

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100126	Exemption for Fuel and Electricity Consumed in Qualified Research - Common Questions

State of Wisconsin
Department of Revenue

Exemption for Fuel and Electricity Consumed in Qualified Research

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. Our company is ONE of the following:

- a. Primarily engaged in biotechnology in Wisconsin on or after January 1, 2012.
- b. Engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats., on or after July 2, 2013.
- c. A combined group member performing qualified research on or after July 2, 2013 for another member of the combined group who is described in (a) or (b).

In addition, our company uses fuel and electricity exclusively and directly in conducting qualified research. What do we need to do in order to purchase our fuel and electricity without sales or use tax?

2. What are the effective dates for the exemption for fuel and electricity consumed exclusively and directly in conducting qualified research?
3. Our company holds a direct pay permit issued by the Wisconsin Department of Revenue. Are we still required to furnish an exemption certificate to the seller in order to purchase fuel and electricity without tax?
4. Does the exemption include fuel and electricity used for plant heating, cooling, and lighting?
5. My business is engaged primarily in biotechnology in Wisconsin and some of my purchases of fuel and electricity qualify for the exemption from sales tax. I do not hold a direct pay permit. What happens if I do not furnish an exemption certificate to the seller?
6. My business is engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats. I paid sales tax in error to the seller on purchases of fuel and electricity consumed in conducting qualified research in Wisconsin. What should I do?
7. How do I request a refund from the seller?
8. How do I file a Buyer's Claim for Refund?

9. We consumed less exempt electricity exclusively and directly in qualified research than what we originally claimed on the exemption certificate we previously gave to the electric utility. Do we need to do anything?
10. We gave an exemption certificate to our supplier, claimed a higher percentage of natural gas consumed exclusively and directly in qualified research than what actually qualified for exemption. The difference was used for taxable purposes. Do we need to do anything?
11. We gave an exemption certificate to our supplier claiming a lower percentage of exempt natural gas consumed exclusively and directly in qualified research than what actually qualified for exemption. The difference was used for exempt purposes. Can we obtain a refund of the sales and use taxes we paid on the additional natural gas purchases we determine to be exempt?
12. We hold a direct pay permit and paid use tax on fuel purchased being consumed exclusively and directly in qualified research. At a later date, we determined that our exempt use of fuel purchased was greater than expected. Can we obtain a refund of the use tax we paid on the fuel purchases we subsequently determined was used in an exempt manner?
13. We are a seller of fuel and electricity. Since January 2012, we have received fully completed exemption certificates from various customers claiming the exemption for fuel and electricity consumed exclusively and directly in qualified research. These exemption certificates are marked "continuous." Based on the exemption percentages claimed on the exemption certificates, we do not charge tax to these customers. At a later date, it is determined that all or a portion of the fuel and electricity was used in taxable manner. Are we liable for any tax on these sales?
14. We are a seller of fuel and electricity. A purchaser contacts us, requesting a refund for overpayment of sales taxes. We are going to file a claim for refund with the Department of Revenue, and refund the tax and interest we receive to the purchaser. Is there any documentation we should obtain from the purchaser?
15. We are a seller of fuel and electricity. A purchaser contacts us, requesting a refund for overpayment of sales taxes, and furnishes us with a fully completed exemption certificate for a prior sale. We have already filed the return and paid the tax for the prior sale. Can I obtain refund for these taxes without filing an amended return to claim the refund?
16. Does the state require a business to purchase a third party "utility usage study" as documentation for the percentage of fuel or electricity claimed to be used exclusively and directly in qualified research? If not, what evidence is acceptable?

1. **Our company is ONE of the following:**

- a. Primarily engaged in biotechnology in Wisconsin on or after January 1, 2012
- b. Engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats., on or after July 2, 2013
- c. A combined group member performing qualified research on or after July 2, 2013 for another member of the combined group who is described in (a) or (b)

In addition, our company uses fuel and electricity exclusively and directly in conducting qualified research. What do we need to do in order to purchase our fuel and electricity without sales or use tax?

You must furnish a fully completed sales tax exemption certificate to each seller from whom you purchase fuel or electricity that is exempt from Wisconsin sales and use tax. You may use the electronic certificate ([S-211E](#)) or [Form S-211](#)).

