

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 sales and use taxes, was duly approved and adopted by this department on September 23, 1997.

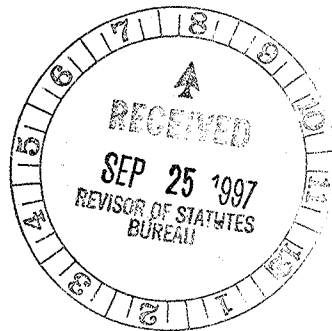
I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

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/548



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

The Wisconsin Department of Revenue adopts an order to: repeal Tax 11.39(4)(a), (d) and (r)2. and 4. and 11.41(2) and (3)(b); renumber Tax 11.39(4)(c), (e), (f), (g), (h), (i), (j), (k), (L), (n), (o) and (r)(intro.), 1., 3., 5., 6., 7., 8., 9., 11., 12., 13. and 14. and 11.41(3)(a)(intro.), 1., 2., 3., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15., (4)(a), (b), (c), (d), (e), (f), (g) and (h) and (5)(title), (a), (b) and (c); renumber and amend Tax 11.39(4)(b) and (m) and 11.41(3)(title) and (a)4., (4)(title) and (intro.) and (5)(intro.); amend Tax 11.39(2)(a), (3)(m), (ze) and (zf) and (4)(intro.); repeal and recreate Tax 11.41(1); and create Tax 11.39(3)(fr), (jd), (jr), (oc), (os), (wd) and (wr) and 11.41(2)(a)4.b. and (b) and (4)(b)(intro.), relating to the Wisconsin sales and use tax as it applies to manufacturers.

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Analysis by the Department of Revenue

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

Statutes interpreted: s. 77.54(2), (6)(a), (6m) and (6r), Stats.

SECTIONS 1, 3 AND 5. Tax 11.39(2)(a), (3)(m), (ze) and (zf) and (4)(intro.) are amended to update language per Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 11.39(3)(fr), (jd) and (jr) are created to reflect the following:

a. The Wisconsin Supreme Court decision in the case of *Wisconsin Department of Revenue v. Bailey-Borhrman Steel Corporation* (February 7, 1980, CCH 201-636) which held that cutting rolls of coiled steel into specific widths so they could be fed into customers' presses was manufacturing. This decision, in effect, reversed the decision by the Wisconsin Tax Appeals Commission in the case of *Sargento Cheese Company, Inc. v. Wisconsin Department of Revenue* (April 20, 1978, CCH 201-492), that Sargento was not engaged in manufacturing when it cut blocks of cheese to produce a variety of packaged cheeses that could be sold at retail.

b. Based on tours of various dental labs, and changes in their operations that have occurred over the years, it is the department's position that dental labs are manufacturers.

c. Based on information provided by various contractors who make ductwork in their machine shops, it was determined by the department that, based on various Commission and court decisions in the past, such activities are manufacturing even though the contractor engages in real property construction when it installs the ductwork.

SECTION 4. Tax 11.39(3)(oc), (os), (wd) and (wr) are created to reflect the following:

a. In an unpublished decision that cannot be cited, the Court of Appeals held in the case of *Wisconsin Department of Revenue v. Artex Corporation* (January 26, 1987), that grain drying was a manufacturing process.

b. The Circuit Court, Branch 1, Milwaukee County, held in the case of *Wisconsin Department of Revenue v. Hide Service Corporation* that curing hides was manufacturing as the

term was defined in s. 77.51(27), Stats. (now s. 77.54(6m), Stats.).

c. The department, after discussing with various experts in the area of manufacturing, determined that snowmaking for a ski hill is manufacturing.

d. The department, after touring many photofinishing operations and seeking the opinion of a person considered an expert in the area of manufacturing, determined that photofinishing is manufacturing.

SECTIONS 6 AND 7. Tax 11.39(4)(a) is repealed to reflect the following decisions by the Wisconsin Tax Appeals Commission:

a. *Astra Plating, Inc. v. Wisconsin Department of Revenue* (March 14, 1990, corrected March 26, 1990, CCH 203-134). The Commission held that an automobile bumper recycling company was engaged in manufacturing, as the term is defined in s. 77.54(6m), Stats., when it restored damaged automobile bumpers for resale.

b. *Lerman Tire Service v. Wisconsin Department of Revenue* (June 6, 1983, Docket # S-8876). The Commission held that the taxpayer's process of tire retreading was popularly regarded as manufacturing as the term is defined in s. 77.54(6m), Stats.

Accordingly, Tax 11.39(4)(b) and (c) are renumbered Tax 11.39(4)(a) and (b). Tax 11.39(4)(a), as renumbered, is amended to clarify that certain activities when performed by contractors are not manufacturing. However, operations performed by contractors such as fabricating ductwork at its machine shop that it will install is a manufacturing operation.

