Chapter 10
Manufacturing and Utility Assessment

The assessment of manufacturing property for the local property tax is the responsibility of the Wisconsin Department of Revenue (DOR). Based on a law change effective for January 1, 1998 assessments, the taxation of telephone companies changed from a license fee to an ad valorem tax. Taxes collected from telephone companies continue to go to the state's general fund.

The Manufacturing & Utility Bureau (Bureau) assesses telephone company property in the same manner as manufacturing property under sec. 70.995, Wis. Stats. However, telephone company equipment is not exempt like manufacturer's machinery and equipment. Also, tax rates for telephone company equipment are net property tax rates (after credits) from the prior year in the taxing jurisdictions where the property is located.

This chapter includes an overview of the assessment process, calendars of events, statutes and standards. The laws and standards apply to classifying businesses, activities, real estate and personal property as manufacturing and telephone company property, and to property valuation.

Manufacturing Assessment

Overview of the Assessment Process

The Department assesses all manufacturing property statewide and annually furnishes municipalities with assessment rolls for property taxation. The Department administers the exemption for manufacturing machinery and equipment and for waste treatment facilities located at manufacturers.

Annual Market Value Assessment

The basis for annual real estate assessments is an appraisal of each parcel once every five years. In the intervening years between appraisals, the Bureau adjusts for market changes. The basis for annual personal property assessment is a self-reporting form submitted by each business, and an audit of each account once every five years. The process includes the following steps:

1. Annually identifying new businesses to be added to the assessment roll and identifying properties that no longer qualify.

2. Producing real estate assessments from current or adjusted appraisals and from changes reported on real estate self-reporting forms. The kinds of changes are new construction, remodeling, etc.

3. Producing personal property assessments by reviewing the personal property self-reporting forms that are submitted.

4. Mailing each business the market value notices and instructions for an appeal.

5. Mailing penalty notices to companies which fail to timely file self-reporting forms.

Field Audit and Appraisal

The appraisal of real estate includes the following:

1. Interviewing the owner or agent, inspecting the property, and reviewing or completing a listing of the physical characteristics of the property.

2. Completing an appraisal of the property by considering and documenting the following:
    a. sales of the subject property;
    b. sales of reasonably comparable property;
    c. all data relevant to value collectively, which may include using a cost approach, a sale of similar property, an income approach, the actual costs and other data; and
    d. a reconciliation of all the data and the final value estimate.

The field audit of personal property includes interviewing the owner or agent, conducting a physical inspection of the property, and reviewing applicable accounting records.

Manufacturing Assessment Appeal Process

Property owners and municipalities may appeal manufacturing property assessments. If there is a question about the assessment, the first step should be contacting the district office that made the assessment. In some cases, the question arises because of a mathematical error made either in completing or auditing the return or because of a misunderstanding of the manufacturing assessment process. These situations can be resolved without the need for formal appeal. If not satisfied, or if the question concerns the valuation or taxability of the property, then the owner or municipality can go through the appeal process.

Manufacturers and municipalities may appeal the market value indicated on the assessment notice, or the taxability of the property, within sixty days of issuance of the notice. Appellants should submit supporting data with the appeal. Supplemental information must be filed within 60 days from the date the objection is filed. Section 70.995(8)(d), Wis. Stats., states “If the person assessed files an objection and the municipality affected does not file an objection, the municipality affected may file an appeal to that objection within 15 days after the person’s objection is filed…" Appeals are filed with the State Board of Assessors and a $45.00 fee must be paid when the objection is filed. A separate objection form and fee is required for each parcel, personal property account and penalty notice. Board of Assessor action includes the following steps:

1. Assignment of the appeal to the district where the property is located.

2. Assignment of a Property Assessment Specialist (PAS) to the case.

3. PAS investigation of the objection and data submitted and preparation of a recommendation.

4. Supervisory review of the PAS recommendation and distribution to all board members.

5. Review of the PAS recommendation by all board members prior to board action.

6. Board action on the recommendation at a meeting or by conference call.

7. Mailing the determination to the appellant and any second party who may be either a municipality or a taxpayer depending on who appealed. Either party may appeal the determination to the Wisconsin Tax Appeals Commission within sixty days of receipt.

8. Attend hearings before the Wisconsin Tax Appeals Commission, preparation of exhibits and written appraisals, and testimony at hearings and depositions in defense of assessments.

Calendar of Events for Manufacturing Assessment

Date	**Activity**
January 1	Date of assessment of manufacturing property.
March 1	M-forms due, last day to request filing extension, and last day to request manufacturing classification.
March 1 - Mid June	Processing of M-forms. Determine annual assessments.
March - June	Full value assessment~~s~~ notices sent to owners and respective municipalities.
April - August	Objection to assessment to be filed with State Board of Assessors within 60 days of issuance of assessment notice.
May - April	Board of Assessor investigation of objections.
May - January	Appraisal and audit of manufacturing.

October - November	Manufacturing assessment roll equated to the local level of assessments and delivered to the municipal clerk.
On-going	Tax Appeals Commission Hearings.

Property Classification

Initial Classification

Cutoff Date for First Time Classification

The due date for filing manufacturing property report forms (M-forms) is March 1 of each year. In order for an establishment to be classified manufacturing for the first time for a specific assessment year, one of the following requirements must have been met:

- the department must have classified the establishment manufacturing by March 1 for the specific assessment year; or

- per sec. 70.995(5), Wis. Stats., the establishment must have contacted the department in writing requesting classification on or before March 1 and subsequently have been granted manufacturing classification for that year.

The above requirements do not apply to establishments previously classified manufacturing that simply have a change in ownership, a name change, or a change in location.

Business Classification

Specifically Classified Manufacturing by Law and the *SIC Manual*

Section 70.995(2), Wis. Stats. says, "In addition to the criteria set forth in sub. (1), property shall be deemed prima facie manufacturing property and eligible for assessment under this section if it is included in one of the following major group classifications set forth in the Standard Industrial Classification (SIC) Manual, 1987 Edition, published by the U.S. Office of Management and Budget. For purposes of this section any other property described in this subsection shall also be deemed manufacturing property and eligible for assessment under this section."

This section of the statutes lists all the major manufacturing groups in the SIC Manual, plus five activities listed as non-manufacturing in the SIC Manual but classified as manufacturing for property tax purposes. Those five activities are mining, photo finishing laboratories, scrap metal processing, wastepaper processing and hazardous waste facilities.

Section 70.995(2)(w), Wis. Stats., classifies as manufacturing, #7384 - Photo finishing laboratories. The SIC Manual describes these as "Establishments primarily engaged in developing film and in making photographic prints and enlargements for the trade or for the general public." This includes one-hour film processors, but does not include film pick-up or drop-off sites, commercial photography nor portrait photography studios.

