

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

The Wisconsin Department of Revenue hereby adopts an order to: **repeal** Tax 11.11(2)(b) and Tax 12.40(2); **renumber and amend** Tax 6.40(3)(a)1. and 3., Tax 11.11(2)(a) and (4) and Tax 12.40(3)(a)1. and 3.; **amend** Tax 6.40(title), (2)(b) and (3)(a)2. and 4., (b) and (c), Tax 11.11(title), (2)(title) and (5)(a) and Tax 12.40(title) and (3)(a)2. and 4., (b) and (c); **repeal and recreate** Tax 11.11(5)(c); and **create** Tax 6.40(3)(d), Tax 11.11(2m) and (4)(b) and Tax 12.40(3)(d); **relating to** waste treatment facilities.

Analysis by the Department of Revenue

Statutory authority: ss. 77.61(9) and 227.11(2), Stats.

Statutes interpreted: ss. 70.11(21), 76.025(1) and 77.54(26), Stats.

Tax 6.40 guides administration of the property tax exemption for waste treatment facilities owned by public utilities. Tax 11.11 guides administration of the sales and use tax exemption for waste treatment facilities. Tax 12.40 guides administration of the property tax exemption for industrial waste treatment facilities taxed under ch. 70, Stats.

Prior to 2001 Wis. Act 16, the property tax exemption for industrial waste treatment facilities under s. 70.11(21), Stats., required an approval process whereby application was made to the Department of Revenue. Under 2001 Wis. Act 16, owners of industrial waste treatment property that is taxed under ch. 70, Stats., are no longer required to apply to the Department of Revenue for the property tax exemption; the application process will continue to be required for public utility property taxed under ch. 76, Stats.

Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from sales and use taxation if the waste treatment property is exempt from the property tax. While this provision is unchanged by 2001 Wis. Act 16, the sales and use tax exemption is no longer tied to a Department of Revenue approval process for property taxed under ch. 70, Stats.

The order clarifies the different requirements for obtaining a sales and use tax exemption for waste treatment facilities in Tax 11.11 and repeals the approval procedures required for the property tax exemption in Tax 12.40. The order also: updates format and style in Tax 6.40, 11.11 and 12.40, per Legislative Council Rules Clearinghouse ("Clearinghouse") standards; updates a department address in Tax 6.40 and Tax 12.40 and moves it from the text of the rule to a note in Tax 6.40, per Clearinghouse standards; and alphabetizes definitions and moves a "non-exempt" provision from a definition to a separate paragraph in Tax 6.40 and 12.40, per Clearinghouse standards.

SECTION 1. Tax 6.40 (title) and (2)(b) are amended to read:

Tax 6.40 (title) **Waste treatment facilities (- industrial/utility).**

(2)(b) The completed form "Application for Exemption of Waste Treatment Facility-Utility" should be sent to the Bureau of Utility and Special Taxes, ~~Division of State/Local Finance,~~ Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708.

Note to Revisor: Insert the following note at the end of Tax 6.40(2)(b):

Note: The address for mailing the application form is Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, Division of State and Local Finance, PO Box 8971, Madison WI 53708-8971.

SECTION 2. Tax 6.40(3)(a)1. and 3. are renumbered Tax 6.40(3)(a)3. and 1. and as renumbered are amended to read:

Tax 6.40(3)(a) 3. "Waste;" means that which is left over as superfluous, discarded or fugitive material. In addition, "~~industrial waste~~ wastes" is defined by reference to s. 281.01(5), Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "*Air contaminant*" is defined by reference to s. 285.01(1), Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

1. " Facility;" means tangible personal property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

SECTION 3. Tax 6.40(3)(a)2. and 4., (b) and (c) are amended to read:

Tax 6.40(3)(a)2. "Treatment;" means removing, altering or storing waste.

4. "Waste treatment facility;" means tangible personal property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing

leftover, superfluous, discarded or fugitive material. ~~Monitoring equipment which is not a component or integral part of a waste treatment facility is not exempt.~~

(b) The exemption for industrial waste treatment facilities does not extend to " ¹ unnecessary siltation ¹ resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" as provided in s. 281.01(7), Stats.