2. **What are the effective dates for the exemption for fuel and electricity consumed exclusively and directly in conducting qualified research?**

The exemption for fuel and electricity consumed in conducting qualified research applies as follows to the businesses indicated:

January 1, 2012 through July 1, 2013:

- Businesses engaged primarily in manufacturing in Wisconsin
- Businesses engaged primarily in biotechnology in Wisconsin

July 2, 2013 and later:

- Businesses engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats.
- Businesses engaged primarily in biotechnology in Wisconsin
- A combined group member who performs qualified research for another combined group member described in (1) or (2)

The exemption applies to purchases where you take possession of the fuel or electricity from the seller or the seller's agent on or after the effective date. A common carrier or the U.S. Postal Service is deemed an agent of the seller, regardless of any f.o.b. point and regardless of the method by which the freight or postage is paid.

Example 1: Company furnished a fully completed exemption certificate to Utility on December 20, 2011, claiming that 55% of the natural gas and 70% of the electricity it will purchase on and after January 1, 2012 is exempt as it is consumed exclusively and directly in qualified research.

On January 3, 2012, Utility mailed a billing for natural gas and electricity to Company. The billing covered natural gas and electricity metered during the period November 24, 2011 through December 23, 2011. Since the billing is for natural gas and electricity used prior to January 1, 2012, Utility must charge tax on 100% of the natural gas and electricity sold to Company for the period November 24, 2011 through December 23, 2011.

On February 5, 2012, Utility mailed a billing to Company for natural gas and electricity metered for the period December 24, 2011 through January 24, 2012 (32 days). Utility must charge tax on 100% of the fuel and electricity sold before January 1, 2012, and on 45% of the natural gas and 30% of the electricity sold on and after January 1, 2012. In computing the amount of natural gas and electricity sold prior to January 1, 2012, Utility may prorate the total amount of natural gas and electricity by the number of days sales were made in 2011 (8), by the total number of days in the billing period (32). Thus, 25% of the natural gas and electricity metered for the period December 24, 2011 through January 24, 2012, is considered sold in 2011.

Example 2: Manufacturer engaged primarily in manufacturing in Wisconsin prior to July 2, 2013, consumes fuel oil in conducting qualified research. All of the fuel oil purchased by Manufacturer is used for this purpose. Fuel Supplier delivered 500 gallons of fuel oil into one of Manufacturer's storage tanks on December 30, 2011. Since Manufacturer took possession of the fuel oil from Fuel Supplier prior to January 1, 2012, the exemption does not apply. Fuel Supplier is required to charge and collect the sales tax on this sale of fuel oil.

Example 3: Company is a member of a combined group. Company is not a manufacturer nor does it engage in biotechnology. Company performs services for other members of its combined group. Some of these services constitute performing qualified research on and after July 2, 2013 for other members who are engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats., or who are engaged primarily in biotechnology in Wisconsin. Company holds a Wisconsin direct pay permit and furnishes a copy of this permit to Fuel Supplier for its purchases of fuel oil. Company took delivery of fuel oil from Fuel Supplier on June 20, 2013 and July 26, 2013. Company uses 60% of the fuel oil exclusively and directly in performing activities that constitute qualified research on and after July 2, 2013, with the remainder being used for activities for which no exemption applies to the use of the fuel oil. Company's purchase of the fuel oil on June 20, 2013 is 100% taxable, as no exemption applies to this purchase. Company owes use tax on 40% of the purchase of fuel oil on July 26, 2013, as 60% of the fuel oil purchased is exempt as fuel used exclusively and directly in qualified research.

3. Our company holds a direct pay permit issued by the Wisconsin Department of Revenue. Are we still required to furnish an exemption certificate to the seller in order to purchase fuel and electricity without tax?

A direct pay permit holder has the option of providing **ONE** of the following:

- A fully completed exemption certificate which includes the name and address of the direct pay permit holder, a statement that the purchases are being made without tax using the direct pay permit, the direct pay permit number, and the effective date of the permit
- A copy of the direct pay permit and a written statement indicating whether the direct pay permit is for a single purchase or continuous

4. Does the exemption include fuel and electricity used for plant heating, cooling, and lighting?

No. Fuel or electricity consumed while being used exclusively and directly in qualified research means only fuel and electricity used to operate machines and equipment used directly in the qualified research itself. Fuel and electricity are not "consumed while being used exclusively and directly in qualified research" if they are used in providing building heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development that is not qualified research, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities.

5. My business is engaged primarily in biotechnology in Wisconsin and some of my purchases of fuel and electricity qualify for the exemption from sales tax. I do not hold a direct pay permit. What happens if I do not furnish an exemption certificate to the seller?

The seller of the fuel or electricity is required to charge you the appropriate sales or use tax unless you furnish the seller with a fully completed exemption certificate prior to or at the time of sale.

6. My business is engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats. I paid sales tax in error to the seller on purchases of fuel and electricity consumed in conducting qualified research in Wisconsin. What should I do?