Some photo finishing establishments are part of a retail store. They develop film (Manufacturing), serve as a film pick-up and drop-off site (Services) for film developed at an outside photo finishing laboratory, and sell photographic equipment and supplies (Retail Trade). They are classified manufacturing if, they meet all of the following criteria:

- The photo finishing laboratory is separate and distinct from the retail store and separate reports can be prepared on the sales or receipts, number of employees, their wages and salaries and other data.

- More than 50% of the revenue comes from on-site photo finishing versus off-site photo finishing and retail sales of photographic equipment and supplies.

- The photo finishing laboratory has at least one full-time employee totally dedicated to the photo finishing process. Retail sales and collecting film for outside processing does not count towards the one full-time employee requirement.

- Primary (more than 50%) employment is in developing film, versus retail selling and collecting and sending film to outside photo finishing laboratories.

Section 70.995(2)(y), Wis. Stats., classifies as manufacturing, "Processors of waste paper, fibers or plastics using large machines for recycling purposes." This includes establishments that sort, grade, compact or bale clean wastepaper, fibers or plastics, not mixed with other solid waste, for sale or use for recycling purposes. Establishments that collect waste paper, fibers or plastics or sort them from non-usable portions of solid wastes are not included. Therefore, the following are not classified as manufacturing:

- collecting and sorting waste paper, fibers or plastics from non-usable solid waste or compacting these materials by supermarkets or other places of business;

- collecting of waste paper, fibers and plastics at various collection points by processors and the transporting of the waste to the processing facility;

- handling, stockpiling or disposal of non-usable portions of solid waste at transfer stations or other places; nor

- storing processed material (a component of solid waste that has been collected, transported to a waste processing facility and prepared for sale to a broker, dealer or manufacturer) by a manufacturer who uses the processed materials as a raw material for producing a product that is known as "recycled material."

Specifically Classified as Nonmanufacturing by Law and the *SIC Manual*

Section 70.995(1)(d), Wis. Stats., states that "Except for the activities under sub. (2), activities not classified as manufacturing in the SIC Manual, 1987 edition, published by the U.S. Office of Management and Budget are not manufacturing for this section."

The SIC Manual classifies many operations or activities under Retail Trade, Wholesale Trade, Services and Construction even though they may perform manufacturing type processes. For example, wholesale establishments may also physically assemble, sort, grade goods in large lots and break bulk and redistribute in smaller lots. Retail, service and construction establishments may have some form of processing that is incidental or subordinate to the primary activity of the business.

Section 70.995(1)(b), Wis. Stats., says "Manufacturing production is usually carried on for the wholesale market, for interplant transfer, or to order for industrial users." The SIC Manual on page 67 makes the same statement and adds, "rather than for direct sale to the domestic consumer." The SIC Manual on page 68 regarding retail trade says, "Also included in Retail Trade are establishments primarily engaged in selling, to the general public, products produced on the same premises from which they are sold, such as bakeries, candy stores, ice cream parlors, and custom tailors." Therefore, establishments making products to order for domestic consumers or the general public are not manufacturing. Also, any production process involved in such retail activities as listed above cannot be treated as separate and distinct establishments for classification purposes, because the SIC manual includes the processes as part of the retail business. Other examples of these types of retail businesses include, but are not limited to:

- wine producers who sell the wine primarily on the premises or by mail order;
- beer producers who sell the beer primarily at or adjacent to the place where it is produced;
- slaughtering operations that sell meat primarily over the counter;
- ceramic shops that sell products primarily on the premises;
- cabinet shops primarily building custom cabinets for individual consumers;
- mattress makers making primarily custom mattresses for individual consumers or selling mattresses primarily at or adjacent to the place where they are produced;
- optical goods stores that also grind lenses.

Section 70.995(1)(a), Wis. Stats., says assembling component parts of a structure or other fixed improvement is not manufacturing. Some construction related establishments do off-site prefabrication (manufacturing) and on-site installation of the materials (construction). They are classified manufacturing if, primary (more than 50%) employment is in off-site prefabrication. The shop versus installation criteria also applies to the total employment of all closely related establishments owned by the same individual or the same group of individuals. The shop versus installation rule does not apply to cabinet shops that build custom cabinets to order for individual consumers, because the SIC Manual classifies those cabinet shops as retail trade (see Figure 10-1).

The basis for the shop versus installation rule comes from several references in the SIC manual, including:

- Construction Division, page 54, “The installation of prefabricated building equipment and materials by general and special trade contractors is classified in this division. Similar installation work performed as a service incidental to sale by employees or an establishment manufacturing or selling pre-fabricated equipment and materials is classified according to the primary activity in the manufacturing or trade divisions.”

- Construction Division, page 54, “Establishments primarily engaged in the distribution and construction or installation of equipment often present classification problems. Since the value added is not available for distinguishing the relative importance of sales versus installation for construction activities, payroll or employment may be used as measures yielding approximately the same results."