SECTIONS 8 AND 9. Tax 11.39(4)(d) is repealed to reflect the department's change in position with respect to dental labs. Based on tours of various dental labs, and changes in their operations that have occurred over the years, it is the department's position that dental labs are manufacturers.

Accordingly, Tax 11.39(4)(e), (f), (g), (h), (i), (j), (k), (L), (m) (n), (o) and (r)(intro.) and 1. are renumbered Tax 11.39(4)(c), (d), (e), (f), (g), (h), (i), (j), (k), (L), (m) and (n)(intro.) and 1. Tax 11.39(4)(k), as renumbered, is amended to provide consistent use of language.

SECTIONS 10 AND 11. Tax 11.39(4)(r)2. is repealed to reflect the Wisconsin Tax Appeals Commission decision in the case of *House of Bidwell v. Wisconsin Department of Revenue* (September 1, 1981, CCH 202-890), which stated that production of customized prosthetic devices was manufacturing as the term is defined in s. 77.54(6m), Stats. Although the products sold to customers were customized for the customers, the operation was still found to be manufacturing.

Accordingly, Tax 11.39(4)(r)3. is renumbered Tax 11.39(4)(n)2.

SECTIONS 12 AND 13. Tax 11.39(4)(r)4. is repealed to reflect the decisions in the case of *Artex Corp. v. Wisconsin Department of Revenue* (November 27, 1984, June 11, 1985 and January 26, 1987, CCH 202-496, 202-585 and 202-855), where it was held that grain drying was manufacturing as the term is defined in s. 77.54(6m), Stats.

Accordingly, Tax 11.39(4)(r)5., 6., 7., 8., 9., 11., 12., 13. and 14. are renumbered Tax 11.39(4)(n)3., 4., 5., 6., 7., 8., 9., 10. and 11.

SECTIONS 14, 15, 17, 18, 19, 20 AND 21. Tax 11.41(1) is repealed and recreated and Tax 11.41(2) and (3)(b) are repealed to reflect the Wisconsin Tax Appeals Commission decision in the case of *Cherney Microbiological Services, Inc. v. Wisconsin Department of Revenue* (94-S-209, April 23, 1996, revised July 15, 1996). The Commission held that a testing laboratory was entitled to claim exemption from Wisconsin sales or use tax on certain purchases under s. 77.54(2), Stats. The Commission explained that virtually all of the quality control tests performed by Cherney were on samples supplied by manufacturers and, since the department has ruled that testing when performed by a manufacturer is part of the manufacturing process, Cherney was entitled to claim exemption on those purchases, even though it was not itself a manufacturer. The Commission also stated that the exemptions in s. 77.54(2) and (6)(a), Stats., were mutually exclusive and must be looked at separately, not together, when determining whether exemption applies.

The department filed a Notice of Nonacquiescence dated July 22, 1996, with respect to a portion of the decision. The Notice of Nonacquiescence filed by the department in response to the *Cherney* decision applies **only** to that portion of the decision that allowed exemption from sales or use tax for (a) equipment and (b) items (e.g., maps, books, and uniforms) not incorporated, consumed, or destroyed in performing testing services on work-in-process samples for manufacturers.

Accordingly, Tax 11.41(3)(title) and (a)(intro.), 1., 2., 3., 4., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15., (4) and (5)(title), (intro.), (a), (b) and (c) are renumbered Tax 11.41(2)(title) and (a)(intro.), 1., 2., 3., 4.a., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15., (3) and (4)(title), (a) and (b)1., 2. and 3.

Tax 11.41(4)(b)(intro.) is created and Tax 11.41(2)(title) and (a)4.a., (3)(title) and (intro.) and (4)(a), as renumbered, are amended to update language and improve presentation per Legislative Council Rules Clearinghouse standards.

SECTION 16. Tax 11.41(2)(a)4.b. and (b) are created to:

a. Update language and presentation to reflect Legislative Council Rules Clearinghouse standards.

b. Address the exemption from Wisconsin sales or use tax for ingredients or component parts of tangible personal property manufactured and destined for sale. Although included in the exemption under s. 77.54(2), Stats., it was not addressed in the rule.

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SECTION 1. Tax 11.39(2)(a) is amended to read:

Tax 11.39(2)(a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of

the product or by another on ~~his or her~~ the producer's behalf and the package or container becomes a part of the tangible personal property as ~~such~~ the unit is customarily offered for sale by the ~~manufacturer~~ producer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the ~~production cycle~~ scope of manufacturing.

