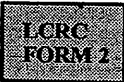


WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97-128

AN ORDER to repeal Tax 11.11 (2) (c); to renumber Tax 11.03 (1) (a) 2. and 3. and 11.11 (3) (a), (b) and (c); to renumber and amend Tax 11.11 (3) (d) and (4); to amend Tax 11.03 (title), (1) (b), (3) (c) and (4) (a) and (c) and 11.11 (2) (b); and to create Tax 11.03 (4) (d) and 11.11 (3) (intro.), (a) (title), (b), (c) and (d), relating to schools and related organizations and to industrial and governmental waste treatment facilities.

Submitted by **DEPARTMENT OF REVENUE**

09-24-97 RECEIVED BY LEGISLATIVE COUNCIL.
10-22-97 REPORT SENT TO AGENCY.

RNS:WF:kjf:jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 97-128

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

The department needs to provide an explanation concerning the statutory authority for those provisions in SECTIONS 5, 6 and 8 of Clearinghouse Rule 97-128 that would exempt from the sales tax "utilities" used or consumed in operating a waste treatment facility. Section 77.54 (26), Stats., in relevant part, exempts from the sales tax the "gross receipts from the sales of . . . tangible personal property which becomes a component part of an industrial waste treatment facility . . . or . . . a waste treatment facility. The exemption includes replacement parts therefor, and also applies to chemicals and supplies used or consumed in operating a waste treatment facility . . ." (emphasis added). In the analysis to Clearinghouse Rule 97-128, the department explains that it has adopted the position that utilities consumed in operating waste treatment facilities qualify as "supplies" and are exempt from the Wisconsin sales tax. However, it is not clear from the statutory language quoted above that utilities are included in the term "supplies." In addition, s. Tax 11.11 (2) (c), which would be repealed by Clearinghouse Rule 97-128, provides that "the sale of electricity for the operation of an industrial waste treatment facility is not a supply and, therefore, is not exempt." The department should explain the reasons for this change of position and the statutory authority for the proposed change.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. Tax 11.11 (3) (b), the correct reference is to ch. 287, Stats., rather than ch. 159, Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

In the title to s. Tax 11.11 (3) (d), "Groundwater" should replace "Ground water."



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

July 26, 1999

Honorable Fred Risser
President, State Senate
Rm 220 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Scott Jensen
Speaker State Assembly
Rm 211 W State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 97-128

Dear Senator Risser and Representative Jensen:

Pursuant to s. 227.19(2), Stats., this is to notify you that the proposed rule order relating to schools and related organizations, and to industrial and governmental waste treatment facilities, is in final draft form. The proposed rule order was published in the **Wisconsin Administrative Register** in Mid-June 1999. A public hearing was not required under the exception provided in s. 227.16(2)(e), Stats.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows:

Summary of Proposed Rule Order

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

Statutes interpreted: s. 77.54(4) and (26), Stats.

SECTION 1. Tax 11.03(title) is amended, to reflect that the section pertains to schools and school-related organizations other than elementary and secondary.

SECTION 2. Tax 11.03(1)(a)2. and 3. are renumbered, to list the definitions in alphabetical order, per Legislative Council Rules Clearinghouse standards.

SECTION 3. Tax 11.03(1)(b) is amended, to reflect the renumbering of Tax 11.03(1)(a)2. as described in SECTION 2.

Tax 11.03(3)(c) is amended, to remove the terms "vocational and adult education schools" and replace them with "technical college districts," to reflect current terminology.

Tax 11.03(4)(a) is amended, to:

- Remove the term "vocational schools" and replace it with "technical colleges," to reflect current terminology.
- Reflect the requirement that the schools must be located in Wisconsin to qualify for the sales and use tax exemption.
- Permit the exemption from sales and use tax to be claimed by schools by providing either an exemption certificate or a purchase order from the school.

Tax 11.03(4)(c) is amended, to clarify that related organizations of public and private schools which are not subject to the control and supervision of school officials may still be exempt from Wisconsin sales and use tax if they have their own certificate of exempt status.