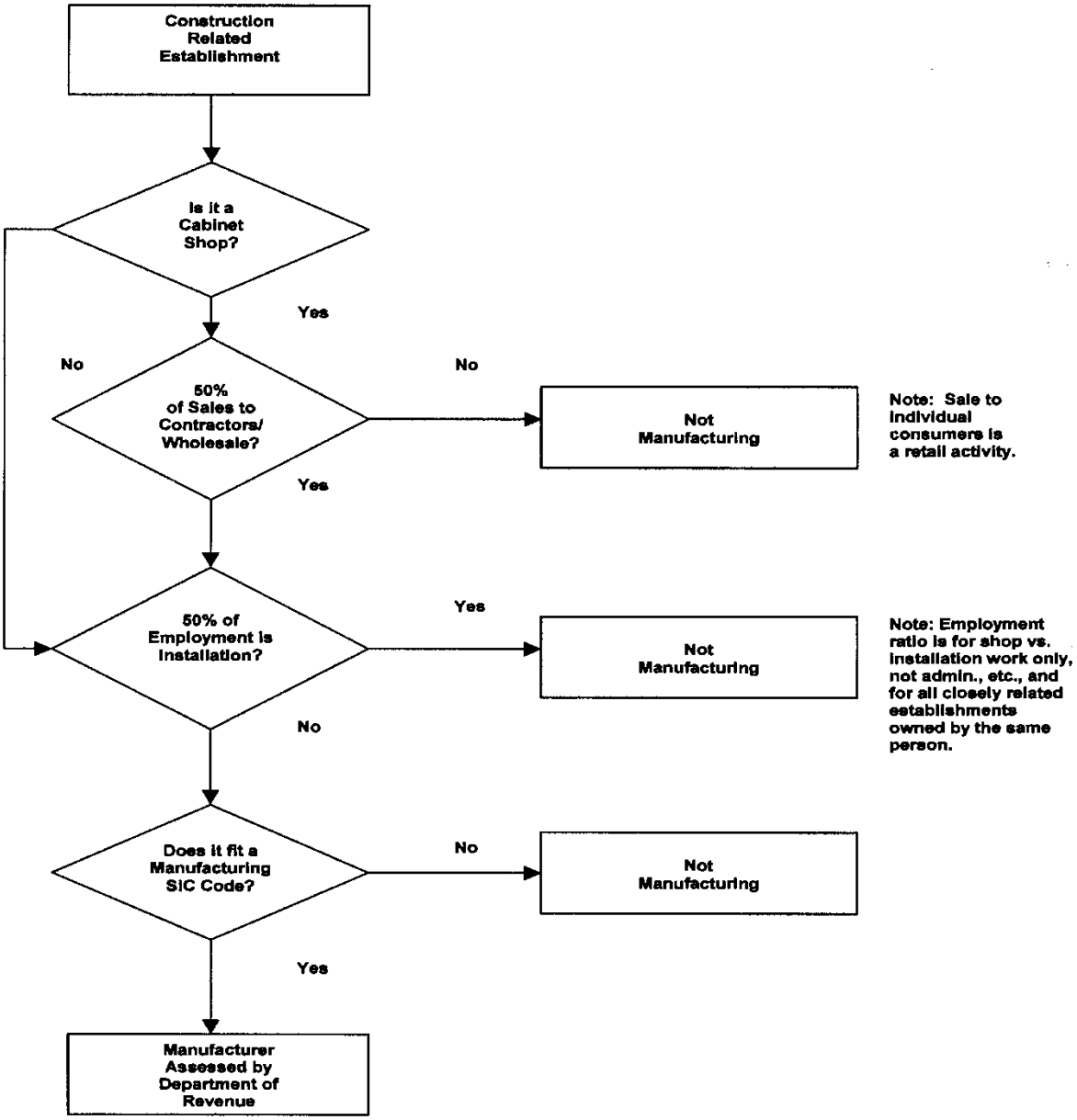
- Construction Division, page 61, “Special trade contractors for the most part perform their work at the site of construction, although they also may have shops where they perform work incidental to the site.”

- Construction Division, page 68, “Fabricating operations performed at the site of construction by contractors are not considered manufacturing, but the prefabrication of sheet metal, concrete, and terrazzo products and similar construction materials is included in the manufacturing division.”

- Manufacturing Division, page 107, “Woodworking in connection with construction, in the nature of reconditioning and repair, or performed to individual order, is classified in nonmanufacturing industries.”

- Manufacturing Division, page 109, Wood Kitchen Cabinets, “Establishments primarily engaged in manufacturing wood kitchen cabinets and bathroom vanities, generally for permanent installation. Establishments primarily engaged in manufacturing freestanding cabinets and vanities are classified in Major Group 25. Establishments primarily engaged in building custom cabinets for individuals are classified in Retail Trade, Industry 5712.”

Figure 10-1


Construction Related Establishment
Is it a Cabinet Shop?
Yes
No
50% of Sales to Contractors/ Wholesale?
No
Not Manufacturing
Note: Sale to individual consumers is a retail activity.
Yes
50% of Employment is Installation?
Yes
Not Manufacturing
Note: Employment ratio is for shop vs. installation work only, not admin., etc., and for all closely related establishments owned by the same person.
No
Does it fit a Manufacturing SIC Code?
No
Not Manufacturing
Yes
Manufacturer Assessed by Department of Revenue

Not Specifically mentioned by Law or the *SIC Manual*

Section 70.995, Wis. Stats., and SIC Manual may not cover every type of business in existence. For those not mentioned in either place, the criteria and general definitions included in secs. 70.995(1)(a) and (b), Wis. Stats., shall be considered, which include:

- Section 70.995(1)(a), Wis. Stats.,"...manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit."
- Section 70.995(1)(a), Wis. Stats., "Establishments engaged in assembling component parts of manufactured products are considered manufacturing establishments if the new product is neither a structure nor other fixed improvement."; and
- Section 70.995(1)(b), Wis. Stats., "Materials used by a manufacturing establishment may be purchased directly from producers, obtained through customary trade channels or secured without recourse to the market by transfer from one establishment to another under the same ownership. Manufacturing production is usually carried on for the wholesale market, for interplant transfer or to order for industrial users rather than for direct sale to a domestic consumer."

Three questions that should be asked to apply these criteria are (in order of priority):

1. Is the activity more similar to those specifically classified manufacturing by law and the SIC Manual, or more similar to those specifically classified nonmanufacturing by law and the SIC Manual?

2. Is the activity more closely aligned with the general description of producing, assembling, fabricating, making or milling by machinery and equipment of a new article with a different form, use and name from existing materials, or is it more aligned with the general activities involved with services as generally described in the SIC Manual, wholesale trade, retail trade, agriculture, or construction?

3. Does the activity produce products more for wholesalers, interplant transfer, to order for industrial users or more for direct sale to domestic consumers?

Activity Classifications

Activities in Support of the Manufacturing Operation

Section 70.995(1)(a), Wis. Stats., says in part, "Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities or offices is in support of the manufacturing property ..."

Section 70.995(3), Wis. Stats., says, "For purposes of subs. (1) and (2) 'manufacturing, assembling, processing, fabricating, making or milling' includes the entire productive process and includes such activities as the storage of raw materials, the movement thereof

to the first operation thereon, and the packaging, bottling, crating or similar preparation of products for shipment."

Some establishments are "in support of the manufacturing property," (called auxiliaries in the SIC Manual). Others are part of "the entire productive process" described in sec. 70.995(3), Wis. Stats., although not part of the exempt "production process" described in sec. 70.11(27), Wis. Stats. Such establishments include but are not limited to the following:

1. Central administrative activities performing management and general administrative functions such as general management; accounting; computing, tabulating, or data processing; purchasing; engineering and systems planning; advertising; public relations or lobbying; and legal, financial, or related managerial functions.

2. Warehouses and storage activities including potato cellars.

3. Research, development and testing activities.

4. Maintenance and repair activities for machinery and equipment.

Activities Not in Support of the Manufacturing Operation

Activities that do not qualify as being "in support of the manufacturing property" under sec. 70.995(1)(a), Wis. Stats., or as being part of "the entire productive process" under sec. 70.995(3), Wis. Stats., include but are not limited to:

1. Sales branches and sales offices of manufacturing companies.

2. Transportation activities including but not limited to those of the following:

   - newspaper collection and pickup stations for carriers;
   - balers and collection containers for collecting and transporting waste paper, fibers, or plastics to a waste processing facility;
   - milk receiving stations for transporting milk to dairies;
   - airplane hangars; and
   - motor vehicle garages and repair shops.

