

Clearinghouse Rule 19-122

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE AMENDING RULES

The Wisconsin Department of Revenue proposes an order to: **amend** Tax 11.05 (3) (L), 11.08 (6) (Note 2), 11.17 (4) (a) 3., 11.45 (4) (b) 3., 11.83 (15) (Note 2), and 11.87 (3) (b) **relating to** derogatory or offensive terminology.

The scope statement for this rule, SS 048-19, was approved by the Governor on May 30, 2019, published in Register No. 762A1 on June 3, 2019, and approved by the Secretary of Revenue on June 18, 2019.

Analysis by the Department of Revenue

Statutes interpreted: Tax 11.05 – ss. 77.52 (1), (2), (13), and (14) and 77.54 (9a), (10), (15), (17), (20n), (30), (32), (37), (42), (44), and (55), Stats.

Tax 11.08 – ss. 77.51 (3pm), (7m), and (11m) and 77.54 (22b) and (28), Stats.

Tax 11.17 – ss. 77.51 (3pj), (3pm), (7m), and (11m), 77.52 (1) and (2) (a) 1. and 9., and 77.54 (9a), (14), (14m), (14r), (20n), (22b), and (28), Stats.

Tax 11.45 – ss. 77.51 (3pj), (3pm), (7m), and (11m) and 77.54 (14), (14m), (22b), and (28), Stats.

Tax 11.83 – ss. 77.51 (7m), (13) (am), (14) (j), and (15b) (b) 6., 77.52 (1), (2) (a) 10. and 13m., and (15), 77.53 (1),(1m), (16), (17), and (18), 77.54 (5) (a), (c) and (d), (7) and (22b), 77.56 (2) and (3), 77.61 (1), 77.71 (2) and (4), and 77.73, Stats.

Tax 11.87 – ss. 77.51 (10m), (12m), (14) (b) and (f), and (15b) and 77.54 (20n) and (20r), Stats.

Statutory authority: s. 227.11 (2), Stats.

Explanation of agency authority: 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 ..."

Executive Order #15, signed on March 12, 2019, states:

Now, therefore, I, Tony Evers, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the Laws of the State, hereby order the following:

1. Direct each State Agency to review its administrative rules and replace any derogatory or offensive terminology with current, inclusive terminology. This includes, but is not limited to replacing:
 - a. "Mentally retarded" with "intellectually disabled";
 - b. "Mental retardation" with "intellectual disability"; and

- c. "Handicapped" with "disabled."
2. Direct each State Agency to complete its review and submit a scope statement to make such changes no later than 90 days from the date of this order.

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

Plain language analysis: Executive Order #15 provides for each state agency to review its administrative rules and replace any derogatory or offensive terminology with current inclusive terminology. This includes replacing "mentally retarded" with "intellectually disabled", "mental retardation" with "intellectual disability", and "handicapped" with "disabled".

The new policy proposed is related to Executive Order #15. This proposed rule will replace all instances of "handicapped" with "disabled" as found in Chapter Tax 11.

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 is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: Executive Order #15 provides for each state agency to review its administrative rules and replace any derogatory or offensive terminology with current inclusive terminology. This includes replacing "mentally retarded" with "intellectually disabled", "mental retardation" with "intellectual disability", and "handicapped" with "disabled". The department has created this proposed rule order to reflect this change. No other data was used in the preparation of this proposed rule order or this analysis.

Analysis and supporting documents used to determine effect on small business: This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

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

Effect on small business: This proposed rule order does not affect small business.

Agency contact person: Please contact Jen Chadwick at (608) 266-8253 or jennifer.chadwick@wisconsin.gov, if you have any questions regarding this proposed rule.

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 11.05 (3) (L) is amended to read:

Tax 11.05 (3) (L) Food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01 (1g), Stats., and any facility certified or licensed under ch. 48, Stats., such as day care centers, child placement agencies, residential care centers, foster homes, treatment foster homes, group homes and shelter care facilities, including prepared food sold to the elderly or ~~handicapped~~ disabled by "mobile meals on wheels." Sales of alcoholic beverages by these organizations are taxable.

