

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

| Document Number | Document Title |
|------------------------|--|
| 100125 | Exemption for Fuel and Electricity Consumed in Manufacturing - Common Questions |

State of Wisconsin
Department of Revenue

Exemption for Fuel and Electricity Consumed in Manufacturing

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. Our company consumes fuel and electricity in our manufacturing processes. What do we need to do in order to purchase our fuel and electricity without sales or use tax?
2. Our company holds a direct pay permit issued by the Wisconsin Department of Revenue. Are we still required to furnish an exemption certificate to the seller in order to purchase fuel and electricity without tax?
3. I am a manufacturer of tangible personal property in Wisconsin and some of my purchases of fuel and electricity qualify for the exemption from sales tax. I do not hold a direct pay permit. What happens if I do not furnish an exemption certificate to the seller?
4. I paid sales tax in error to the seller on purchases of fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. What should I do?
5. How do I request a refund from the seller?
6. How do I file a Buyers Claim for Refund with the Department of Revenue?
7. Our company used less electricity for exempt purposes than previously stated on the exemption certificate we provided to our supplier. The electricity for exempt electricity and taxable electricity is billed on a single meter. Do we need to furnish the electric utility company with a new exemption certificate?
8. Our company used less natural gas for exempt purposes than previously stated on the exemption certificate we provided to our supplier. We used the difference for taxable purposes. Do we need to do anything?
9. Our company used more natural gas for exempt purposes than previously stated on the exemption certificate we provided to our supplier. Can we obtain a refund of the sales and use tax we paid on the additional natural gas purchases we determine to be exempt?
10. We hold a direct pay permit and remit use tax based on a percentage of fuel purchased and consumed in the manufacture of tangible personal property in Wisconsin. Later, we determined that our exempt use of fuel purchased is actually higher than originally reported. Can we obtain a refund of the use tax we paid on the fuel purchases we subsequently determined was used in an

exempt manner?

11. We are a seller of fuel and electricity. Since January 2006, we have received fully completed exemption certificates from various customers claiming the exemption for fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. These exemption certificates are marked "continuous." Based on the exemption percentages claimed on the exemption certificates, we do not charge tax to these customers. At a later date, it is determined that all or a portion of the fuel and electricity was used in taxable manner. Are we liable for any tax on these sales?
12. We are a seller of fuel and electricity. A purchaser contacts us, requesting a refund for overpayment of sales taxes. We are going to file a claim for refund with the Department of Revenue, and refund the tax and interest we receive to the purchaser. Is there any documentation we should obtain from the purchaser?
13. Does the state require manufacturers to purchase a third party "utility usage study" as documentation for the exempt percentage claimed to be used in manufacturing? If not, what evidence is acceptable?
14. Since the manufacturer's sales tax credit was replaced with a sales and use tax exemption beginning January 1, 2006, what happens to my unused manufacturer's sales tax credits from taxable years that began before January 1, 2006?

1. Our company consumes fuel and electricity in our manufacturing processes. What do we need to do in order to purchase our fuel and electricity without sales or use tax?

You must furnish a fully completed *Wisconsin Sales and Use Tax Exemption Certificate* (Form S-211 or the electronic exemption certificate Form S-211E), or *Streamlined Sales and Use Tax Exemption Certificate - Wisconsin version* (Form S-211-SST), to each seller from whom you purchase fuel or electricity that is exempt from Wisconsin sales and use tax because it is consumed in manufacturing tangible personal property in Wisconsin.


2. Our company holds a direct pay permit issued by the Wisconsin Department of Revenue. Are we still required to furnish an exemption certificate to the seller in order to purchase fuel and electricity without tax?

A direct pay permit holder has the option of either providing:



- A fully completed *Wisconsin Sales and Use Tax Exemption Certificate* (Form S-211 or the electronic exemption certificate Form S-211E) or *Streamlined Sales and Use Tax Exemption Certificate - Wisconsin version* (Form S-211-SST), which includes the name and address of the direct pay permit holder, a statement that the purchases are being made without tax using the direct pay permit, the direct pay permit number, and the effective date of the permit, or
- A copy of the direct pay permit and a written statement indicating whether the direct pay permit is for a single purchase or continuous use.

3. I am a manufacturer of tangible personal property in Wisconsin and some of my purchases of fuel and electricity qualify for the exemption from sales tax. I do not hold a direct pay permit. What happens if I do not furnish an exemption certificate to the seller?

The seller of the fuel and electricity is required to charge you the appropriate sales or use tax unless you furnish the seller with a fully completed *Wisconsin Sales and Use Tax Exemption Certificate* (Form S-211 or the electronic exemption certificate Form S-211E), or *Streamlined*



Sales and Use Tax Exemption Certificate - Wisconsin version  ([Form S-211-SST](#)), prior to or at the time of sale.

4. I paid sales tax in error to the seller on purchases of fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. What should I do?