Furnish the seller with a fully completed exemption certificate as soon as possible to avoid paying tax on future purchases. In addition, you may seek a refund of the taxes paid in error using **ONE** of the two options below:

- Request a refund from the seller
- File a Buyer's Claim for Refund directly to the Department of Revenue (see [question #8](#)).

7. How do I request a refund from the seller?

- o Furnish the seller a fully completed exemption certificate claiming the correct exemption percentage. You may use the electronic certificate ([S-211E](#)) or [Form S-211](#).

If the request is made within 90 days of the date of the sale, the purchaser may instead provide the seller with information sufficient to prove the exemption, such as:

- o Purchaser name and address
- o Purchaser's state tax identification number and state of issue if the purchaser does not have a state tax identification number:
 - The purchaser's federal identification number (FEIN) is needed if the purchaser does not have a FEIN:
 - The purchaser's personal driver's license number and state of issue is needed
- o Purchaser's type of business
- o The reason for the claimed exemption

The seller may then file a claim for refund with the Wisconsin Department of Revenue requesting a refund of the tax they had collected from you and remitted to the department in error. See [Publication 216, Filing Claims for Refunds of Sales or Use Taxes](#), for more information.

Note: In this example, if the purchaser provides the exemption certificate to the seller more than 90 days after the date of the sale, the seller must be able to accept the exemption certificate in good faith.

8. How do I file a Buyer's Claim for Refund?

Generally, your refund must be at least \$50, and must be filed within 4 years of the due date of your income or franchise tax return. See [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for more information.

For a refund of tax paid to a seller, do **ONE** of the following:

- o File a buyer's claim for refund using [My Tax Account](#)
- o File a claim on paper - you must use both Forms [S-220](#) and [S-220a](#)

The department will immediately acknowledge receipt of a refund claim filed electronically.

9. We consumed less exempt electricity exclusively and directly in qualified research than what we originally claimed on the exemption certificate we previously gave to the electric utility. Do we need to do anything?

Yes. Based on your current knowledge, the exemption amount indicated on the exemption certificate is no longer valid. You should furnish your electric utility with a new exemption certificate claiming the current revised estimate exempt usage for electricity consumed in qualified research. In addition, if for a period of time the utility exempted more of the electricity than actually qualified for exemption, you are required to report Wisconsin use tax to the Wisconsin Department of Revenue on the difference between what was claimed as being exempt and what was actually exempt.

10. We gave an exemption certificate to our supplier, claimed a higher percentage of natural gas consumed exclusively and directly in qualified research than what actually qualified for exemption. The difference was used for taxable purposes. Do we need to do anything?

Yes. You are required to self-assess and pay Wisconsin use tax on the portion of the fuel purchased without tax, but used in a taxable manner.

11. **We gave an exemption certificate to our supplier claiming a lower percentage of exempt natural gas consumed exclusively and directly in qualified research than what actually qualified for exemption. The difference was used for exempt purposes. Can we obtain a refund of the sales and use taxes we paid on the additional natural gas purchases we determine to be exempt?**

Yes. See questions [#6-8](#) for refund options.

12. **We hold a direct pay permit and paid use tax on fuel purchased being consumed exclusively and directly in qualified research. At a later date, we determined that our exempt use of fuel purchased was greater than expected. Can we obtain a refund of the use tax we paid on the fuel purchases we subsequently determined was used in an exempt manner?**

Yes. To file a claim for refund for use taxes paid directly to the Department of Revenue, you need to file amended returns for the periods in which you overpaid the use tax. The amended returns must be filed within four years of the due date for filing your income or franchise tax return for the year that includes purchases for which you overpaid the tax. See [Publication 216, Filing Claims for Refunds of Sales or Use Taxes](#), for more information.

13. **We are a seller of fuel and electricity. Since January 2012, we have received fully completed exemption certificates from various customers claiming the exemption for fuel and electricity consumed exclusively and directly in qualified research. These exemption certificates are marked "continuous." Based on the exemption percentages claimed on the exemption certificates, we do not charge tax to these customers. At a later date, it is determined that all or a portion of the fuel and electricity was used in taxable manner. Are we liable for any tax on these sales?**

For your sales of fuel and electricity to these customers on and after January 1, 2012, you are not liable for sales or use tax. This assumes that for each sale of fuel and electricity, you either had the exemption certificate on file before the sale, or obtained the certificate within 90 days after the date of the sale.