SECTION 2. Tax 11.08 (6) (Note 2) is amended to read:

Tax 11.08 (6) Note: The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983, pursuant to 1983 Wis. Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985, pursuant to 1985 Wis. Act 29; (c) Charges for apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels became exempt March 1, 1989, pursuant to 1987 Wis. Act 399; (d) Charges for antiembolism elastic hose and stockings prescribed by a physician became exempt October 1, 1989, pursuant to 1989 Wis. Act 31; (e) The exemption for adaptive equipment for a ~~handicapped~~ disabled person's vehicle became exempt effective June 1, 1990, pursuant to 1989 Wis. Act 238, renumbered by 1989 Wis. Act 359; (f) The exemption for parts and accessories became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemptions provided in s. 77.54 (14s) and (22), Stats., were repealed effective October 1, 2009, and replaced with the exemptions provided under s. 77.54 (22b), Stats., pursuant to 2009 Wis. Act 2; (h) The exemption in s. 77.54 (28), Stats., was amended to remove the exemption for apparatus and equipment for the injection of insulin or the treatment of diabetes. These items will still qualify for exemption under s. 77.54 (22b), Stats., if they are for home use, pursuant to 2009 Wis. Act 2; and (i) The clarification that a "prosthetic device" must be a replacement, corrective, or supportive device became effective July 2, 2013, pursuant to 2013 Wis. Act 20.

SECTION 3. Tax 11.17 (4) (a) 3. is amended to read:

Tax 11.17 (4) (a) 3. Prepared food sold to the elderly or ~~handicapped~~ disabled by persons providing "mobile meals on wheels."

SECTION 4. Tax 11.45 (4) (b) 3. is amended to read:

Tax 11.45 (4) (b) 3. Swivel seats which enable a ~~handicapped~~ disabled person to rotate his or her body, while seated, in order to get into position to rise from a chair.

SECTION 5. Tax 11.83 (15) (Note 2) is amended to read:

Tax 11.83 (15) Note: The interpretations in s. Tax 11.83 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for a transfer from an individual to a corporation solely owned by an individual became effective January 1, 1983, pursuant to Chapter 264, Laws of 1981; (b) The exemption for motor vehicles used in waste reduction and recycling became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (c) The exemption for mobile mixing and processing units became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (d) The exemption for adaptive equipment for ~~handicapped~~ disabled persons to enter, operate or leave a vehicle became effective June 1, 1990, pursuant to 1989 Wis. Act 238; (e) The exemption for motor vehicles donated to exempt organizations became effective August 9, 1989, pursuant to 1989 Wis. Act 31; (f) The exemption for transfers of motor vehicles to in-laws became effective August 15, 1991, pursuant to 1991 Wis. Act 39; (g) The exemption for parts and accessories for adaptive equipment for motor vehicles of ~~handicapped~~ disabled persons became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (h) The measure of use tax on motor vehicles as described in sub. (8) (b) 1., 3. and 4. became effective September 1, 1995, pursuant to 1995 Wis. Act 27; (i) The use of the amount per plate rather than the lease value, as described in sub. (8) (b) 2., as the measure of use tax for motor vehicles assigned to owners of a dealership became effective December 1, 1997, pursuant to 1997 Wis. Act 27; (j) The trade-in provisions related to lemon law refunds became effective June 1, 2002, pursuant to 2001 Wis. Act 45; (k) The imposition of tax on towing and hauling motor vehicles by a tow truck became effective July 1, 2009, pursuant to 2009 Wis. Act 28; (L) The exemption for mobility-enhancing equipment became effective October 1, 2009, pursuant to 2009 Wis. Act 2; (m) The requirement to collect the tax by persons who are not dealers but who hold a Wisconsin seller's permit became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (n) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2.

SECTION 6. Tax 11.87 (3) (b) is amended to read:

Tax 11.87 (3) (b) "*Meals on wheels.*" Prepared food sold to the elderly or ~~handicapped~~ disabled by persons providing "mobile meals on wheels."

SECTION 7. EFFECTIVE DATE; GENERAL. 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.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Peter W. Barca
Secretary of Revenue

E:Rules/170 – Derogatory or Offensive Terminology – SS 048-19/Tax 11 Derogatory or Offensive Terminology Proposed Order