3. Recreation activities, such as gymnasiums, golf courses, and swimming pools, maintained for the benefit of employees.

4. Establishments primarily engaged in news collection, editorial work, or advertising sales related to publishing activities, but who don't publish or print.

Manufacturers may include activities not "in support of the manufacturing property" on the same self-reporting form for the manufacturing property, when they are in the same municipality. This provides efficiencies for the taxpayer, the municipal assessor and the Department. However, when the nonmanufacturing activity is in a different municipality, a

separate municipally assessed personal property account is mandatory. Real estate parcels for nonmanufacturing activities are assessed by the municipal assessor regardless of location.

Activities Done on Behalf of Primary Manufacturer

Establishments doing one part of the manufacturing process on behalf of the primary manufacturer are classified as manufacturing. Establishments manufacturing on the behalf of others include but are not limited to:

- metal cutting and finishing on a job basis for the primary manufacturer;
- balancing of manufactured parts such as pump impellers, blower wheels, motor rotors, fan blades and brake drums on a job basis for a primary manufacturer; and
- packaging on a job basis for a primary manufacturer.

Remanufacturing Activities vs. Repair Activities

Remanufacturing on a "factory basis" occurs where the activity resembles a production line or uses mass production techniques, while a repair activity does not. Usually, in remanufacturing, the customer receives a different rebuilt item from the one they brought in, while in repair, they receive the same item back. Two examples of remanufacturing where the customer receives a different item include barrel reconditioning and automotive starter rebuilding. Examples of remanufacturers where the customer receives the same item back, include:

- repair in conjunction with ship or boat building;
- rebuilding machinery and equipment on a factory basis;
- industrial machine shop manufacturing and repairing; and
- automotive engine rebuilding on a factory basis (must perform the service for a repair garage not the consumer and cannot remove or install the engines).

Personal Property Account and Real Estate Parcel Classification

Personal Property Account Classification

Multiple Activities Are Separate and Distinct

For purposes of business classification, the SIC manual defines an establishment as an economic unit, generally at a single physical location where business is conducted or where services or industrial operations are performed. It says where distinct and separate economic activities are performed at a single physical location, each activity should be treated as a separate establishment wherever all the following occur (also see Figure 10-2):

- no one SIC industry description includes such combined activities;
- employment in each such economic activity is significant; and
- separate reports can be prepared on the sales or receipts, number of employees, their wages and salaries and other establishment type data.

The Department defines the SIC Manual's criteria of "significant employment" as at least one full-time employee totally dedicated to the manufacturing activity.

The Department will assess the personal property of a separate and distinct manufacturing activity at the same location as a nonmanufacturing activity.

Examples include, but are not limited to the following:

- a separate and distinct waste paper, fiber or plastics processing activity (manufacturing) in a waste transfer station that also collects and transfers non-usable solid waste for disposal in a landfill or by incineration (nonmanufacturing);
- a separate and distinct flange fabricating activity (manufacturing) in a sheet metal contractor's shop (nonmanufacturing) (see Figure 10-3);
- a separate and distinct truss manufacturing activity (manufacturing) at a lumberyard (nonmanufacturing) (see Figure 10-4);
- a separate and distinct quarry operation, asphalt batching plant or crushing plant that crushes and recycles concrete or asphalt slabs or roadbeds into new crushed base course (manufacturing) performed by a road contractor (non-manufacturing).
- a separate and distinct printing-for-the-trade operation (manufacturing), in an advertising agency or other creative service (nonmanufacturing), when the two activities use different equipment; and
- a separate and distinct newspaper operation (manufacturing) that also provides an on-line computer news service (nonmanufacturing).

The *SIC Manual* says establishments with "physically dispersed operations" have permanent main offices and individual sites, projects, networks or systems for the dispersed operations. All are considered part of the total manufacturing establishment. An example is a Golden Goat establishment with large aluminum recycling machines dispersed throughout an area.

Multiple Activities Are Not Separate and Distinct

The *SIC Manual* classifies establishments by their primary activity. Principal product produced or distributed, or services rendered determines primary activity. "Value added" best determines principal product of the establishment. Other criteria to determine the primary activity are value of production, value of receipts or revenues, value of sales, and employment or payroll.

There are businesses with manufacturing and retail activities that are not separate and distinct. Manufacturing classification depends on the primary (more than 50%) source of revenue. Wholesale revenues are manufacturing and retail revenues are not. Retail includes sales on the premises, by mail order, or to order for domestic consumers. Examples of such businesses include, but are not limited to the following:

- bakeries whose sales occur both on a wholesale basis and over the counter (see Figure 10-5);
- beer or wine producers whose sales occur on a wholesale basis and also at or adjacent to the place where the product is produced; and
- photo finishing laboratories that also process film for their own commercial or portrait photography studio.

Examples where the nonmanufacturing activity is services or wholesale trade are the following:

- prototype makers (manufacturing) who also provide research and development services (services);
- water bottlers producing distilled water (manufacturing) and also bottling natural spring and mineral waters (wholesale trade);
- printers (manufacturing) who also provide direct mail advertising services (services); and
- printers (manufacturing) who also do writing and creating (services) with the same equipment.

Classification of Equipment Used But Not Owned by a Manufacturer

Equipment leased, rented, or loaned to a manufacturer, or possessed but not owned by a manufacturer, and used by the manufacturer is usually classified manufacturing property. The Department assesses manufacturing leased equipment to the lessee according to sec. 70.995(4), Wis. Stats. Lessors must file a leased equipment self-reporting form.

For the benefit of all parties, the Department will allow municipal assessment of some lessors. Lessors of low value, taxable, mostly municipally assessed equipment on a short term lease (less than a year) may qualify. A list of these lessors is included in the annual supplement to this Manual.