(c) The exemption ~~also~~ for industrial waste treatment facilities does not apply to conversion of an industrial furnace from one type of fuel to another type of fuel ~~. The exemption does not apply~~ , or to the increased height of a smoke stack to diffuse emissions over a wide area or increments to property held for the production of income but which may be indirectly related to pollution abatement. However, the installation of a scrubber or electrostatic precipitator in a smoke stack could qualify for exemption.

SECTION 4. Tax 6.40(3)(d) is created to read:

Tax 6.40(3)(d) The exemption for industrial waste treatment facilities does not apply to monitoring equipment that is not a component or integral part of a waste treatment facility.

Note to Revisor: Replace the note at the end of Tax 6.40 with the following:

Note: Section Tax 6.40 interprets s. 76.025(1), Stats.

SECTION 5. Tax 11.11(title) and (2)(title) are amended to read:

Tax 11.11(title) ~~Industrial or~~ **Utility, industrial and governmental waste treatment facilities.**

(2)(title) ~~INDUSTRIAL~~ **UTILITY** WASTE TREATMENT EXEMPTION.

SECTION 6. Tax 11.11(2)(a) is renumbered Tax 11.11(2) and amended to read:

Tax. 11.11(2) If ~~an industrial or a~~ utility waste treatment facility that is taxed under ch. 76, Stats., qualifies for property tax exemption under s. ~~70.11(21)(a)~~ 76.025(1), Stats., as approved by the department, it qualifies for the sales and use tax exemption under s. 77.54(26), Stats.

Note to Revisor: Insert the following note at the end of Tax 11.11(2):

Note: Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines and pipelines, approved by the department, write to Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, PO Box 8971, Madison WI 53708-8971; telephone (608) 266-8162; send an e-mail to utility@dor.state.wi.us; or access the department's internet web site at www.dor.state.wi.us/contact/slfbust.

SECTION 7. Tax 11.11(2)(b) is repealed.

SECTION 8. Tax 11.11(2m) is created to read:

Tax 11.11(2m) INDUSTRIAL WASTE TREATMENT EXEMPTION. (a) An industrial waste treatment facility is any property taxed under ch. 70, Stats., that is built, constructed or installed as a unit used for the treatment of liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource.

(b) Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from the sales and use tax under s. 77.54(26), Stats., if the facility qualifies for property tax exemption under s. 70.11(21)(a), Stats.

Note: Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities. For more information regarding the property tax exemption for industrial waste treatment facilities of manufacturers write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, PO Box 8971, Madison WI 53708-8971; telephone (608) 266-1147. The web site is www.dor.state.wi.us/contact/slfbmta. To ascertain whether a non-manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

Note to Revisor: Insert the following note at the end of Tax 11.11(3):

Note: For more information regarding the exemption for municipal treatment facilities, write or call Wisconsin Department of Revenue, Bureau of Customer Service, Mail Stop 5-77,

PO Box 8902, Madison WI 53708-8902, telephone (608) 266-2772. The web site is www.dor.state.wi.us/contact/pcs.html#cust.

SECTION 9. Tax 11.11(4) is renumbered Tax 11.11(4)(a) and amended to read:

Tax 11.11(4)(a) The repair, service, alteration, cleaning, painting and maintenance of a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. ~~(2)~~ (2m) and a municipal waste treatment facility described in sub. (3) as well as the repair parts and replacement for those types of facilities and chemicals, supplies and utilities used or consumed in operating those types of facilities are exempt from the sales and use tax.

SECTION 10. Tax 11.11(4)(b) is created to read:

Tax 11.11(4)(b) Chemicals and supplies, including fuel and electricity, used or consumed in operating a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m) and a municipal waste treatment facility described in sub. (3) are exempt from the sales and use tax.

