

CR 90-179


CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to Tax 11.86 was duly approved and adopted by this department on March 6, 1991.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 6th day of June, 1991.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:ssa
CKLEG/649

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ORDER OF THE DEPARTMENT OF REVENUE
REPEALING AND RECREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal and recreate Tax 11.86 relating to utilities for sales and use tax purposes.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(20), 77.52(2)(a)10, 11 and 20, 86.16 and 182.017, Stats.

SECTION 1. Tax 11.86 is repealed and recreated for the following reasons:

- a. To improve format and language per Legislative Council Rules Clearinghouse standards.
 - b. To address the April 10, 1987 Wisconsin Tax Appeals Commission decision in PAE Communications, Inc., which held that the installation of underground television cable was not a taxable service and that "risers" installed were taxable. Cable television lines are to be classified similar to telephone and telegraph lines. This treatment was affirmed in the May 9, 1990, Wisconsin Tax Appeals Commission decision in Alton Cable Corporation.
 - c. To address the June 19, 1987, Wisconsin Tax Appeals Commission decision and subsequent stipulation and order of the Circuit Court of Dane County dated September 21, 1987, in Capital City Tree Experts, Inc., which held that certain tree trimming and line clearing in the construction or maintenance of a utility's line are nontaxable services.
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SECTION 1. Tax 11.86 is repealed and recreated to read:

Tax 11.86 UTILITY TRANSMISSION AND DISTRIBUTION LINES. (ss. 77.51(20), 77.52(2)(a)10, 11 and 20, 86.16 and 182.017, Stats.)

(1) DEFINITIONS. In this section:

(a) "Utility facilities" include telephone, telegraph and television lines; electrical, water and gas transmission and distribution lines; and poles, transformers and towers, including pipes, conduits, sleeves, risers for cable television lines, or other property by which lines are supported or in which they are contained or connected.

(b) "Real property" includes underground utility facilities; lines, poles, foundations, towers, gravel and any buildings of a substation located

on a utility's own land; and concrete foundations, anchors, crushed rock and backfill whether or not on land owned by the utility.

(c) "Tangible personal property" includes overhead utility facilities and circuit breakers and other equipment, but not their foundations, installed to control the flow of electricity. It also includes other overhead property by which lines are supported or in which they are contained or connected if erected or installed under an easement or license, including authorizations under ss. 86.16 and 182.017, Stats., on land owned by a person other than the utility.

(2) GENERAL. (a) Gross receipts from the installation, lease, rental, repair, service or maintenance of tangible personal property are subject to sales tax.

(b) Materials used in construction or forming of real property are taxable when purchased by the contractor.

Examples: (1) The gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion of an overhead utility facility, and from a sale "in place" of the facility, if installed under an easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of the property may be purchased without tax for resale.

(2) The gross receipts of a utility from the repair, service or maintenance of an overhead utility facility, or a portion of an overhead facility of another utility are taxable. Materials used in the repair, service or installation may be purchased without tax for resale.

(3) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to sales or use tax. However, the materials used in the construction or installation of the underground utility facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(4) X-ray testing of weld joints in the pipe as part of the construction of an underground utility pipeline is part of the construction process and the gross receipts are not subject to sales or use tax. However, materials used in the X-ray testing of the underground utility pipeline cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(3) RELATED EXPENSES. The gross receipts from the performance of a lump sum contract for the construction of an overhead utility facility, which is tangible personal property, may not be reduced by expenses in performing the contract, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and unloading and hauling materials.

Note: The related expenses described in sub. (3) are costs of performing the contract and do not affect the amount of taxable gross receipts.

(4) EQUIPMENT CHARGES. (a) The gross receipts from a contract to construct or repair an overhead utility facility which is tangible personal property may not be reduced by the amount of hourly charges for the use of equipment.

(b) The gross receipts from the rental of equipment, including any charge for an operator of the equipment, for the construction or repair of a utility line to a utility are taxable, unless the utility employs all of the crew to construct or repair the utility line, in which case only the charge for the equipment is taxable.

Note: See s. Tax 11.29(4) for more information.