Figure 10-2

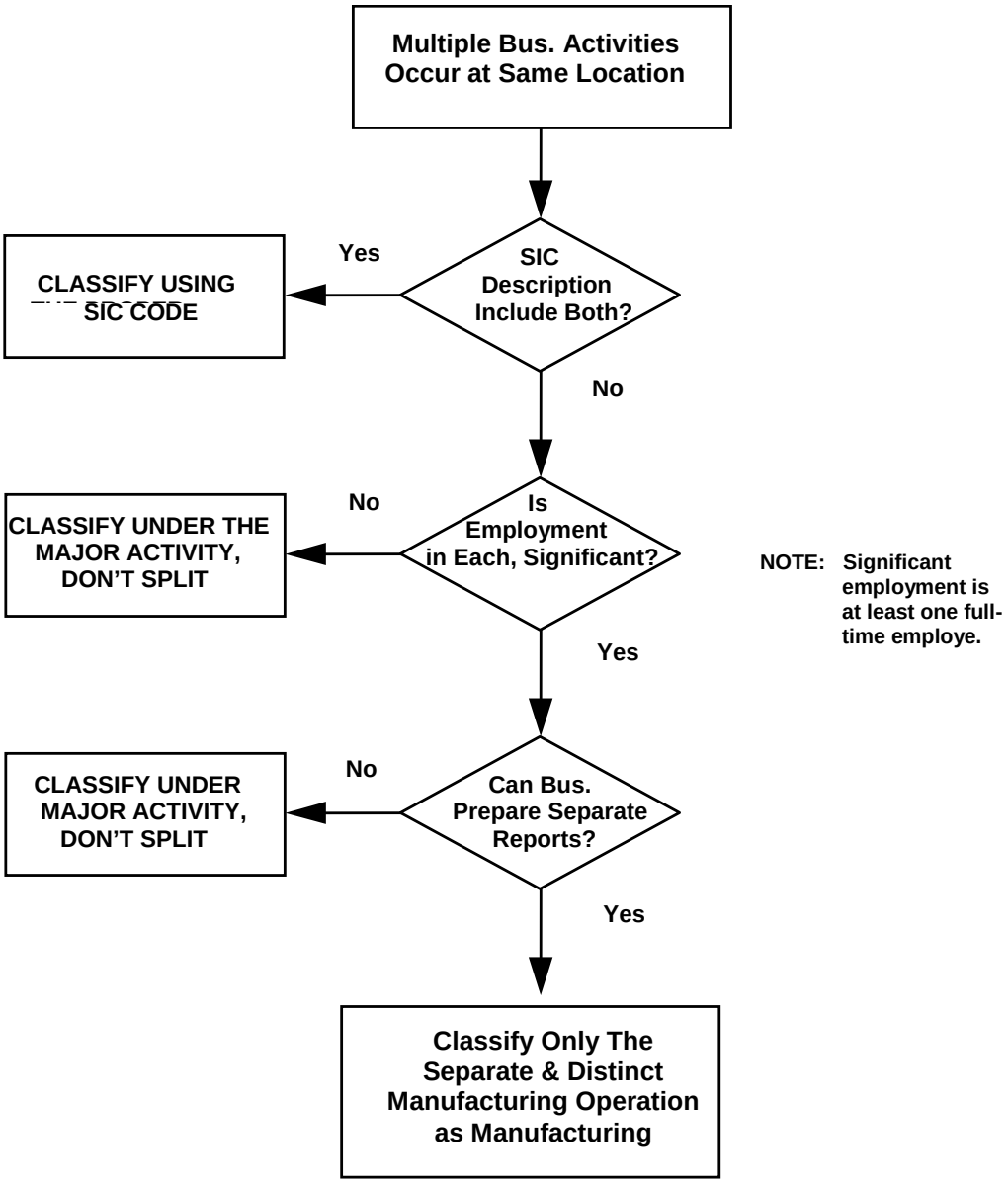

Multiple Bus. Activities Occur at Same Location
SIC Description Include Both?
Yes
CLASSIFY USING SIC CODE
No
Is Employment in Each, Significant?
No
CLASSIFY UNDER THE MAJOR ACTIVITY, DON'T SPLIT
Yes
Can Bus. Prepare Separate Reports?
No
CLASSIFY UNDER MAJOR ACTIVITY, DON'T SPLIT
Yes
Classify Only The Separate & Distinct Manufacturing Operation as Manufacturing
NOTE: Significant employment is at least one full-time employe.

Figure 10-3

Multiple Activities
Separate and Distinct

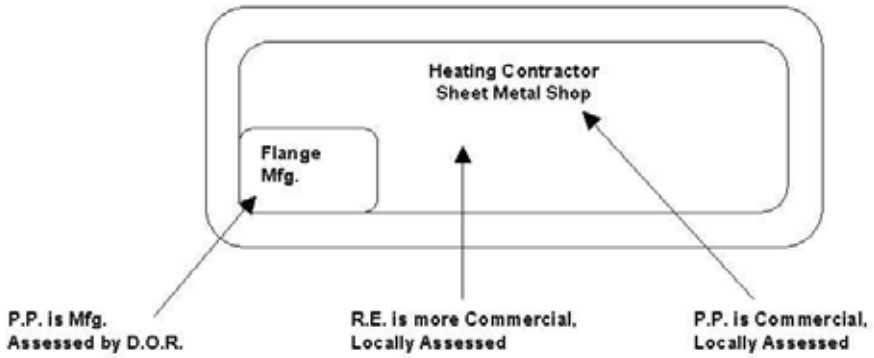


Figure 10-4

Multiple Activities
Separate and Distinct

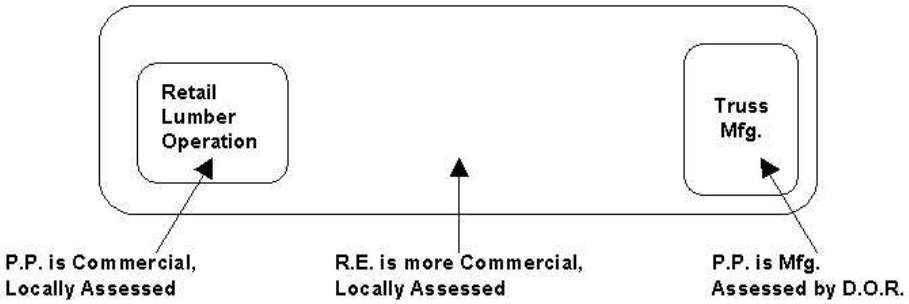
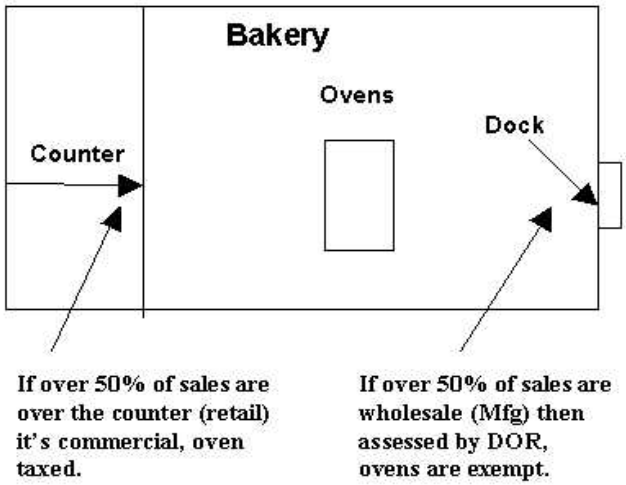


Figure 10-5

Multiple Activities
Not Separate and Distinct



Real Estate Parcel Classification

Section 70.995(1)(a), Wis. Stats., says, "In this section 'manufacturing property' includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities and offices is in support of the manufacturing property." Since the statute requires property to be "used" in manufacturing, vacant quarries and unused mines are not classified manufacturing. Parcels representing future quarries or mines where mining use is not imminent are not classified manufacturing.