Furnish the seller with a fully completed *Wisconsin Sales and Use Tax Exemption Certificate*  ([Form S-211](#) or the electronic exemption certificate [Form S-211E](#)), or *Streamlined Sales and Use Tax Exemption Certificate* - Wisconsin version  ([Form S-211-SST](#)), as soon as possible to avoid paying tax on future purchases. In addition, you may seek a refund of the taxes paid in error using one of the two options below:

- o Request a refund from the seller (see [Answer #5](#)), or
- o File a Buyer's Claim for Refund directly with the Department of Revenue (see [Answer #6](#)).

5. How do I request a refund from the seller?


Furnish the seller with a fully completed *Wisconsin Sales and Use Tax Exemption Certificate*  ([Form S-211](#) or the electronic exemption certificate [Form S-211E](#)), or *Streamlined Sales and Use Tax Exemption Certificate* - Wisconsin version  ([Form S-211-SST](#)), claiming the correct exemption percentage.

If the request is made within 90 days of the date of the sale, the purchaser may instead provide the seller with information sufficient to prove the exemption, such as:



- o Purchaser name and address
- o Purchaser's state tax number and state of issue
 - If the purchaser has no state tax number, then the purchaser's federal identification number (FEIN) is needed
 - If the purchaser has no FEIN then the purchaser's personal driver's license number and state of issue is needed
- o Purchaser's type of business
- o The reason for the claimed exemption

If the purchaser provides the exemption certificate to the seller more than 90 days after the date of the sale, the seller must be able to accept the exemption certificate in good faith.

6. How do I file a Buyers Claim for Refund with the Department of Revenue?

Generally, your refund must be at least \$50 and you must file within 4 years of the due date of your income or franchise return. See  [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for more information.

For a refund of tax paid to a seller, do one of the following:

- o File a buyer's claim for refund in [My Tax Account](#)
- o File claim on paper - you must use both Forms  [S-220](#) and  [S-220a](#)

The department will immediately acknowledge receipt of a refund claim filed electronically.

7. Our company used less electricity for exempt purposes than previously stated on the exemption certificate we provided to our supplier. The electricity for exempt electricity and taxable electricity is billed on a single meter. Do we need to furnish the electric utility company with a new exemption certificate?

Yes. Your percentage claimed on your original exemption certificate is no longer valid. You should furnish your electric utility with a new exemption certificate claiming the revised estimate of usage for electricity consumed in manufacturing tangible personal property in Wisconsin.

In addition, if for a period the utility exempted the higher percentage of electricity when it was actually lower, you are required to report Wisconsin use tax to the Wisconsin Department of Revenue on the percentage difference between what was claimed as being exempt and what was actually exempt.

8. Our company used less natural gas for exempt purposes than previously stated on the exemption certificate we provided to our supplier. We used the difference for taxable purposes. Do we need to do anything?

Yes. You are required to self-assess and pay Wisconsin use tax on the portion of the fuel purchased without tax, but used in a taxable manner.

9. Our company used more natural gas for exempt purposes than previously stated on the exemption certificate we provided to our supplier. Can we obtain a refund of the sales and use tax we paid on the additional natural gas purchases we determine to be exempt?

Yes. You may request a refund from the seller or if your claim for refund is at least \$50, you may file a Buyer's Claim for Refund directly with Department of Revenue. See questions #4-6 for refund options.

10. We hold a direct pay permit and remit use tax based on a percentage of fuel purchased and consumed in the manufacture of tangible personal property in Wisconsin. Later, we determined that our exempt use of fuel purchased is actually higher than originally reported. Can we obtain a refund of the use tax we paid on the fuel purchases we subsequently determined was used in an exempt manner?

Yes. To file a claim for refund for use taxes paid directly to the Department of Revenue, you need to file amended returns for the periods in which you overpaid the use tax. You must file the amended returns within four years of the due date for filing your income or franchise tax return for the year that includes the year of the purchases for which you overpaid the tax. See [Publication 216, Filing Claims for Refunds of Sales or Use Tax](#), for more information.

11. We are a seller of fuel and electricity. Since January 2006, we have received fully completed exemption certificates from various customers claiming the exemption for fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. These exemption certificates are marked "continuous." Based on the exemption percentages claimed on the exemption certificates, we do not charge tax to these customers. At a later date, it is determined that all or a portion of the fuel and electricity was used in taxable manner. Are we liable for any tax on these sales?

If you had a fully completed exemption certificate on file before the sale, or obtained the certificate within 90 days after the date of the sale, you are not liable for sales or use tax.

Exception: A seller is **not** relieved of its liability to collect and remit the applicable Wisconsin sales or use tax on a sale to a purchaser if any of the following apply:

- The seller fraudulently fails to collect the sales or use tax.
- The seller solicits the purchaser to claim an unlawful exemption.
- The seller accepts an exemption certificate from a purchaser claiming to be an entity that is not subject to sales and use taxes, if **both** of the following apply:
 - The subject of the transaction covered by the exemption certificate is received by the purchaser at the seller's Wisconsin location; and

- The exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in Wisconsin.