SECTION 4. Tax 11.03(4)(d) is created, to clarify that related organizations of public and private schools which are subject to the control and supervision of school officials may claim exemption from Wisconsin sales and use tax by providing an exemption certificate or purchase order from the school.

The second note at the end of Tax 11.03 is repealed, because it is obsolete.

SECTIONS 5 AND 6. Tax 11.11(2)(b) is amended and Tax 11.11(2)(c) is repealed, to reflect the department's position that utilities consumed in operating waste treatment facilities qualify as supplies and are exempt from Wisconsin sales and use tax.

The term "supply" is not defined in Ch. 77, Stats. Therefore, when determining what items fall within the definition of "supplies," the common definition of the term as found in a standard dictionary is to be used.

"Supply" is defined in *Webster's Ninth New Collegiate Dictionary* (1991 Edition) to mean "...the quantity or amount (as of a commodity) needed or available...PROVISIONS, STORES...the quantities of goods or services offered for sale at a particular time or at one price...something that maintains or constitutes a supply."

"Provision" is defined in *Webster's Ninth New Collegiate Dictionary* (1991 Edition) to mean "...a measure taken beforehand to deal with a need or contingency...a stock of needed materials or supplies..."

Upon examining the dictionary definition of "supply" and the recent decision in *Cherney Microbiological Services, Ltd. v. Wisconsin Department of Revenue* (April 23, 1996), the department has determined that electricity is a supply that is exempt pursuant to s. 77.54(26), Stats.

The term "utilities" clearly fits within the definition of the word "supply," which includes "...the quantity or amount (as of a commodity) needed or available..." Utilities are clearly an item needed to operate a waste treatment facility.

SECTION 7. Tax 11.11(3)(intro.) is created, to provide a general explanation of the exemption provided in s. 77.54(26), Stats., for waste treatment facilities.

SECTION 8. Tax 11.11(3)(a), (b) and (c) are renumbered Tax 11.11(3)(a)1., 2. and 3. respectively, since they all apply to the title of par.(a) as created in SECTION 9.

Tax 11.11(3)(d) is renumbered Tax 11.11(4) and amended, to:

- Add a title identifying to what the subsection applies.
- Provide that the exemption for the repair, service, alteration, cleaning, painting and maintaining applies to both municipal and certain industrial waste treatment facilities.
- Provide that utilities purchased for municipal and certain industrial waste treatment facilities are exempt from Wisconsin sales and use tax, to reflect the department's position as explained in the analysis for SECTIONS 5 AND 6.

Tax 11.11(4) is renumbered Tax 11.11(5) and Tax 11.11(5)(c) as renumbered is amended, to reflect correct punctuation per Legislative Council Rules Clearinghouse Standards.

The note at the end of Tax 11.11(5)(a) as renumbered is revised, to provide the proper zip code for the mailing address of the Department of Revenue.

SECTION 9. Tax 11.11(3)(a)(title) is created, to identify the type of waste treatment facility to which this paragraph applies.

Tax 11.11(3)(b), (c) and (d) are created, to provide explanations of other types of waste treatment facilities which qualify for the exemption provided in s. 77.54(26), Stats.

The first note at the end of Tax 11.11 is moved to follow the third note, to conform with Legislative Council Rules Clearinghouse standards.

The second note at the end of Tax 11.11 is revised, to reflect proper mailing addresses.

Sincerely,



Cate Zeuske
Secretary of Revenue

CZ:MPW:cil
e:rules1103 Committees – President Speaker

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 97-128
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to:

- Reflect the scope of Tax 11.03 by removing the words "elementary and secondary" from the title.
- Reflect a department policy change relating to purchases by schools located outside of Wisconsin.
- Clarify that certificates of exempt status are not required of related organizations of schools, which are subject to the control and supervision of school officials.
- Reflect a department policy relating to purchases of utilities for use in operating an industrial waste treatment facility.
- Provide additional department policy information relating to the sales and use tax treatment of additional types of waste treatment facilities.
- Update style and format per Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was not required, pursuant to s. 227.17(2)(e), Stats.

