

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Cate Zeuske, Secretary of the Department of Revenue and custodian of the official records, certify that the annexed rule, relating to the sales and use tax treatment of landscaping services, and sales and purchases by governmental units, was duly approved and adopted by this department on September 23, 1997.

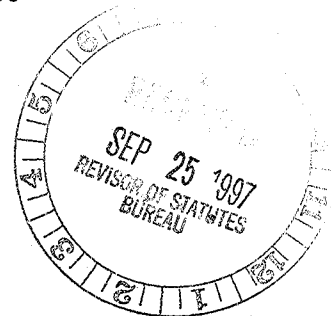
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 23 day of September, 1997.

Cate Zeuske

Cate Zeuske
Secretary of Revenue

CKRUL/560



11-1-97

ORDER OF THE DEPARTMENT OF REVENUE
AMENDING AND REPEALING AND RECREATING RULES

The Wisconsin Department of Revenue adopts an order to: amend Tax 11.05(2)(h), (k), (m) and (s), (3)(b) and (L) and (4)(a) and (e); and repeal and recreate Tax 11.05(4)(b) and 11.86(6), relating to the Wisconsin sales and use tax treatment of landscaping services and sales and purchases by governmental units and the use of exemption certificates.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.52(2)(a)20., (13) and (14) and 77.54(9a), (20)(c)4. and (30)(a)5., Stats.

SECTION 1. Tax 11.05(2)(h) is amended to conform language and style to Legislative Council Rules Clearinghouse standards.

Tax 11.05(2)(k), relating to sales of beverages to hospitals, etc., is amended to more clearly reflect s. 77.54(20)(b) and (c)4., Stats., and to reflect the amendment to s. 77.54(20)(c)4., Stats., by 1993 Wisconsin Act 332.

Tax 11.05(2)(m), relating to sales to schools, is amended to reflect correct terminology.

Tax 11.05(2)(s) is amended to reflect the Wisconsin Tax Appeals Commission decision in the case of *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket 93-S-569), that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

Tax 11.05(3)(b), relating to sales of fuel and electricity by governmental units, is amended to reflect the creation of s. 77.54(30)(a)5., Stats., by 1991 Wisconsin Act 39.

Tax 11.05(3)(L), relating to sales of meals by governmental units, is amended to reflect the amendment to s. 77.54(20)(c)4., Stats., by 1991 Wisconsin Act 39 and 1993 Wisconsin Act 332.

Tax 11.05(4)(a), relating to sales to governmental units, is amended to include in the list of exempt governmental units a local exposition district, due to the creation of s. 77.54(9a)(g), Stats., by 1993 Wisconsin Act 263, and the University of Wisconsin Hospitals and Clinics Authority, due to the amendment to s. 77.54(9a)(a), Stats., by 1995 Wisconsin Act 27.

SECTIONS 2 AND 3. Tax 11.05(4)(b) is repealed and recreated and Tax 11.05(4)(e) is amended. These paragraphs, relating to how a retailer verifies an exempt sale to a governmental unit, are revised to reflect the department's creation of a new exemption certificate for governmental units.

SECTION 4. Tax 11.86(6) is repealed and recreated to reflect the Wisconsin Tax Appeals Commission decision in the case of *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket 93-S-569), that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

SECTION 1. Tax 11.05(2)(h), (k), (m) and (s), (3)(b) and (L) and (4)(a) are amended to read:

Tax 11.05(2)(h) Sales of buildings or timber when the purchaser acquires ~~such~~ the property for removal.

(k) Sales of soda water beverages ~~and beer, fermented malt beverages and intoxicating liquor~~, including sales of these items by hospitals, sanatoriums ~~and~~, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., to patients, employees or guests.

(m) Sales of books and supplies, including sales by ~~vocational, technical and adult education schools~~ college districts. Sales of tangible personal property by elementary and secondary schools are exempt under s. 77.54(4), Stats.

(s) The gross receipts from landscaping and lawn maintenance services, including weed cutting in lawn, ~~and garden and other developed areas and along highways, streets and walkways~~, but not charges for damages described in sub. (3)(c).

(3)(b) Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use. Electricity and natural gas sold for residential use and electricity sold for farm use during the months of November through April. Fuel sold for use in farming. "Sold" is defined in s. 77.54(30)(b), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57(2)(L)7.

(L) Meals, food, food products or beverages, except soda water beverages ~~and beer,~~ fermented malt beverages and intoxicating liquor, sold by hospitals, sanatoriums ~~and ,~~ nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employes, residents or guests; meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals; and meals sold to the elderly or handicapped by "mobile meals on wheels."

(4)(a) Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 281.43(4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., local exposition district under subch. II of ch. 229, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

SECTION 2. Tax 11.05(4)(b) is repealed and recreated to read:

Tax 11.05(4)(b) A Wisconsin governmental unit shall provide one of the following to a retailer as proof that a sale to the governmental unit is exempt from tax:

1. A purchase order or similar written document identifying the governmental unit as the purchaser.
2. An exemption certificate, form S-207 or S-209.

