

STATEMENT OF SCOPE

Department of Revenue

Rule No.: Chapter Tax 11

Relating to: Classification of real vs personal property for purposes of real property construction activities, city sales tax, increasing retailer discount

Rule Type: Permanent

1. Detailed description of the objective of the proposed rule:

The objective of the rule is to update Chapter Tax 11 for changes to sales tax administration that have occurred as a result of 2023 Wisconsin Acts 12 and 19.

2023 Wisconsin Act 12 amended the definition of real property construction activities for sales tax purposes. Contractors must determine whether their services are taxable services to tangible personal property or nontaxable real property construction activities, the determination of which impacts who owes tax and what amount is subject to tax. Act 12 also provides that the department may promulgate rules to determine what activities are considered "real property construction activities." If the classification of property is not identified by rule, there are three criteria to consider in determining if the property becomes a part of real property. Various sections in Chapter Tax 11 will need to be updated to reflect these changes and to classify certain property as real property or tangible personal property.

2023 Wisconsin Act 12 also authorizes a county in which a first class city is located to adopt an ordinance to increase its county sales and use tax rate by 0.4%, and also authorizes a first class city to adopt a city sales and use tax at a rate of 2%. Various sections in Chapter Tax 11 will need to be updated to reflect these changes.

2023 Wisconsin Act 12 also modifies the sales tax exemptions in sec. 77.54(20n) and (57d) as a result of repealing personal property tax. Various sections in Chapter Tax 11 will need to be updated to reflect these changes.

2023 Wisconsin Act 19 increases the discount retailers may obtain for reporting and collecting sales taxes for the state. The discount increases from .5% to .75% for taxes payable on or after October 1, 2023. Various sections in Chapter Tax 11 should be updated to reflect this change.

2023 Wisconsin Act 19 also renames the police and fire protection fee to the "911 fee" effective July 1, 2024. Several references to this fee in Chapter Tax 11 should be updated to reflect this change.

2. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing policies are described in the rule. The objective of this proposed rule is to make necessary changes made by Acts 12 and 19.

For purposes of promulgating rules to classify property or activities as real property construction activities under sec. 77.51(12t), Wis. Stats., the department will consider existing policies described in chapter Tax 11 and the department's published guidance. The department will also consider comments from the public. It is unknown whether the classification of property will change upon conclusion of the rule promulgation; the department does not anticipate any changes at this time.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11(2), Stats., provides statutory rule-making authority as follows:

(a) "Each 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..."

(b) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

Section 77.51(12t) Stats., provides statutory rule-making authority as follows:

(intro) "...The department may promulgate rules to determine whether activities that occur at a site where tangible personal property or items or goods under s. 77.52 (1) (b) or (d) are affixed to real property are real property construction activities for purposes of this subchapter. ..."

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

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates it will take approximately 200 hours to develop the rule.

5. List with description of all entities that may be affected by the proposed rule:

The effect on entities is primarily a result of 2023 Wisconsin Acts 12 and 19. However, construction contractors and their suppliers and customers may be affected by the classification of property authorized by this rule pursuant to sec. 77.51(12t), Wis. Stats.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no federal regulations relating to Wisconsin sales tax.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The department does not anticipate economic impact due to this rule change. The department does not intend to make changes to real property construction activities that significantly vary from existing rule and published guidance.

Economic impacts relating to the new municipal sales and use tax, county sales and use tax, and the retailer's sales tax discount are a result of the changes in the law.

This scope statement was approved by the Governor on September 7, 2023.

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