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CLEARINGHOUSE RULE 94-208

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.]

2. Form, Style and Placement in Administrative Code

a. In s. Tax 11.13 (1) (a), “may” should be substituted for “shall be allowed to” because use of a direct pay permit is a permissive privilege. [See s. 1.01 (2), Manual.] The word “may” should replace “shall” in ss. Tax 11.13 (3) (b) and 11.14 (12).

b. In s. Tax 11.13 (5) (c), “pars. (a) and (b)” should replace “sub. (5) (a) and (b).”

c. Section Tax 11.13 (6) (intro.) is followed by two paragraphs mistakenly numbered as subs. (1) and (2). These paragraphs should be renumbered as pars. (a) and (b). [See s. 1.03, Manual.]

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

a. Clearinghouse Rule 94-208 is not drafted in a manner that clearly states what it intended. For example, s. Tax 11.13 (1) (a) states that the holder of a direct pay permit may purchase tangible personal property and taxable services “without Wisconsin sales or use tax.” First, the statement would be more clear if the word “paying” were placed after the word “without.” Second, it is not an accurate statement that the holder of a direct pay permit may purchase taxable property and services without paying the tax. Rather, the holder of a direct pay permit does not pay the tax to the retailer. These problems occur throughout Clearinghouse Rule 94-208. It is suggested that s. Tax 11.13 be redrafted to eliminate these problems.

b. Section Tax 11.13 (1) (b) states that use tax shall be reported on the taxpayer’s Wisconsin sales tax return for the period in which the property or service is first stored, used or

consumed in Wisconsin “in a taxable manner.” This phrase is unnecessarily vague. It is suggested that the department either eliminate this phrase or be more specific concerning what it means.

c. In s. Tax 11.13 (2), it is suggested that “applicants” be substituted for “persons.”

d. In s. Tax 11.13 (2) (b), it is grammatically correct to state that a person applies “to” the department rather than “with” the department.

e. In s. Tax 11.13 (2) (c), it would be more accurate to state that the permit is effective for purchases made beginning on the first day of the applicant’s taxable year. To state that a direct pay permit may only be “issued effective” for the beginning of the applicant’s taxable year is confusing because it combines the date when the department issues the permit with the effective date that purchases may be made using it.

f. In s. Tax 11.13 (4) (a) 2. b., it is suggested that the phrase “A statement” be substituted for the phrase “An indication.”

g. It is suggested that s. Tax 11.13 (4) (c) be redrafted. The first and third sentences are redundant. The second sentence is confusing because it is unclear how a direct pay permit or a written statement containing information about the purchaser could constitute “proof” that all subsequent purchases by the purchaser are made without paying sales tax to the retailer.

h. Section Tax 11.13 (5) (a) (intro.) states that the services enumerated in subds. 1 to 6 are subject to tax regardless of whether the purchaser holds a direct pay permit. It would be more accurate to state that the retailer is required to collect the tax regardless of whether the purchaser holds a direct pay permit. This comment is also applicable to s. Tax 11.13 (5) (b).

i. Section Tax 11.13 (6) needs to be redrafted. The subsection states that a retailer is liable for sales or use tax if the retailer has been “notified” by the purchaser or by the department that the direct pay permit has been canceled. However, a direct pay permit may not be canceled until the last day of the person’s taxable year. Therefore, it is not accurate to state that the retailer is liable for sales or use taxes after he or she has been notified that a direct pay permit has been canceled because the retailer is required by s. Tax 11.13 (1) not to collect sales tax on purchases that occur before the permit is canceled.