

# Clearinghouse Rule 97-094

## CERTIFICATE

STATE OF WISCONSIN )

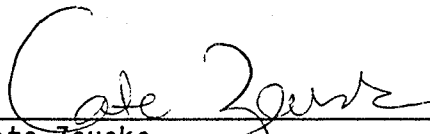
) SS

DEPARTMENT OF REVENUE )

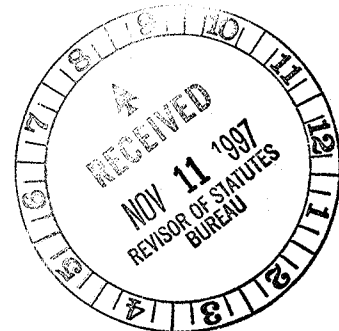
I, Cate Zeuske, Secretary of the Department of Revenue and custodian of the official records, certify that the annexed rule, relating to the sales and use tax treatment of containers and other shipping and packaging materials, was duly approved and adopted by this department on November 5, 1997.

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 5 day of November, 1997.

  
\_\_\_\_\_  
Cate Zeuske  
Secretary of Revenue

CKRUL/581



1-1-98  
97-094

ORDER OF THE DEPARTMENT OF REVENUE  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING  
AND AMENDING RULES

The Wisconsin Department of Revenue adopts an order to: repeal Tax 11.15(3); renumber Tax 11.15(4), (5), (7) and (8); renumber and amend Tax 11.15(6); and amend Tax 11.15(1)(a) and (c)5., relating to the Wisconsin sales and use tax as it applies to containers.

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Analysis by the Department of Revenue

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

Statutes interpreted: ss. 77.51(4)(a) and (b) and (14)(intro.) and (j) and 77.54(3m) and (6)(b), Stats.

SECTION 1. Tax 11.15(1)(a) and (c)5. are amended to update language, punctuation and style per Legislative Council Rules Clearinghouse standards.

SECTIONS 2 AND 3. Tax 11.15(3) is repealed because it is duplicative. This same information is contained in Tax 11.12. A note is added to refer the reader to Tax 11.12 for information on the exemption that applies to containers used by farmers.

Accordingly, Tax 11.15(4), (5), (6), (7) and (8) are renumbered.

Tax 11.15(5), as renumbered, is amended to clarify that there is no provision in the sales and use tax law that states that an item sold or leased below cost may not be purchased without tax for resale.

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SECTION 1. Tax 11.15(1)(a) and (c)5. are amended to read:

Tax 11.15(1)(a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be "used by the purchaser to transfer merchandise to customers".

Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor. The exemption ~~shall~~ does not apply to containers used in the incidental transfer of property to customers by persons providing services.

(c)5. "Fragile", "Handle with Care" or other shipping labels.

Note to Revisor: Insert the following note at the end of sub. (1):

Note: See Tax 11.12 for information on farmer's container exemption.

SECTION 2. Tax 11.15(3) is repealed.

SECTION 3. Tax 11.15(4), (5), (6), (7) and (8) are renumbered Tax 11.15(3), (4), (5), (6) and (7) and Tax 11.15(5), as renumbered, is amended to read:

Tax 11.15(5) DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG ~~storage tank~~ or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a ~~reasonable~~ charge is made to the customer for the use of the container and the container is used exclusively for ~~such~~ those leasing purposes, the gas supplier ~~can~~ may issue a resale certificate when ~~such~~ the supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer without making a separately itemized charge for its use ~~or charges only a nominal rental~~, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of ~~such~~ the containers or tanks.

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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.

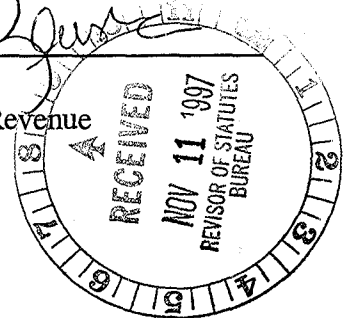
Final Regulatory Flexibility Analysis

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

Dated: November 5, 1997

DEPARTMENT OF REVENUE

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue



LRB or Bill No./Adm. Rule No.

TAX 11.15

Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Containers Used to Store Hay and Silage

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  
2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:

- 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 Tax 11.15 with respect to the Department's current position that hay and silage are grain for the purpose of the sales and use tax exemption for containers used to store grain. In addition, the rule order clarifies that silos purchased by contractors and subcontractors, and used in real property construction are subject to the sales and use tax, even though the silos may be used to store grain. The rule order also clarifies the Department's position with respect to the resale of liquid propane gas and other fuel storage tanks. Other changes update language, punctuation and style to conform with Legislative Council Rules Clearinghouse standards.

These changes do not have a fiscal effect.

Long-Range Fiscal Implications

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

Wisconsin Department of Revenue  
Craig Kammholz, (608) 261-8984

Authorized Signature/Telephone No.

Yeang-Eng Braun  
(608) 266-2700

*Yeang-Eng Braun*

Date

2/19/97



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

November 10, 1997

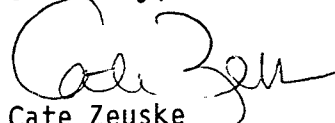
Douglas La Follette  
Secretary of State  
30 West Mifflin Street, 10th Floor  
Madison, WI 53703

Dear Secretary La Follette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 97-094.

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

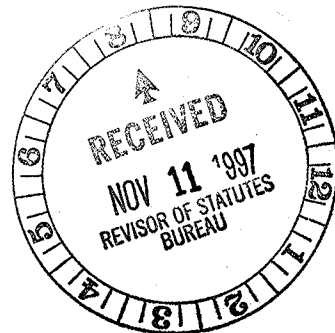
Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:MPW:c11  
CKRUL/577

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

November 10, 1997

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

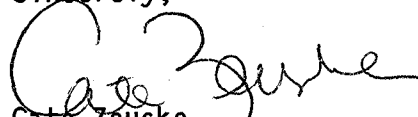
Re: Clearinghouse Rule 97-094

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use taxes.

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

Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:MPW:c11  
CKRUL/578

Enclosure

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