Exception: A seller is not relieved of its liability to collect and remit the applicable Wisconsin sales or use tax on a sale to a purchaser if **ANY** of the following apply:

- The seller fraudulently fails to collect the sales or use tax.
- The seller solicits the purchaser to claim an unlawful exemption.
- The seller accepts an exemption certificate from a purchaser claiming to be an entity that is not subject to sales and use taxes, if **both** of the following apply:
 - The subject of the transaction covered by the exemption certificate is received by the purchaser at the seller's Wisconsin location; and
 - The exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in Wisconsin.

Additional information regarding exemption certificates is provided in [sec. Tax 11.14\(3\) and \(4\)](#), Wis. Adm. Code.

14. **We are a seller of fuel and electricity. A purchaser contacts us, requesting a refund for overpayment of sales taxes. We are going to file a claim for refund with the Department of Revenue, and refund the tax and interest we receive to the purchaser. Is there any documentation we should obtain from the purchaser?**

Yes. No later than 90 days after the date of sale, you should obtain **ONE** of the following:

- A fully completed exemption certificate from the purchaser
- The following information necessary to prove the exemption:
 - Purchaser's name and address.

- Purchaser's state tax identification number and state of issue. If the purchaser does not have a state tax identification number:
 - The purchaser's federal employer identification number (FEIN) is needed. If the purchaser does not have a FEIN:
 - The purchaser's personal driver's license number and state of issue is needed.
- Purchaser's type of business.
- The reason for the claimed exemption

If you don't obtain a fully completed exemption certificate or the information necessary to prove the exemption within 90 days after the date of the sale, you may either obtain a fully completed exemption certificate from the purchaser in good faith or by some other means obtain proof that your sale was not taxable.

Additional information on obtaining documentation from a purchaser to prove an exemption is available is available in the following Common Question [Sales and Use Tax Exemptions](#), and in [sec. Tax 11.14\(3\) and \(4\)](#), [Wis. Adm. Code](#).

15. We are a seller of fuel and electricity. A purchaser contacts us, requesting a refund for overpayment of sales taxes, and furnishes us with a fully completed exemption certificate for a prior sale. We have already filed the return and paid the tax for the prior sale. Can I obtain refund for these taxes without filing an amended return to claim the refund?

Yes. On and after July 2, 2013, a retailer receiving a fully completed exemption certificate from the purchaser after reporting a sale covered by the exemption certificate as taxable may claim a deduction on its sales tax return for the sales price of the items covered by the exemption certificate if **ALL** of the following conditions are satisfied:

- The retailer has paid the tax to the Department of Revenue
- The exemption certificate was received by the retailer in the same taxable year (for income or franchise tax purposes) of the retailer in which the sale covered by the exemption certificate occurred
- The retailer has returned to the buyer, in cash or credit, all tax previously paid by the buyer

The deduction is claimed on the return filed for the period in which the retailer receives the exemption certificate.

If the seller is ineligible to claim a deduction on its sales tax return, the seller must file a claim for refund.

Prior to July 2, 2013, a retailer who filed a sales tax return and paid the sales tax on a transaction and subsequently received a fully completed exemption certificate from the purchaser for that transaction, had to amend that sales tax return in order to have received a refund.

16. Does the state require a business to purchase a third party "utility usage study" as documentation for the percentage of fuel or electricity claimed to be used exclusively and directly in qualified research? If not, what evidence is acceptable?

Wisconsin does not require that a business purchase a third party utility usage study to determine the percentage of fuel or electricity that is consumed exclusively and directly in qualified research. However, the purchaser is responsible for providing documentation to support the exempt percentage claimed and a third party utility usage study is good supporting evidence.

Although the department may prefer to see an independent third party utility usage study, there is nothing that would prevent you from doing a detailed analysis/study yourself of the fuel or electricity that is consumed exclusively and directly in qualified research. As long as the study is reasonable and you have documentation (e.g., list of exempt machines, how much energy each machine consumes, how many hours each machine operates a day) to support the study that proves it accurately reflects the fuel or electricity consumed exclusively and directly in qualified research, this would be acceptable to the department. This study would also need to be updated periodically to account for additions and deletions of the machinery and equipment used, plant expansions or downsizing, etc.

When claiming an exemption, it is up to the taxpayer to prove that a sale or purchase qualifies for a particular exemption. Therefore, regardless of the method you choose to determine the amount of fuel or electricity that qualifies for exemption, you will need documentation to support the method chosen and evidence (such as a detailed analysis of your energy consumption) to prove that this method is reasonable in your particular situation. The method you choose is also subject to review in the event that you are audited.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 19, 2020: Sections 70.995, 77.52, 77.53, 77.54, 77.585 and 77.59, Wis. Stats., and secs. Tax 11.01, 11.13, 11.14 and 11.20, Wis. Adm. Code.

Laws enacted and in effect after February 19, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 19, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2) (a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

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