

Report From Agency
DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 12-015
SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

The proposed rule includes guidance for the sales and use tax exemptions for property and items used in qualified research and raising animals used in qualified research or manufacturing, criteria used by the department to certify a business as a biotechnology business, definitions applicable to the statutory exemptions that are the subject of the rule, clarification that the term "engaged primarily in manufacturing or biotechnology in this state" means more than 50% of a person's activity in Wisconsin is manufacturing or biotechnology, and examples to clarify the sales and use tax treatment of certain items in the rule and related statutes.

Public Hearing and Comments

A public hearing was held on February 27, 2012. No one appeared at the hearing to offer testimony.

Questions and concerns were presented by General Electric; Deloitte Tax; DeWitt, Ross & Stevens, S.C.; Grant Thornton, LLP; Wipfli, CPAs; and Wisconsin Manufacturers & Commerce (WMC) and have been addressed by the department. A summary of comments and the department's responses are as follows:

Comments from General Electric:

- What if property is leased rather than "sold."

Property leased is treated same as sale.

- What documentation would the lessee have to provide to the lessor to get the exemption?

The same documentation as purchaser would be required to provide.

- What constitutes "primary" when there are research operations in multiple states? What is the denominator?

Look only at WI activities. Denominator is total WI activities. Out of State activities are irrelevant.

Comments from Deloitte Tax:

- Provide examples of qualifying and non-qualifying research materials.

Additional examples were provided in the Rule.

- Question whether raw materials were included in the exemption.

Yes, raw materials are included. This was added to the examples.

- Question whether fuel and electricity were included in the exemption.

Yes, fuel and electricity are tangible personal property and are included in the exemption. Example has been included in the rule.

- Clarification regarding "primarily" engaged in both manufacturing and research & development.

Provided clarification in the rule.

Comments from Wipfli, CPAs:

- Clarify that definition of "animals" does not preclude the usual animals, such as rats, rabbits, etc.

Yes, definition of "animals" includes the usual animals such as rats, rabbits, etc.

- Provide examples of "qualified research"

Additional examples included in the Rule.

Comments from DeWitt Ross & Stevens, S.C.:

- Consider a biotechnology's expenditures, rather than its revenues in making determination of "primary activity".

Clarification that expenditures can be used in determining "primary activity".

Comments from Grant Thornton:

- Concern regarding the documentation required for the sales tax exemption.

Examples of documentation needed and additional clarification language was added.

Comments from WMC:

- To potentially broaden the sales and use tax exemptions the proposed rule concerns, the definitions of "person" and "manufacturer" in the proposed rule should be expanded.

The definitions of "person" and "manufacturer" in the proposed rule are identical to the statutory definitions applicable for sales and use tax purposes. As such, it is not within the department's authority to make these changes.

- To broaden the sales and use tax exemptions the proposed rule concerns, the tie-in to section 41 of the Internal Revenue Code as it relates to qualified research should be eliminated from the proposed rule.

"Qualified research" for purposes of the sales and use tax exemptions the proposed rule concerns has a statutory definition that is tied to section 41 of the Internal Revenue Code. As such, it is not within the department's authority to make this change.

Response to Legislative Council Report

All Legislative Council staff recommendations have been incorporated in the proposed rule order.

Regulatory Flexibility Analysis

The proposed rule order does not affect small businesses.