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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 In addition, s. Tax 11.11 (2) (c), which would be repealed by Clearinghouse Rule 97-128, provides that “the sale of electricity for the operation of an industrial waste treatment facility is not a supply and,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.”