SECTION 11. Tax 11.11(5)(a) is amended to read:

Tax 11.11(5)(a) *Exempt purchases*. The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates the property into an approved ~~industrial~~ utility waste treatment facility or who incorporates the property into an industrial waste treatment facility or a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sales. Certification of exempt use shall be made on a Wisconsin sales and use tax exemption certificate, form S-211.

SECTION 12. Tax 11.11(5)(c) is repealed and recreated to read:

Tax 11.11(5)(c) *Determining exemptions*. 1. 'Utility property taxed under ch. 76, Stats.' A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a utility waste treatment facility that has not been approved by the department for a property tax exemption under s. 76.025(1), Stats.

Note: Contractors may direct questions concerning the property to the department as provided in sub. (2).

2. 'Industrial property taxed under ch.70, Stats.' Approvals are not required for industrial waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a facility that is determined to not qualify for a waste treatment facility property tax exemption under s. 70.11(21), Stats.

Note: Contractors may direct questions concerning the taxability of the waste treatment facility to the department as provided in sub. (2m).

3. 'Municipal waste treatment facilities.' Approvals are not required for municipal waste treatment facilities. A contractor or subcontractor may be liable for sales and use tax on a purchase of tangible personal property that becomes a component part of a facility that is determined not to be a municipal waste treatment facility as provided in sub. (3).

Note: Contractors may direct questions concerning municipal waste treatment facilities to the department as provided in sub. (3).

Note to Revisor: Remove the first two notes at the end of Tax 11.11, and replace the last note with the following:

Note: The interpretations in s. Tax 11.11 are effective July 31, 1975 when ss. 70.11(21) and 77.54(26), Stats., were revised, except: (a) The exemptions for chemicals and supplies used or consumed in operating a waste treatment facility became effective September 1, 1979, pursuant to Chapter 39, Laws of 1979; and (b) The approval process for property and sales tax exemptions for industrial waste treatment facilities, except utilities, were eliminated effective January 1, 2002, pursuant to 2001 Wis. Act 16.

SECTION 13. Tax 12.40(title) is amended to read:

Tax 12.40(title) **Waste treatment facilities (- industrial).**

SECTION 14. Tax 12.40(2) is repealed.

SECTION 15. Tax 12.40(3)(a)1. and 3. are renumbered Tax 12.40(3)(a)3. and 1. and as renumbered are amended to read:

Tax 12.40(3)(a) 3. "Waste;" means that which is left over as superfluous, discarded or fugitive material. In addition, "*industrial waste wastes*" is defined by reference to s. 281.01(5), Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. "*Air contaminant*" is defined by reference to s. 285.01(1), Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

1. " Facility;" means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

SECTION 16. Tax 12.40(3)(a)2. and 4., (b) and (c) are amended to read:

Tax 12.40(3)(a)2. "Treatment;" means removing, altering or storing waste.

4. "Waste treatment facility" means tangible personal property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material. ~~Monitoring equipment which is not a component or integral part of a waste treatment facility is not exempt.~~

(b) The exemption for industrial waste treatment facilities does not extend to " ! unnecessary siltation ! resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries

and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" (as provided in s. 281.01(7), Stats.)-

(c) The exemption ~~also~~ for industrial waste treatment facilities does not apply to conversion of an industrial furnace from one type of fuel to another type of fuel ~~. The exemption does not apply~~ , or to the increased height of a smoke stack to diffuse emissions over a wide area or increments to property held for the production of income but which may be indirectly related to pollution abatement. However, the installation of a scrubber or electrostatic precipitator in a smoke stack could qualify for exemption.

SECTION 17. Tax 12.40(3)(d) is created to read:

Tax 12.40(3)(d) The exemption for industrial waste treatment facilities does not apply to monitoring equipment that is not a component or integral part of a waste treatment facility.

Note to Revisor: Replace the note at the end of Tax 12.40 with the following:

Note: Section Tax 12.40 interprets s. 70.11(21), Stats.

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

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

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Richard G. Chandler
Secretary of Revenue

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