Section 70.995(4), Wis. Stats., says in part, "Whenever real property or tangible personal property is used for one, or some combination, of the processes mentioned in sub. (3) and also for other purposes, the department of revenue, if satisfied that there is substantial use in one or some combination of such processes, may assess the property under this section. For all purposes of this section the department of revenue shall have sole discretion for the determination of what is substantial use and what description of real property or what unit of tangible personal property shall constitute 'the property' to be included for assessment purposes...". For property used for a manufacturing activity and other activities "substantial use" is defined as majority use (more than 50%) of the area occupied. Separate and distinct manufacturing and nonmanufacturing activities may occur on a vacant land parcel. If so, splitting the parcel's legal description is the best alternative. If that is not possible then manufacturing classification depends on the majority use (more than 50%) of the acreage. When multiple uses occur in buildings, majority use of the floor area determines classification.

Property owned by a manufacturer, but not classified manufacturing by the Department, is under the jurisdiction of the municipal assessor. If the Department assesses the property the following year, it will not make an omitted assessment for the year under municipal jurisdiction.

Exempt Machinery and Equipment (M&E) Classification

Case law mentioned in this section was before the recreation of sec. 70.11(27), Wis. Stats., effective for the January 1, 1992 assessments. It was also before the strict construction amendment published August 8, 1989. Section 70.11(27)(b), Wis. Stats., provides for exemption of certain manufacturing machinery and equipment and states, "Machinery and specific processing equipment; and repair parts, replacement machines, safety attachments and special foundations for that machinery and equipment; that are used exclusively and directly in the production process in manufacturing tangible personal property, regardless of their attachment to real property, but not including buildings. The exemption under this paragraph shall be strictly construed." Section 70.11(27)(a), Wis. Stats., provides definitions of terms for the machinery and equipment exemption.

Termination of Manufacturing Classification

Returning Property to Municipal Assessment

Section 70.995(4) Wis. Stats., says in part, "Vacant property designed for use in manufacturing, assembling, processing, fabricating, making or milling tangible property for profit may be assessed under this section or s.70.32(1), and the period of vacancy may not be the sole ground for making that determination. In those specific instances where a portion of a description of real property includes manufacturing property rented or leased and operated by a separate person who does not satisfy the substantial use qualification for the entire property, the local assessor shall assess the entire real property description and all personal property not exempt under s.70.11(27)."

Classification as manufacturing real or personal property will be terminated under any of the following conditions:

- An individual parcel or one of multiple parcels owned by a manufacturing establishment has had its use changed. The new use is not manufacturing nor in support of the manufacturing operation;

- The prior manufacturing establishment has ceased manufacturing operations and nonmanufacturing use is likely;

- The area of a building for lease that is rented to manufacturing lessees falls below 50% of the total floor area; and

- The Department discovers it mistakenly classified a business as manufacturing.

After terminating manufacturing classification the Department transfers the assessment files to the municipality. Previously exempted machinery and equipment becomes taxable. If the Department transfers a mistakenly classified property to municipal assessment, it will not retroactively tax machinery and equipment exempted in prior years.

Definition of "Manufacturing"

Section 70.11(27)(a)3, Wis. Stats., says " 'Manufacturing' means engaging in an activity classified as manufacturing under s. 70.995."

A business owned by a manufacturer, but not classified manufacturing by the Department does not qualify for the machinery and equipment exemption. It is not considered "classified as manufacturing under sec. 70.995, Wis. Stats." If the Department does classify that business manufacturing in later years, it will not retroactively exempt machinery and equipment taxed in earlier years.

Equipment used by the public, like walk-up copy machines at a printing establishment, are not "used by a manufacturer."

Definition of "Machinery"

Section 70.11(27)(b) Wis. Stats. says, " 'machinery' means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but "machinery" does not include a building."

Section 70.11(27)(b) Wis. Stats. says, " 'machinery includes 'repair parts, replacement machines, safety attachments and special foundations for that machinery and equipment'".

Case law has ruled the following to be machinery: power wiring for exempt machinery and equipment; brewery aging and fermentation cellars; malt aging silos, head houses, resting bins, attemporators, kilns and germination compartments; and graving docks.

Definition of "Power Wiring"

Section 70.11(27)(a)4, Wis. Stats. says, " 'Power wiring' means bus duct, secondary service wiring or other wiring that is used exclusively to provide electrical service to production machines that are exempt under par. (b). "Power wiring' does not include transformers."

Definition of "Specific Processing Equipment"

Section 70.11(27)(a)6, Wis. Stats. says, " 'Specific processing equipment' means containers for chemical action, mixing or temporary holding of work in process to ensure the uninterrupted flow of all or part of the production process, process piping, tools, implements and quality control equipment."

Electric motors, air compressors and computers used exclusively to power or operate exempt machines are considered part of the machine and also exempt. Exempt machinery and specific processing equipment includes, but is not limited to the following unique or specialized property:

- packaging equipment, including equipment used for printing product labels and instructions for the product;
- small tools, hand tools such as drills, saws, micrometers, hammers, etc., unless also used for machine repair or general maintenance;
- spare machines and parts that when in use, meet the criteria for exemption, but not machinery in vacated plants that have been returned to local assessment; and
- equipment used to clean food processing equipment between batches which is embedded within and part of the production machine.

Exempt quality control equipment includes equipment that ensures the manufacturer's processes are working properly, but not equipment used to measure or check raw materials received by the manufacturer.

Definition of "Building"

Section 70.11(27)(a)1, Wis. Stats. says, " 'Building' means any structure used for sheltering people, machinery, animals or plants; storing property; or working, office, parking, sales or display space."

Case law has ruled that a structure is a machine if it does work. The incidental or occasional presence of employees does not destroy the exemption, but permanent work stations would. One case said that steel columns supporting both a building and an exempt crane are taxable as part of the building. Unique or specialized type structures ruled to be classified exempt machinery and equipment by case law includes, but are not limited to the following:

- attemporators functioning as giant air conditioner/humidifier;
- malt aging silos that house an organic change;
- kilns functioning as giant ovens;
- beer aging/fermentation cellars;
- malt houses functioning as germinating compartments; and
- graving docks functioning as conveyors (launching), work platforms (like a hoist), and huge measuring instruments (plane for alignment of parts).