Note: Form S-207, Certificate of Exemption, and Form S-209, Government Sales and Use Tax Exemption Certificate, are available from any Department of Revenue office.

SECTION 3. Tax 11.05(4)(e) is amended to read:

Tax 11.05(4)(e) Purchases, including lodging, meals or uniforms, by employes of a governmental unit are not exempt, whether or not the employe is subsequently reimbursed for the purchases by the governmental unit, unless the retailer issues the billing or invoice in the name of the governmental unit, receives a ~~purchase order or similar written document~~ from the governmental unit a document as described in par. (b) and keeps a copy of both documents.

Note to Revisor: Change the first note at the end of s. Tax 11.05 to read:

Note: Section Tax 11.05 interprets ss. 77.51(4)(c)6. and (10), 77.52(2)(a)1., 2., 9. and 20., (13) and (14) and 77.54(9a), (10), (15), (17), (20), (30), (32), (37) and (42), Stats.

Note to Revisor: In the second note at the end of s. Tax 11.05, delete the word "and" before part (o) and add the following at the end of the Note:

;(p) The exemption for fuel used in farming became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (q) The requirement that meals must be served on the premises of hospitals, nursing homes, etc., for exemption to apply became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (r) The exemption for sales to a local exposition district became effective April 26, 1994, pursuant to 1993 Wis. Act 263; (s) The exemption for sales of meals by community-based residential facilities became effective June 1, 1994, pursuant to 1993 Wis. Act 332; and (t) The exemption for sales to the University of Wisconsin Hospitals and Clinics Authority became effective July 29, 1995, pursuant to 1995 Wis. Act 27.

SECTION 4. Tax 11.86(6) is repealed and recreated to read:

Tax 11.86(6) LANDSCAPING SERVICES. Gross receipts from landscaping and lawn maintenance services are taxable. Except as provided in sub. (5)(a), landscaping and lawn maintenance services include:

- a. Landscape planning and counseling.
- b. Lawn and garden services, such as planting, mowing, spraying and fertilizing.
- c. Shrub and tree services.
- d. Spreading topsoil and installing sod or planting seed where trenches have been dug or sump pump, transmission and distribution lines have been buried in residential, business, commercial and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots and other areas and along highways, streets and walkways.

Note to Revisor: Remove the example that follows sub. (6).

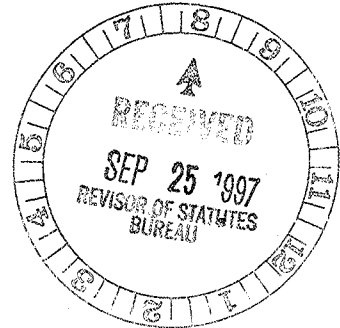
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

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

Dated : September 23, 1997 By: Cate Zeuske
Cate Zeuske
Secretary of Revenue

DEPARTMENT OF REVENUE



LRB or Bill No /Adm. Rule No.

TAX 11.05 and 11.86

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Landscaping Services; Sales and Purchases by Governmental Units; Use of Exemption Certificates by Governmental Units

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Appropriation
- Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Towns Villages Cities
 Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The rule order updates the Wisconsin Administrative Code with respect to the sales and use tax treatment of landscaping services and sales and purchases by governmental units. The rule order also makes changes regarding the use of exemption certificates by governmental units to reflect the Department's creation of a new exemption certificate for governmental units.

These rule changes have no fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department Of Revenue

Craig D. Kammholz, (608) 261-8984

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

Yeang Eng Braun

Date

5/13/97



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P O BOX 8933 • MADISON, WISCONSIN 53708-8933 • (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

September 23, 1997


Douglas La Follette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary La Follette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 97-090.

These materials are filed with you pursuant to s. 227.20(1), Stats.

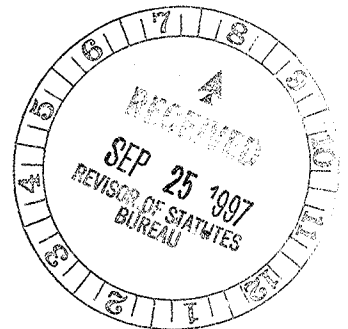
Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:c11
CKRUL/556

Enclosure

cc: Deputy Revisor





State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

September 23, 1997

Gary L. Poulson
Deputy Revisor
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

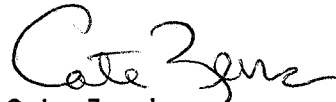
Re: Clearinghouse Rule 97-090

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to the sales and use tax treatment of landscaping services, and sales and purchases by governmental units.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:c11
CKRUL/557

Enclosure

cc: Douglas J. La Follette, Secretary of State
Commerce Clearing House, Inc.
Research Institute of America, Inc.