If you received the exemption certificate more than 90 days after the date of the sale, you are not liable for sales or use tax, if the exemption certificates were fully completed and you accepted them in good faith. An exemption certificate is fully completed and accepted in good faith if all of the following are true:

- It bears the name and address of the purchaser
- It includes the purchaser's type of business
- It discloses a valid reason for exemption (in this case, fuel and electricity consumed in manufacturing tangible personal property in Wisconsin)
- It includes the purchaser's ID number, if required for the specific exemption claimed
- It contains the signature of the purchaser, if a paper certificate
- It contains no statement or entry which the seller knows, or has reason to believe the certificate is false or misleading

However, if the certificate is not fully completed or is not accepted in good faith, the seller remains liable for any additional sales tax.

Additional information regarding exemption certificates is provided in sec. Tax 11.14(3) and (4), Wis. Adm. Code.

12. We are a seller of fuel and electricity. A purchaser contacts us, requesting a refund for overpayment of sales taxes. We are going to file a claim for refund with the Department of Revenue, and refund the tax and interest we receive to the purchaser. Is there any documentation we should obtain from the purchaser?

After 90 days from the date of the sale, you may substantiate the claimed exemption within 120 days from the date of request by the Department of Revenue, by obtaining, in good faith, a fully completed *Wisconsin Sales and Use Tax Exemption Certificate*  (Form S-211 or the electronic exemption certificate Form S-211E), or *Streamlined Sales and Use Tax Exemption Certificate - Wisconsin version*  (Form S-211-SST), from the purchaser, or by some other means provide proof that your sale was not taxable.

You are accepting an exemption certificate in good faith if the exemption certificate is fully completed and claims an exemption that:

- Was authorized by law on the date of the transaction in the jurisdiction to which the transaction was sourced
- Could be applicable to the property, item, good, or service being purchased
- Is reasonable for the purchaser's type of business

However, even if you obtain an exemption certificate containing the above information, you will still be liable for the tax if it is discovered through the audit process that you had knowledge or reason to know at the time the information provided was materially false or if you knowingly participated in an activity intended to purposefully evade the tax due.

Additional information on obtaining documentation from a purchaser is available in the following Common Question: [Sales and Use Tax Exemptions](#), or in sec. Tax 11.14(3) and (4), Wis. Adm. Code.

13. Does the state require manufacturers to purchase a third party "utility usage study" as documentation for the exempt percentage claimed to be used in manufacturing? If not,

what evidence is acceptable?

No. However, the purchaser/manufacturer is responsible for providing documentation to support the exempt percentage claimed and a third party utility usage study is good supporting evidence to prove how they arrived at the amount of fuel and electricity consumed in manufacturing.

While the department may prefer to see an independent third party utility usage study, there is nothing provided statutorily that would prevent you from doing a detailed analysis/study yourself of the fuel or electricity that is consumed in manufacturing. As long as the study is reasonable and you have documentation (e.g., list of exempt machines, how much energy each machine consumes, how many hours each machine operates a day) to support the study that proves it accurately reflects the fuel or electricity consumed in manufacturing, this would be acceptable to the department. This study would also need to be updated periodically to account for additions and deletions of the machinery and equipment used, plant expansions or downsizing, etc.

One thing to remember when claiming an exemption is that it is up to the taxpayer to prove that a sale or purchase qualifies for a particular exemption. Therefore, regardless of the method you choose to determine the amount of fuel or electricity that qualifies for exemption, you will need documentation to support the method chosen and evidence (such as a detailed analysis of your energy consumption) to prove that this method is reasonable in your particular situation. The method you choose is also subject to review in the event that you are audited.

14. **Since the manufacturer's sales tax credit was replaced with a sales and use tax exemption beginning January 1, 2006, what happens to my unused manufacturer's sales tax credits from taxable years that began before January 1, 2006?**

Unused manufacturer's sales tax credits from taxable years that began prior to January 1, 2006 may be claimed beginning with the first tax year beginning after January 1, 2006.

Refer to [Manufacturer's Sales Tax Credit](#) for information on unused credits.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 19, 2020: Sections 71.07, 77.52, 77.53, 77.54, 77.585(10) and 77.59, Wis. Stats., and secs. Tax 11.01, 11.13 and 11.14, Wis. Adm. Code.

Laws enacted and in effect after February 19, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 19, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2) (a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

WISCONSIN DEPARTMENT OF REVENUE

Customer Service Bureau

PO Box 8949

Madison, WI 53708-8949

Phone: (608) 266-2776

Fax: (608) 267-1030

Email additional questions to DORSalesandUse@wisconsin.gov

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