Parts of buildings can be exempt. Section 70.11(27), Wis. Stats. states in part, "Machinery and specific processing equipment; ... regardless of their attachment to real property, but not including buildings." Section 70.11(27)(a)2, Wis. Stats. states in part, "Machinery" means a structure or assemblage of parts..." Therefore, a machine can be a structure. An example of a machine being a structure and part of a building is a three story building with the second floor functioning as a germination compartment. The second floor is an exempt machine while the first and third floors are taxable as buildings.

The term "buildings" includes all structural and mechanical components as well as components used for sanitary requirements, human comfort, human safety, storage or necessary for the protection or operation of processing machinery and equipment. Building structural and mechanical components include heating, air conditioning, ventilating humidification and dehumidification components.

If an exempt machine has an external "skin" directly affixed to it, the "skin" is considered part of the machine and exempt, but if the machine is free standing within a structure, the structure is considered a taxable building.

Definition of "Production Process"

Section 70.11(27)(a)5, Wis. Stats. says, " 'Production process' means the manufacturing activities beginning with conveyance of raw materials from plant inventory to a work point of the same plant and ending with conveyance of the finished product to the place of first storage on the plant premises, including conveyance of work in process directly from one manufacturing operation to another in the same plant, including the holding for 3 days or less of work in process to ensure the uninterrupted flow of all or part of the production process and including quality control activities during the time period specified in this

subdivision but excluding storage, machine repair and maintenance, research and development, plant communication, advertising, marketing, plant engineering, plant housekeeping and employee safety and fire prevention activities; and excluding generating, transmitting, transforming and furnishing electric current for light or heat; generating and furnishing steam; supplying hot water for heat, power or manufacturing; and generating and furnishing gas for lighting or fuel or both."

For purposes of defining the production process, a "plant" is a manufacturing facility at a single physical location. A "single physical location" is defined as one that receives material to be processed or stored via public street, airway, railway or waterway. A "single physical location" may be comprised of separate buildings on one parcel or several contiguous parcels (See Figure 10-6). However, when stored or processed material moves on a public street, airway, railway or waterway, regardless of type of vehicle, its destination is considered a "single physical location" different from its point of origin (See Figure 10-7). If a manufacturer has received permission from a municipality to move material across a public street by unlicensed vehicle, i.e., forklifts going across a dead-end street, then the "single physical location" would extend across that public street.

The beginning of the production process is illustrated by, but not limited to the following:

- in dairies, it begins where the unprocessed milk is moved from a storage tank. The act of adding a skim powder to the unprocessed milk is incidental to the primary purpose of the tank which is raw material storage;
- in mining, it begins with the stripping off of the overburden;
- in publishing and printing, it begins after the written material, artwork or photograph has been created and selected for printing;
- in typesetting, it begins with converting images into standardized letter forms of a certain style which are usually hyphenated, justified and indented automatically by mechanical or electronic means; and
- in plate making, it begins when camera ready copy is photographed.
- the end of the production process is illustrated by, but not limited to the following:
- in magazine and catalog printing it ends with the packaging of the printed material in postal carrier order. Demographic or customer specific binding and ink-setting are included in the production process.

The production process does not include the removal of waste material from an exempt machine. Equipment performing this function would likely qualify as exempt waste treatment equipment (see Manufacturing Equipment Versus Waste Treatment Equipment later in this chapter).

"Research and development" means:

- developing a new product or improving an existing product, including manufacturing the sample product at pilot plants for employee or consumer testing (unless sold to consumers);
- designing specifications for products at testing labs;
- designing new products with computers or mainframe terminals; and

- creative work done by authors, reporters, artists, ad agencies, photographers and similar activities.

"Plant engineering" means designing products, producing blueprints, determining product specifications and determining manufacturing instructions, processes or steps by manual or electronic means.

"Plant communication" means delivering or transferring product specifications or instructions for the step by step flow of the production line. It may be done by manual, mechanical or electronic means. A computer that actually operates an exempt machine is exempt as part of the machine.

"Research and development", "plant engineering" and "plant communication" do not include the following activities which are considered exempt:

- reporters and ad takers at newspapers using mainframe terminals which replace typesetting equipment where little of the text is subsequently changed;
- processing of a photograph at a newspaper after it has been selected as the one to print;
- production of software that will be permanently imbedded in a computer as a component of a manufactured product such as an automobile or a computer numerically controlled machine product; and
- production of electronic templates or patterns for a specific machine by computer. The production of jigs, fixtures and patterns is a manufacturing process regardless of the method of production.

"Advertising" and "marketing" includes the printing of advertisements or brochures by a manufacturer who does not print material for the trade.

Definition of "Storage"

Section 70.11(27)6m, Wis. Stats. says, " 'Storage' means the holding or safekeeping of raw materials or components before introduction into the production process; the holding, safekeeping or preservation of work in process or of components outside the production process; and the holding or safekeeping of finished products or of components after completion of the production process; whether or not any natural processes occur during that holding, safekeeping or preservation; but 'storage' does not include the holding for 3 days or less of work in process to ensure the uninterrupted flow of all or part of the production process" (See Figure 10-8).

Only the normal workdays of a specific manufacturer's normal workweek are considered in application of the 3 day rule for work in process.

Property used to store raw material or finished product is taxable regardless of the length of time the material or product is stored (the 3 day rule only applies to storage of work in process).

"The holding or safekeeping of raw materials or components before introduction into the production process" may occur at the beginning or anywhere along the production line of a plant.

Hopper-feed tanks directly affixed to an exempt machine are part of the machine and exempt. Directly affixed means bolted, welded or permanently fastened to the machine. It doesn't mean connected by pipes, wires or hoses. A hopper-feed tank that is freestanding from the exempt machine is taxable raw material storage equipment. The production process begins where the conveyor begins movement of material from the freestanding tank.

Taxable storage equipment includes equipment used to create an artificial environment for preserving raw material, work-in-process more than three days and finished product. It also includes equipment used to maintain that material in a certain physical state (gas, liquid, powder, etc.). Storage equipment includes equipment for heating, cooling, humidifying, dehumidifying, etc. such material. It also includes structures or equipment used to dry grain for storage purposes.

