



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 122: Property Tax Exemption for Waste Treatment Facilities

Senate Bill 122 would amend the property tax exemption for treatment plant and pollution abatement equipment. On March 30, 2007, SB 122 was introduced and referred to the Senate Committee on Commerce, Utilities, and Rail. On April 18, 2007, the Committee held a public hearing on the bill and, on May 14, 2007, recommended Senate Substitute Amendment 1 to SB 122 for passage by a vote of seven to zero. On the same date, the Committee introduced Senate Amendment 1 to SSA 1 but did not vote to adopt the amendment. The Joint Survey Committee on Tax Exemptions has issued a report that characterizes the bill as "good public policy" but recommends that "the bill be amended to recognize the issues related to Senate Substitute Amendment 1."

BACKGROUND

State law exempts treatment plant and pollution abatement equipment from the property tax, under s. 70.11 (21), Wisconsin Statutes. The exemption reads:

"All property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes, as defined in s. 281.01 (5), or air contaminants, as defined in s. 285.01 (1), but not for other wastes, as defined in s. 281.01 (7), for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under ch.76, if the property is approved by the department of revenue. For the purposes of this subsection, "industrial waste" also includes wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded, or fugitive material. The department of natural resources and

department of health and family services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats."

The statute contains four additional subsections establishing administrative provisions related to the exemption, and additional interpretation of the exemption is provided through administrative rule (TAX 12.40).

In 2004, the Tax Appeals Commission (TAC) decided an appeal from the Department of Revenue's Board of Assessors and extended the property tax exemption for treatment plant and pollution abatement equipment to property of the Paperboard Corporation, which is owned by the Newark Group, Inc. The decision has been referred to as the Newark decision. Paperboard Corporation manufactures cardboard from waste paper. Because the manufacturing process is dedicated to converting waste, the Corporation sought exemption of its entire plant, consisting of three parcels of real property and the personal property on that real estate. One parcel contains a paper mill with two large paper machines, a powerhouse building, an electrical substation, and surrounding paved yards where waste paper is stored. Two additional parcels are comprised of fenced parking lots. The Tax Appeals Commission agreed that this property should be exempt under the exemption for treatment plant and pollution abatement equipment, and its decision was sustained at circuit court. The Newark decision is noteworthy because it extends the exemption to an entire manufacturing facility if waste treatment is performed there.

SUMMARY OF SSA 1 TO SB 122

The substitute amendment would modify the property tax exemption for treatment plant and pollution abatement equipment in two ways to address issues raised by the Tax Appeals Commission. First, the current law provision that requires waste treatment facilities to be used to treat industrial wastes or air contaminants would be expanded to instead require facilities to be used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants. "Used exclusively" would be defined to mean to the exclusion of all other uses except for other uses not exceeding 5% of total use or except to produce heat or steam for a manufacturing process. With regard to the production of heat or steam, the total fuel must consist of either 95% or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50% or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material. The latter provision would replace a current law provision enacted in 1980 that exempts "hog fuel boilers" used by the paper industry.

Second, the substitute amendment would specify that industrial waste has no monetary or market value, except as specified in the definition of "used exclusively," and that industrial waste would otherwise be considered as superfluous, discarded, or fugitive material. Otherwise, the

substitute amendment would continue, but recodify, the current law provisions that define industrial waste as waste resulting from any process of industry, trade, or business, or the development of any natural resource. As under current law, other wastes, as defined by way of a cross-reference, would be excluded from the definition of industrial waste.

The preceding provisions would first apply as of January 1, 2007, with regard to property tax assessments and to claims for the recovery of illegal taxes. However, objections to assessments as of January 1, 2007, that are affected by these provisions could be filed no later than 60 days after the effective date of the act or the time allowed under current law, whichever is later. The definition of treatment plant and pollution abatement equipment in the property tax exemption is also used to determine what property qualifies for a related exemption under the state's general sales and use tax. The substitute amendment specifies that any changes related to general sales and use taxation take effect on the first day of the second month after publication of the act. However, the changes related to general sales and use taxation would not apply to tangible personal property purchased in fulfillment of a contract to construct, repair, or improve a waste treatment facility, if the contract is entered into, or a formal bid is made, prior to the effective date of the act and the tangible personal property is affixed and made a structural part of the waste treatment facility.

Finally, the substitute amendment would make a series of technical modifications by amending cross-references to the property tax exemption for treatment plant and pollution abatement equipment in current law provisions regarding claims for the recovery of unlawful taxes, taxation of public utilities, general sales and use taxation, and public utility aid.

SENATE AMENDMENT 1 TO SSA 1

Senate Amendment 1 would modify the "used exclusively" definition in SSA 1. The amendment would remove the exception to the definition related to the production of heat or steam, provided the total fuel consists of 50% or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material. Instead, the amendment would use identical language to create a new exemption that would extend to all property used to produce energy, steam, or heat for a manufacturing process from wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that would otherwise be considered superfluous, discarded, or fugitive material. This change would exempt property that uses any such material to produce energy, heat, or steam for a manufacturing process, rather than just those using such material for 50% or more of the total fuel.

FISCAL EFFECT

To date, eight manufacturers, in addition to Paperboard Corporation, have been granted exemptions based on the reasoning in the Newark decision. The exempt property totals \$34.3 million in value, and an estimated \$0.7 million in taxes are being shifted from the exempt property to other taxable property each year, based on current tax rates. If SB 122, as amended, becomes law, the Department of Revenue would be required to reevaluate the currently-exempt property at the

nine sites to determine if the properties' tax status has changed. Provisions in the substitute amendment regarding exclusive use and the value of waste would codify arguments that the Department of Revenue made to the Tax Appeals Commission, but which the Commission rejected. Presumably, the \$34.3 million in value exempted based on the Commission's decision would become taxable under SSA 1. In its fiscal estimate for the bill, the Department of Revenue commented that properties "that had been exempt prior to the Newark decision are expected to remain exempt." Therefore, the substitute amendment appears to return the exemption to its pre-Newark status. The Department of Revenue has indicated that it would be able to administer the law changes in SSA 1 as late as August 1, 2007, for the 2007(08) property tax year. If the bill is enacted much after that date, it may be desirable to amend the bill so that it initially applies to assessments as of January 1 of the year following enactment.

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