(5) NONTAXABLE SERVICES. (a) Gross receipts from tree and shrub trimming services for a utility for the purpose of keeping the overhead transmission and distribution lines free from interference from nearby trees and shrubs or inaccessible to children are not services which are taxable under s. 77.52(2)(a)20, Stats.

(b) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line are not taxable.

(c) Gross receipts from a separate charge for removing an existing utility line are not taxable.

(6) LANDSCAPING SERVICES. Gross receipts from landscaping services are taxable when performed in lawn and garden areas. This includes lawn, shrub and tree services, except for services described in sub. (5)(a), performed in developed areas found in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other developed areas.

Example: Restoration work performed when a utility extends its service or repairs or replaces existing lines is subject to sales tax.

Note: The interpretations in s. Tax 11.86 are effective on and after September 1, 1969, except that (a) Underground utility facilities were determined not to be tangible personal property, effective September 1, 1970; (b) Landscaping services described in sub. (6) became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; and (c) The Wisconsin Tax Appeals Commission decision in Capital City Tree Experts, Inc., dated June 19, 1987, later modified by stipulation and order of the Circuit Court of Dane County dated September 21, 1987, held that the service of trimming trees on a utility right-of-way to prevent interference and to make inaccessible to children is not a taxable landscaping service.

The repeal and recreation contained in this order shall take effect on the first day of the month following publication as provided in s. 227.22(2), Stats.

Final Regulatory Flexibility Analysis

This proposed order does not have a significant economic impact on a substantial number of small businesses.

Dated: March 6, 1991

DEPARTMENT OF REVENUE
By: Mark D. Bugher
Secretary of Revenue

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FISCAL ESTIMATE

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

DOA-2048 (R 10/88)

Subject

Sales Tax Rules Related to Utility Transmission and Distribution Lines

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The revisions reflect decisions made by the Wisconsin Tax Appeals Commission regarding the sales and use tax treatment of underground television cable, risers and tree trimming and line clearing in the construction or maintenance of utility lines. Because the proposed rule changes reflect current tax treatment, they have no fiscal effect.

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Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue
Dennis Collier, 266-9706

Authorized Signature/Telephone No.

Margaret M. Deuss

Date

5/15/90

FISCAL ESTIMATE WORKSHEET

1989 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED CORRECTED SUPPLEMENTAL

DOA-2047(R 10/88)

LRB or Bill No./Adm. Rule No. **Tax 11** Amendment No.

Subject: **Sales Tax Rules Related to Utility Transmission and Distribution Lines**

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).			
A. State Costs by Category			
Salaries and Fringes		\$ -	\$ +
Staff Support Costs		-	+
Other State Costs		-	+
Local Assistance		-	+
Aids to Individuals or Organizations		-	+
TOTAL State Costs by Category		\$ -	\$ +
B. State Costs by Source of Funds			
GPR		\$ -	\$ -
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
C. FTE Position Changes		Increased Pos. + ()	Decreased Pos. - ()
III. State Revenues-		Decreased Rev.	Increased Rev.
GPR Taxes	Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	\$ -	\$ +
GPR Earned		-	+
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
TOTAL State Revenues		\$ -	\$ +

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+	-	Total Revenues	+	-

NET Impact on State Funds	\$ (+) or None (-)	NET Impact on Local Funds	\$ (+) or None (-)
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Agency/Prepared by: (Name & Phone No.) **Wisconsin Department of Revenue
Dennis Collier, 266-9706**

Authorized Signature/Telephone No. **266-2700** Date **5/15/90**

Herbert M. Deuss



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 7, 1991

Gary L. Poulson
Assistant Revisor
2nd Floor
119 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703

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Re: Clearinghouse Rule 90-179

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to Tax 11.86.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:ssa
CKLEG/648

Enclosure

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.



State of Wisconsin ● **DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 7, 1991

Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, Wisconsin 53703

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Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 90-179.

These materials are filed with you pursuant to s. 227.20, Stats.

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:MPW:ssa
CKLEG/647

Enclosure

cc: Revisor of Statutes