Legislative Council Staff Recommendations

All Legislative Council Staff recommendations have been incorporated into this proposed rule.

Regulatory Flexibility Analysis

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

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

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.11(2)(c); renumber Tax 11.03(1)(a)2. and 3. and Tax 11.11(3)(a), (b) and (c); renumber and amend Tax 11.11(3)(d) and (4); amend Tax 11.03(title), (1)(b), (3)(c) and (4)(a) and (c) and Tax 11.11(2)(b); and create Tax 11.03(4)(d) and Tax 11.11(3)(intro.), (a)(title), (b), (c) and (d), relating to schools and related organizations, and industrial and governmental waste treatment facilities.

Analysis by the Department of Revenue

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

Statutes interpreted: s. 77.54(4) and (26), Stats.

SECTION 1. Tax 11.03(title) is amended, to reflect that the section pertains to schools and school-related organizations other than elementary and secondary.

SECTION 2. Tax 11.03(1)(a)2. and 3. are renumbered, to list the definitions in alphabetical order, per Legislative Council Rules Clearinghouse standards.

SECTION 3. Tax 11.03(1)(b) is amended, to reflect the renumbering of Tax 11.03(1)(a)2. as described in SECTION 2.

Tax 11.03(3)(c) is amended, to remove the terms "vocational and adult education schools" and replace them with "technical college districts," to reflect current terminology.

Tax 11.03(4)(a) is amended, to:

- Remove the term "vocational schools" and replace it with "technical colleges," to reflect current terminology.
- Reflect the requirement that the schools must be located in Wisconsin to qualify for the sales and use tax exemption.
- Permit the exemption from sales and use tax to be claimed by schools by providing either an exemption certificate or a purchase order from the school.

Tax 11.03(4)(c) is amended, to clarify that related organizations of public and private schools which are not subject to the control and supervision of school officials may still be exempt from Wisconsin sales and use tax if they have their own certificate of exempt status.

SECTION 4. Tax 11.03(4)(d) is created, to clarify that related organizations of public and private schools which are subject to the control and supervision of school officials may claim exemption from Wisconsin sales and use tax by providing an exemption certificate or purchase order from the school.

The second note at the end of Tax 11.03 is repealed, because it is obsolete.

SECTIONS 5 AND 6. Tax 11.11(2)(b) is amended and Tax 11.11(2)(c) is repealed, to reflect the department's position that utilities consumed in operating waste treatment facilities qualify as supplies and are exempt from Wisconsin sales and use tax.

The term "supply" is not defined in Ch. 77, Stats. Therefore, when determining what items fall within the definition of "supplies," the common definition of the term as found in a standard dictionary is to be used.

"Supply" is defined in *Webster's Ninth New Collegiate Dictionary* (1991 Edition) to mean "...the quantity or amount (as of a commodity) needed or available...PROVISIONS, STORES...the quantities of goods or services offered for sale at a particular time or at one price...something that maintains or constitutes a supply."

"Provision" is defined in *Webster's Ninth New Collegiate Dictionary* (1991 Edition) to mean "...a measure taken beforehand to deal with a need or contingency...a stock of needed materials or supplies..."

Upon examining the dictionary definition of "supply" and the recent decision in *Cherney Microbiological Services, Ltd. v. Wisconsin Department of Revenue* (April 23, 1996), the department has determined that electricity is a supply that is exempt pursuant to s. 77.54(26), Stats.

The term "utilities" clearly fits within the definition of the word "supply," which includes "...the quantity or amount (as of a commodity) needed or available..." Utilities are clearly an item needed to operate a waste treatment facility.

SECTION 7. Tax 11.11(3)(intro.) is created, to provide a general explanation of the exemption provided in s. 77.54(26), Stats., for waste treatment facilities.

SECTION 8. Tax 11.11(3)(a), (b) and (c) are renumbered Tax 11.11(3)(a)1., 2. and 3. respectively, since they all apply to the title of par.(a) as created in SECTION 9.