SECTION 2. Tax 11.39(3)(fr), (jd) and (jr) are created to read:

Tax 11.39(3)(fr) Cheese cutting and repackaging plants.

(jd) Dental labs.

(jr) Ductwork fabricators.

SECTION 3. Tax 11.39(3)(m) is amended to read:

Tax 11.39(3)(m) Food processing plants (~~and~~ canning and freezing).

SECTION 4. Tax 11.39(3)(oc), (os), (wd) and (wr) are created to read:

Tax 11.39(3)(oc) Grain dryers.

(os) Hide curers.

(wd) Persons engaged in snowmaking for a ski hill.

(wr) Photofinishers.

SECTION 5. Tax 11.39(3)(ze) and (zf) and (4)(intro.) are amended to read:

Tax 11.39(3)(ze) ~~Crushing~~ Persons engaged in crushing, washing, grading and blending sand, rock, gravel and other minerals.

(zf) ~~Ore~~ Persons engaged in ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.

(4)(intro.) ~~Examples of nonmanufacturers are~~ Nonmanufacturers include the following:

SECTION 6. Tax 11.39(4)(a) is repealed.

SECTION 7. Tax 11.39(4)(b) and (c) are renumbered Tax 11.39(4)(a) and (b) and Tax 11.39(4)(a), as renumbered, is amended to read:

Tax 11.39(4)(a) Contractors, when engaged in real property construction activities and installing or repairing tangible personal property.

SECTION 8. Tax 11.39(4)(d) is repealed.

SECTION 9. Tax 11.39(4)(e), (f), (g), (h), (i), (j), (k), (L), (m), (n), (o) and (r)(intro.) and 1. are renumbered Tax 11.39(4)(c), (d), (e), (f), (g), (h), (i), (j), (k), (L), (m) and (n)(intro.) and 1. and Tax 11.39(4)(k), as renumbered, is amended to read:

Tax 11.39(4)(k) ~~Repairperson~~ Repairpersons.

SECTION 10. Tax 11.39(4)(r)2. is repealed.

SECTION 11. Tax 11.39(4)(r)3. is renumbered Tax 11.39(4)(n)2.

SECTION 12. Tax 11.39(4)(r)4. is repealed.

SECTION 13. Tax 11.39(4)(r)5., 6., 7., 8., 9., 11., 12., 13. and 14. are renumbered Tax 11.39(4)(n)3., 4., 5., 6., 7., 8., 9., 10. and 11.

SECTION 14. Tax 11.41(1) is repealed and recreated to read:

Tax 11.41(1) GENERAL. (a) Tangible personal property consumed or destroyed or losing its identity in the manufacture of tangible personal property in any form destined for sale is exempt from Wisconsin sales or use tax.

(b) 1. Manufacture as used in par. (a) has the same meaning as manufacturing in s. 77.54(6m), Stats. and includes those activities described in s. Tax 11.39(2) as being within the scope of manufacturing.

2. An exemption under par. (a) is not allowed for property consumed or destroyed or

losing its identity if any of the following apply:

- a. The activity is not manufacturing or is not within the scope of manufacturing.
- b. The property manufactured is not destined for sale.

SECTION 15. Tax 11.41(2) is repealed.

SECTION 16. Tax 11.41(2)(a)4.b. and (b) are created to read:

Tax 11.41(2)(a)4.b. Chemicals and cleaning agents used by food manufacturers to clean walls, ceilings, floors and drains of the rooms where manufacturing takes place in order to meet strict sanitation standards required by state and federal regulatory agencies.

(b) Tangible personal property becoming an ingredient or component part of tangible personal property destined for sale as tangible personal property is exempt from Wisconsin sales or use tax.

SECTION 17. Tax 11.41(3)(title) and (a)(intro.), 1., 2., 3., 4., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15. are renumbered Tax 11.41(2)(title) and (a)(intro.), 1., 2., 3., 4.a., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14. and 15. and Tax 11.41(2)(title) and (a)4.a., as renumbered, are amended to read:

Tax 11.41(2)(title) PROPERTY EXEMPT.

(a)4.a. Cleaning compounds and solvents for maintaining manufacturing machinery whether used during the manufacturing process or while the machinery is idle. ~~A food processor, who is required to maintain strict sanitation standards by a regulatory agency, may also purchase chemicals and cleaning agents used to clean the walls, ceilings, floors and drains of the rooms in which manufacturing takes place without tax.~~

Note to Revisor: Move the note following sub. (3)(a)4., prior to renumbering, to follow the example after sub. (2)(a)4.a. as renumbered.

SECTION 18. Tax 11.41(3)(b) is repealed.

