

## ORDER OF THE DEPARTMENT OF REVENUE RENUMBERING AND AMENDING, AMENDING, AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **re number and amend** Tax 11.20 (3) (c); **amend** Tax 11.20 (4) (a); and **create** Tax 11.20 (3) (c) 2. and (4) (am) and (Example); **relating** to sales and use tax provisions and affecting small business.

The scope statement for this rule, SS 085-16, was approved by the Governor on September 15, 2016, published in Register No. 729B, and approved by the Secretary of Revenue on October 14, 2016.

### *Analysis by the Department of Revenue*

**Statutes interpreted:** ss. 77.54 (57) and (57d), Stats.

**Statutory authority:** ss. 77.54(57)(b) 3. and 4., 77.51(1d), 77.65 (3) and 227.11 (2) (a), Stats.

**Explanation of agency authority:** Sections 77.51(1d) and 77.54(57)(b) 3. and 4., Stats., require the department to certify biotechnology businesses in the manner prescribed by the department.

Section 77.65 (3), Stats., provides “[t]he department may promulgate rules to administer this section...”

Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

**Related statute or rule:** There are no other applicable statutes or rules.

**Plain language analysis:** Section Tax 11.20(4), Wis. Adm. Code, requires a person in the business of raising animals to collect evidence from each customer showing the customer is a department-certified biotechnology business. This requirement has shown itself to be burdensome for businesses.

The rule is being updated to create an exception to this requirement. The exception allows the person in the business of raising animals to treat a customer, other than a university or government unit, as a biotechnology business if the person obtains an exemption certificate from the customer indicating the customer will use the animals exclusively and directly in qualified research or manufacturing, subject to the department verifying/certifying that the customer actually meets the requirements in current s. Tax 11.20(4), Wis. Adm. Code.

The department's existing policy is to treat animals sold to universities and government agencies as sold for exclusive and direct use in qualified research. The rule is being updated to reflect this policy.

In summary, this proposed rule order makes the following changes:

**a. Raising Animals for Use in Qualified Research.** Treats all animals sold to private institutions of higher learning and government units as deemed exempt for use in qualified research, thus reducing the documentation needed to prove the exemption.

**b. Documentation Requirements.** Allows a seller, the person in the business of raising animals, to treat a customer, other than a university or government unit, as a biotechnology business if the person obtains an exemption certificate from the customer indicating the customer will use the animals exclusively and directly in qualified research or manufacturing, subject to the department verifying that the customer actually meets the requirements in current s. Tax 11.20(4), Wis. Adm. Code. This requires a change to Tax 11.20 (4) (a) and creation of (4) (am) and Example.

**Summary of, and comparison with, existing or proposed federal regulation:** There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Comparison with rules in adjacent states:** The department has not found a similar rule in an adjacent state.

**Summary of factual data and analytical methodologies:** The rule relates to law created in 2009 Wis. Act 28, and amended by 2013 Wis. Act 20. This proposed rule order eases the administrative burden on persons affected by the law.

**Analysis and supporting documents used to determine effect on small business.** Based on past audit experience, it is difficult for persons claiming the exemption to obtain required documentation from their customers, including small businesses.

**Anticipated costs incurred by private sector:** This rule order does not have a fiscal effect on the private sector.

**Effect on small business:** This proposed rule order eases the administrative burden on all businesses.

**Agency contact person:** Please contact Jennifer Chadwick at (608) 266-8253 or [jennifer.chadwick@wisconsin.gov](mailto:jennifer.chadwick@wisconsin.gov), if you have any questions regarding this rule order.

**Place where comments are to be submitted and deadline for submission:** Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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**SECTION 1.** Tax 11.20 (3) (c) is renumbered 11.20 (3) (c) 1. and amended to read:

Tax 11.20 (3) (c) 1. ~~A~~ Except as provided in subd. 2. and sub. (4) (am), a person claiming an exemption under par. (a) shall obtain a "Purchaser's Statement to Seller for Animals Used in Qualified Research or Manufacturing," ~~form~~ Form S-209, from each of its customers described in par. (a) (intro.) and keep the completed forms as a part of its records to document the number of animals that were raised by the seller and sold to biotechnology businesses, public or private institutions of higher education, and governmental units for exclusive and direct use in qualified research or manufacturing. When completing Form S-209, the purchaser of the animals is attesting to the number of animals purchased and the number of animals used exclusively and directly in qualified research or manufacturing.

**SECTION 2.** Tax 11.20 (3) (c) 2. is created to read:

2. A person is not required to obtain Form S-209 from its customers that are public or private institutions of higher learning and governmental units. For purposes of the exemption in par. (a), animals sold to such customers are deemed to be sold to such customers for exclusive and direct use in qualified research.

**SECTION 3.** Tax 11.20 (4) (a) is amended to read:

Tax 11.20 (4) (a) ~~In~~ Except as provided in par. (am), in order to be considered a biotechnology business for purposes of the exemptions under sub. (3), a business shall first obtain certification from the department as prescribed in this subsection.

**SECTION 4.** Tax 11.20 (4) (am) and (**Example**) are created to read:

Tax 11.20 (4) (am) In lieu of Form S-209, a seller may accept a fully completed exemption certificate, Form S-211 or S-211E from a purchaser that is a biotechnology business indicating the percentage of the animals purchased from the seller that are for exclusive and direct use in qualified research or manufacturing. The seller of the animals may regard such animals claimed as exempt for exclusive and direct use in qualified research or manufacturing, subject to a request by the department that the seller obtain certifications described in par. (a) from the purchasers to verify the exemption. If the department determines that all of the animals raised by the seller are not sold primarily to biotechnology businesses, the department may invalidate the exemption and make an adjustment to reflect the correct tax.

**Example:** Company A raises and sells animals exclusively to purchasers that are biotechnology businesses. Based on the Forms S-209 and the fully completed exemption certificates received by Company A, 60% of all the animals it sells are sold to biotechnology businesses for exclusive and direct use in qualified research or manufacturing. Company A is audited by the department. The department requests that certain purchasers of animals be certified by the department as biotechnology businesses for years relating to the audit. Some of these purchasers are not certified as biotechnology businesses by the department. As a result, only 45% of Company A's sales of animals are considered to be sold to biotechnology businesses for exclusive and direct use in qualified research or manufacturing. Since Company A does not sell more than 50% of the animals to biotechnology businesses, Company A does not qualify for the exemption under sub. (3) (a).

**SECTION 5. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.