Tax 11.11(3)(d) is renumbered Tax 11.11(4) and amended, to:

- Add a title identifying to what the subsection applies.
- Provide that the exemption for the repair, service, alteration, cleaning, painting and maintaining applies to both municipal and certain industrial waste treatment facilities.
- Provide that utilities purchased for municipal and certain industrial waste treatment facilities are exempt from Wisconsin sales and use tax, to reflect the department's position as explained in the analysis for SECTIONS 5 AND 6.

Tax 11.11(4) is renumbered Tax 11.11(5) and Tax 11.11(5)(c) as renumbered is amended, to reflect correct punctuation per Legislative Council Rules Clearinghouse Standards.

The note at the end of Tax 11.11(5)(a) as renumbered is revised, to provide the proper zip code for the mailing address of the Department of Revenue.

SECTION 9. Tax 11.11(3)(a)(title) is created, to identify the type of waste treatment facility to which this paragraph applies.

Tax 11.11(3)(b), (c) and (d) are created, to provide explanations of other types of waste treatment facilities which qualify for the exemption provided in s. 77.54(26), Stats.

The first note at the end of Tax 11.11 is moved to follow the third note, to conform with Legislative Council Rules Clearinghouse standards.

The second note at the end of Tax 11.11 is revised, to reflect proper mailing addresses.

SECTION 1. Tax 11.03(title) is amended to read:

Tax 11.03(title) ~~Elementary and secondary schools~~ Schools and related organizations.

SECTION 2. Tax 11.03(1)(a)2. and 3. are renumbered Tax 11.03(1)(a.)3. and 2.

SECTION 3. Tax 11.03(1)(b), (3)(c) and (4)(a) and (c) are amended to read:

Tax 11.03(1)(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par.(a) 1. and 2. 3. and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year. Elementary and secondary schools also include school districts for purposes of exemption under s. 77.54(4), Stats.

(3)(c) Sales of tangible personal property or taxable services by ~~vocational, technical and adult education schools~~ college districts.

(4)(a) ~~All public~~ Public schools, ~~vocational schools~~ technical colleges, state colleges and universities and public school districts, located in Wisconsin. ~~This exemption may be claimed without use of an~~ An exemption certificate. ~~A or a~~ purchase order shall be acceptable evidence of a sale's exempt status.

(c) Related organizations of private or public schools having which have certificates of exempt status, such as parent-teacher associations and student organizations which are not subject to the control and supervision of school officials.

SECTION 4. Tax 11.03(4)(d) is created to read:

Tax 11.03(4)(d) Related organizations of private or public schools, such as parent-teacher associations and student organizations which are subject to the control and supervision of school officials. An exemption certificate completed by the school or a school purchase order shall be acceptable evidence of a sale's exempt status.

Note to Revisor: Remove the second note at the end of Tax 11.03.

SECTION 5. Tax 11.11(2)(b) is amended to read:

Tax 11.11(2)(b) When any plant or equipment has been approved as exempt from the property tax on January 1, the repair, service, alteration, cleaning, painting and maintenance of the exempt property and the repair parts and replacements related to that property are also exempt through the following December 31. The sales and use tax exemption applies to chemicals and supplies and utilities used or consumed in operating a waste treatment facility, ~~except as provided in par. (c).~~

SECTION 6. Tax 11.11(2)(c) is repealed.

SECTION 7. Tax 11.11(3)(intro.) is created to read:

Tax 11.11(3)(intro.) Tangible personal property which becomes a component or ingredient part of the following municipal facilities that treat waste qualifies for exemption from Wisconsin sales and use tax under s. 77.54(26), Stats.:

SECTION 8. Tax 11.11(3)(a), (b), (c) and (d) and (4) are renumbered Tax 11.11(3)(a)1., 2. and 3., (4) and (5), and as renumbered, Tax 11.11(4) and (5)(c) are amended to read:

Tax 11.11(4)(title) REPAIR, SERVICE AND OPERATION. The repair, service, alteration, cleaning, painting and maintenance of an industrial waste treatment facility described in sub.(2) and a municipal central waste treatment facility described in sub.(3), the repair parts and replacements therefor, for those types of facilities and chemicals and supplies and utilities used or consumed in operating a ~~waste treatment facility~~ those types of facilities are exempt from the sales and use tax.