Note to Revisor: Move the examples following sub. (3)(b) prior to repeal to follow sub.

(2)(b).

SECTION 19. Tax 11.41(4) is renumbered Tax 11.41(3) and Tax 11.41(3)(title) and (intro.), as renumbered, are amended to read:

Tax 11.41(3)(title) PROPERTY NOT EXEMPT.

(intro.) The following property is not within the exemption provided by s. 77.54(2), Stats., although the property may be exempt under s. 77.54(6)(a), Stats., if the property is a part of a machine or specific processing equipment, or a part for that machine or equipment, used exclusively and directly in manufacturing, as described in s. Tax 11.40:

SECTION 20. Tax 11.41(4)(b)(intro.) is created to read:

Tax 11.41(4)(b)(intro.) Fuel includes:

SECTION 21. Tax 11.41(5)(title), (intro.), (a), (b) and (c) are renumbered Tax 11.41(4)(title), (a) and (b)1., 2. and 3. and Tax 11.41(4)(a), as renumbered, is amended to read:

Tax 11.41(4)(a) Fuel and electricity are specifically excluded from the exemption provided by s. 77.54(2), Stats., even though ~~such property they~~ may be consumed, or destroyed or lose ~~its~~ their identity in the manufacture of ~~products~~ tangible personal property destined for sale. ~~However, s. 77.54(30)(a)4., Stats., exempts "Any, except that any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edging, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue." Since "fuel" is not defined in s. 77.54(2), Stats., it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:~~ is exempt from sales or use tax.

Note to Revisor: Add the following note after Tax 11.41(4)(b)3. as renumbered:

Note: Since "fuel" is not defined in the sales and use tax statutes, it shall be given its ordinary meaning as provided in a dictionary. Dictionaries generally define fuel as a material



used to produce heat or power by burning, or something that feeds a fire.

Note to Revisor: Replace the second-to-last note at the end of Tax 11.41 with the following:

Note: Section Tax 11.41 interprets s. 77.54(2), (6)(a), (6m) and (6r), Stats.

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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.

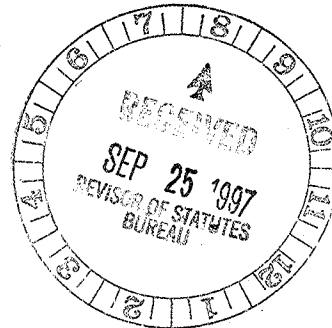
Final Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: September 23, 1997

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue



LRB or Bill No./Adm. Rule No.  
**TAX 11.39 and 11.41**  
 Amendment No. if Applicable

**FISCAL ESTIMATE  
 DOA-2048 N(R10/94)**

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**  
**Sales and Use Tax Treatment of Certain Manufacturers**

**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 the sales and use tax treatment of certain manufacturers. These changes conform to current law, therefore, they have no fiscal effect. Specifically, the changes:

- reflect two Wisconsin Tax Appeals Commission (TAC) decisions which determined that automobile bumper restoration for resale and tire retreading are manufacturing activities;
- reflect the Department of Revenue's position that certain dental laboratory operations are considered to be manufacturing activities;
- reflect a TAC decision that the production of customized prosthetic devices is a manufacturing activity;
- conform to three court decisions which determined that grain drying may be considered a manufacturing activity;
- adopt a TAC decision which determined that a testing laboratory was entitled to a sales and use tax exemption on certain purchases;
- incorporate the statutory exemption for ingredients used in the manufacturing process.

Other rule changes create titles, renumber sections, update language and presentation to provide consistency and to conform to Legislative Clearinghouse standards.

**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 	Date 1/22/97
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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

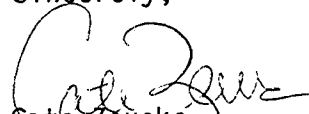
Douglas La Follette  
Secretary of State  
30 West Mifflin Street, 10th Floor  
Madison, WI 53703

Dear Secretary La Follette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 97-068.

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

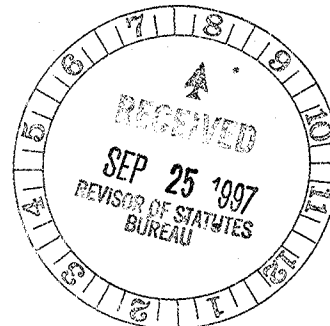
Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:MPW:c11  
CKRUL/544

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

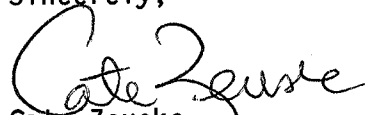
Re: Clearinghouse Rule 97-068

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/545

Enclosure

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

