

Report From Agency

DEPARTMENT OF REVENUE CLEARINGHOUSE RULE NUMBER 11-052 SECTION 227.19 (2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

The rule is necessary to interpret the sales and use tax exemption provided in s. 77.54 (56), Stats., created effective July 1, 2011. It defines the term "product" as it applies to the exemption, provides examples of items that are and are not considered products, and clarifies the exemption requirements and scope.

Public Hearing and Comments

A public hearing was held on January 27, 2012. No one appeared at the hearing.

No public comments to the proposed rule were received.

Response to Legislative Council Report

All Legislative Council staff recommendations have been incorporated in the proposed rule order, except those concerning statutory authority as noted below.

Comment 1.a. – element of exclusive use in s. Tax 11.10 (5) (b). This is consistent with the statutory language that provides the exemption. The exemption is authorized for a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste. The statutes do not authorize additional power sources.

Comment 1.b. – basis for the conversion ratio in s. Tax 11.10 (5) (c) 1. and 2. The "derate factor" provided by the National Renewable Energy Laboratory, U.S. Department of Energy as being a reasonable approximation for going from a photovoltaic cell's nameplate rating determined under "standard test conditions" to the amount of alternating current for purposes of modeling a system's actual output.

Comment 1.c. – authority to use expected use instead of rated capacity to qualify a product in s. Tax 11.10 (5) (c) 7. This is consistent with the statutory language that provides the exemption. The exemption is authorized for a product that produces 600 British thermal units per day, a reference to actual output. The statutes do not refer to a product being exempt if rated to produce or capable of producing 600 British thermal units per day.

Comment 1.d. – authority to limit the application of the exemption as specified in s. Tax 11.10 (6) (b). The comment indicates the statutory exemption provides the sale price of electricity produced by a qualifying product is exempt from taxation without qualification. However, the fact that electricity must be produced by a qualifying product in order to be exempt is in itself a qualification. Unless there is a direct connection from a particular generator to the customer, neither the retailer nor the customer is able to determine the source of the electricity sold in a retail transaction. If the source of the electricity sold is unknown, it cannot be considered exempt.

Regulatory Flexibility Analysis

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