(5)(c) *Determining exemptions.* Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department for a property tax exemption under s. 70.11(21), Stats. If there has been no "approval," the contractor or subcontractor may be liable for the sales or use tax on its purchases. Approvals are not required for municipal waste treatment facilities and, therefore, contractors may

purchase without tax construction materials which become a component part of the exempt facility.

Note to Revisor: Change the note following Tax 11.11(5)(a) to read as follows:

Note: Form S-207 may be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

SECTION 9. Tax 11.11(3)(a)(title), (b), (c) and (d) are created to read:

Tax 11.11(3)(a)(title) *Wastewater treatment facility.*

(b) *Material recovery facility.* 1. A facility constructed by a municipality to meet mandates of ch. 287, Stats., regarding the reuse, recycling and recovery of waste material to reduce the need for waste disposal is exempt if the activities include all of the following:

a. Sorting recyclable materials delivered from municipalities.

b. Processing recyclable materials which may include removing contaminants, baling paper, shredding paper, pelletizing plastics and crushing glass.

c. Storing processed recyclable materials for sale to others.

2. The exemption does not apply if the only activities performed are sorting and storing and no processing of the materials takes place.

(c) *Sanitary landfill.* A sanitary landfill, including the treatment equipment, such as the collection and burner system, laboratory equipment, maintenance buildings, garages, office buildings, fences and gates, qualifies for exemption.

(d) *Groundwater facilities.* 1. A municipal facility constructed to treat hazardous or contaminated groundwater, including oil and water separators, air strippers, aerators, blowers, filters, carbon units, controls, thermal oxidizers and pumps, qualifies for exemption.

2. The collection system used to bring the hazardous or contaminated water to the facility and the distribution system used to carry the treated water away from the facility are not exempt.

Note to Revisor: Move the first note at the end of Tax 11.11, to follow the third note.

Note to Revisor: Replace the second note at the end of Tax 11.11 with the following:

Note: Contractors and others may determine whether an industrial waste treatment

facility has been approved by the department as follows:

a. Public utility facilities, including railroads, airlines and pipelines: Write or call Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, P.O. Box 8933, Madison, WI 53708-8933; telephone (608) 266-8162.

b. Other commercial and industrial facilities: Write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, P.O. Box 8933, Madison, WI 53708-8933; telephone (608) 266-1147.

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.

Initial Regulatory Flexibility Analysis

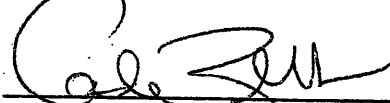
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: _____

5-27-99

By: _____

DEPARTMENT OF REVENUE



Cate Zeuske
Secretary of Revenue

e:rules\1103 Proposed Order

LRB or Bill No./Adm. Rule No.

TAX 11.03 and 11.11

Amendment No. If Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

Subject

Sales and Use Tax Treatment of Schools and Waste Treatment Facilities

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
 Decrease Existing Appropriation
 Create New Appropriation

Increase Existing Revenues
 Decrease Existing Revenues

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 Wisconsin Administrative Code with respect to related organizations of public and private schools, and waste treatment facilities. The changes to Tax 11.03 clarify the sales tax exemption as it pertains to related organizations of public and private schools. The changes to Tax 11.11 reflect the Department's current position based on a legal opinion that utilities used in operating a waste treatment facility are "supplies" and thus exempt from the sales and use tax. Because these changes clarify and reflect the Department's current position, they do not have a fiscal effect.

Long-Range Fiscal Implications

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

Wisconsin Department Of Revenue

John Stott, (608) 266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

Yeang-Eng Braun

Date

5/6/99