40, EXEMPTION OF MACHINES AND PROCESSING EQUIPMENT

Relating to the definition for sales and use tax purposes of "exclusive" use of machines and processing equipment purchased by manufacturers.

Analysis by the Department of Revenue

Rule Tax 11.40 interprets the manufacturers' exemption for machines and processing equipment provided by ss. 77.51(27) and 77.54(6)(a) of the Wisconsin Statutes. This amendment clarifies the sales and use tax status of machines and processing equipment which have some nonexempt use. It recognizes that exempt machinery and equipment may have some sporadic non-exempt use and still retain their 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 amendments to subsections (1)(a), (2)(b) and (3)(a) recognizes that machinery and equipment of necessity may not be used 100% in manufacturing, but in unusual circumstances may be applied to other uses. For example, a fork lift truck may be used for many years in an exempt manufacturing process by a manufacturer and its temporary use in a nonexempt manner will not void the exemption.

Paragraphs (3)(b) and (c) of the rule are amended to delete languages in conflict with s. 77.54(6)(a), Stats., and an example.

These amendments codify the Department of Revenue's statutory interpretations and provide the same definition of exclusive use as is currently being proposed in amendments to rules Tax 11.12 and 11.16, relating to farming and common or contract carriers, respectively.

Pursuant to authority vested in the Department of Revenue by section 227.014, Wis. Stats., the Department proposes to amend rule Tax 11.40 interpreting section 77.54(6)(a), Wis. Stats., as follows:

SECTION 1. Sections Tax 11.40(1)(a), (2)(b), (3)(a) and (3)(c) of the Wisconsin Administrative Code are amended to read:

Tax 11.40 Exemption of machines and processing equipment. (sections 77.51(27) and 77.54(6)(a), Stats.) (1) GENERAL. (a) Section 77.54(6)(a) exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property." Effective on *
and thereafter, "exclusively" as used in s. 77.54(6)(a) and in this section means that the machines and specific processing equipment and repair parts or replacement thereof are used solely by a manufacturer in manufacturing tangible personal property to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing tangible personal property.

(2)(b) Machines and processing equipment shall be used exclusively in manufacturing. ~~The exemption shall not apply if machines and processing equipment are used partially or totally in nonmanufacturing activities.~~ For example, a forklift truck used partially on a production line to move products from machine to machine and used regularly or frequently in a warehouse to move and stack finished products is not used exclusively in manufacturing.

(3) OTHER EXAMPLES OF THE EXEMPTION. Other examples of application of the exemption are as follows: (a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment". Small tools include hand tools such as drills, saws, micrometers and hammers. However, if such items are used partially regularly, frequently or totally for machine repair or general maintenance, they are not exempt.

(3)(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by such manufacturer to produce tangible personal property for sale. For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.

(3)(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property. ~~destined for sale. For example, a printing press used by a manufacturer exclusively to print labels for its manufactured products is exempt. However, if the press is used partially to print advertising materials and office forms, it is not exempt.~~

SECTION 2. The "Notes" following the end of rule Tax 11.40 are amended to read:

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

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

The amendments contained in this order shall take effect as provided by 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

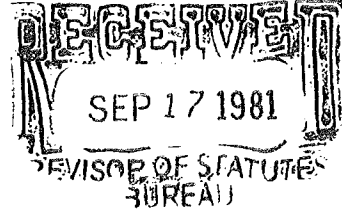
Lee Sherman Dreyfus
Governor

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

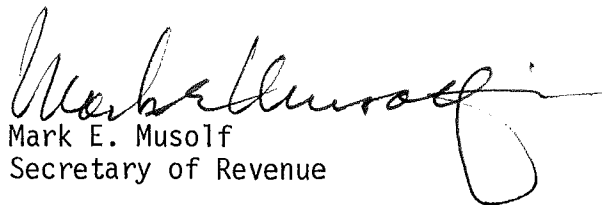


Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue amending rule Tax 11.40.

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

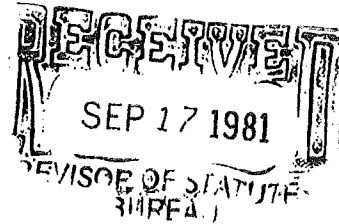
Lee Sherman Dreyfus
Governor

Mark E. Musolf
Secretary

September 17, 1981

125 SOUTH WEBSTER STREET
MADISON, WISCONSIN 53702

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

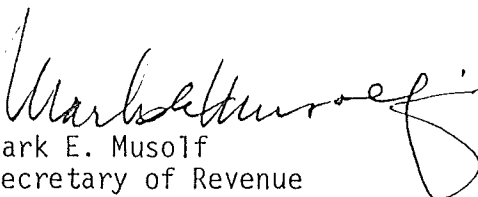


Dear Ms. Phillips:

Enclosed are a Certificate and an Order of the Department of Revenue amending rule Tax 11.40.

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