Figure 10-6
Single Physical Location – Multiple Buildings

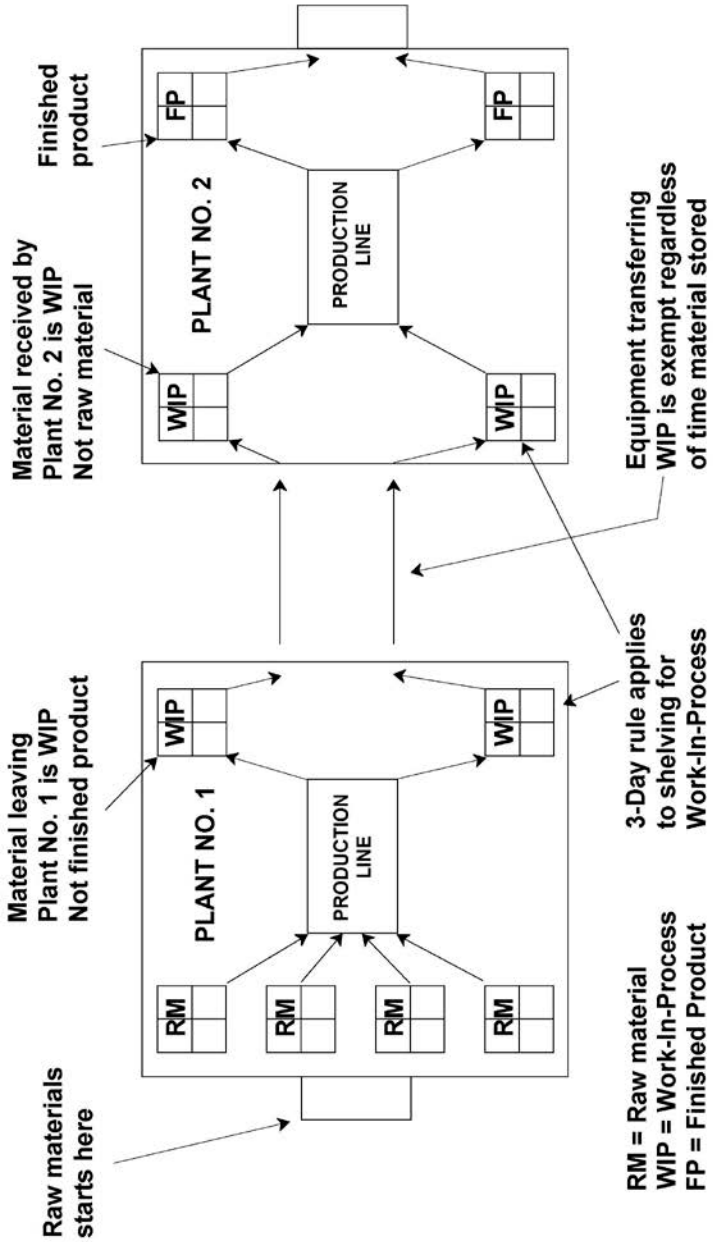


Figure 10-7
Two Physical Locations for One Manufacturer

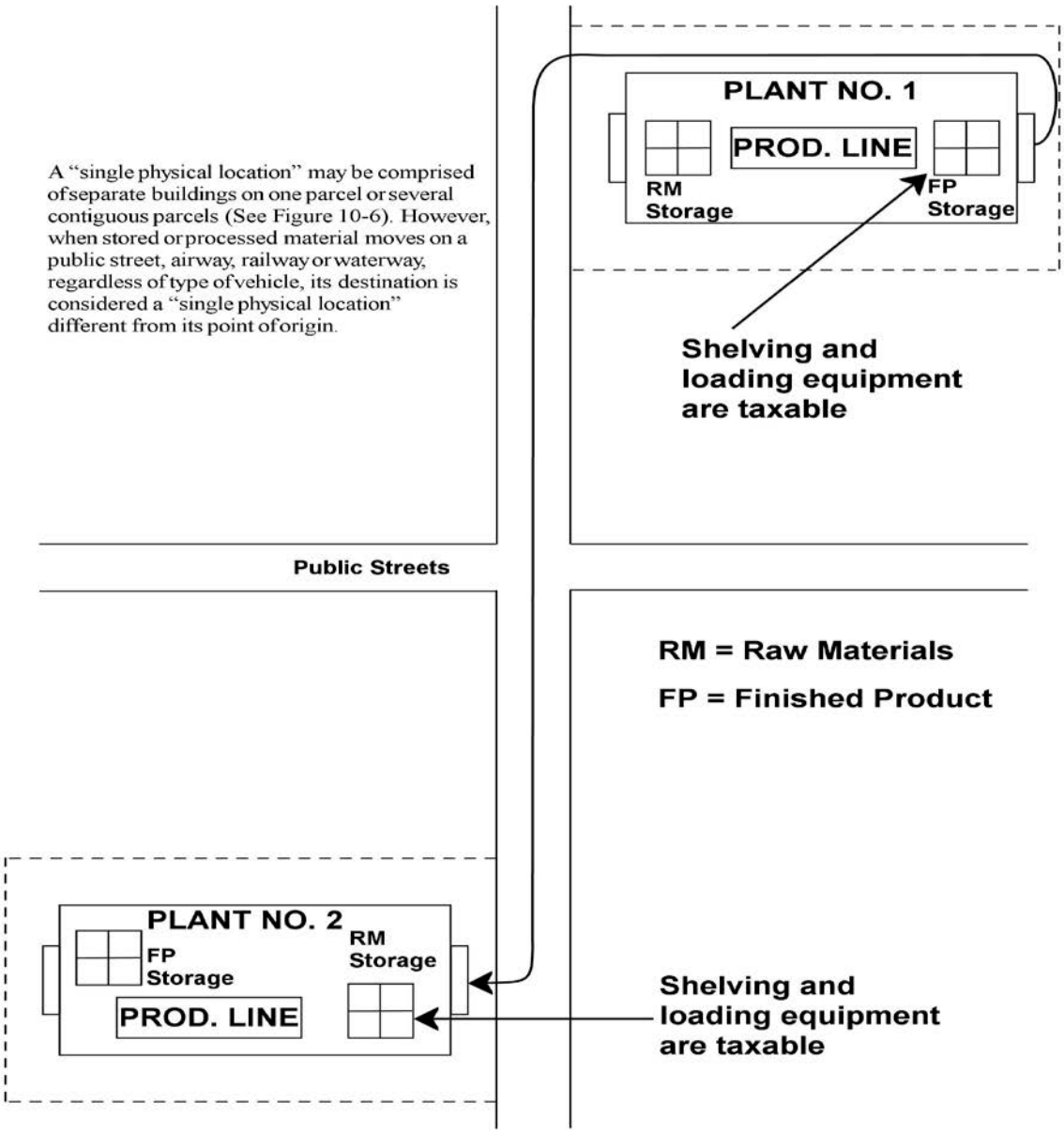
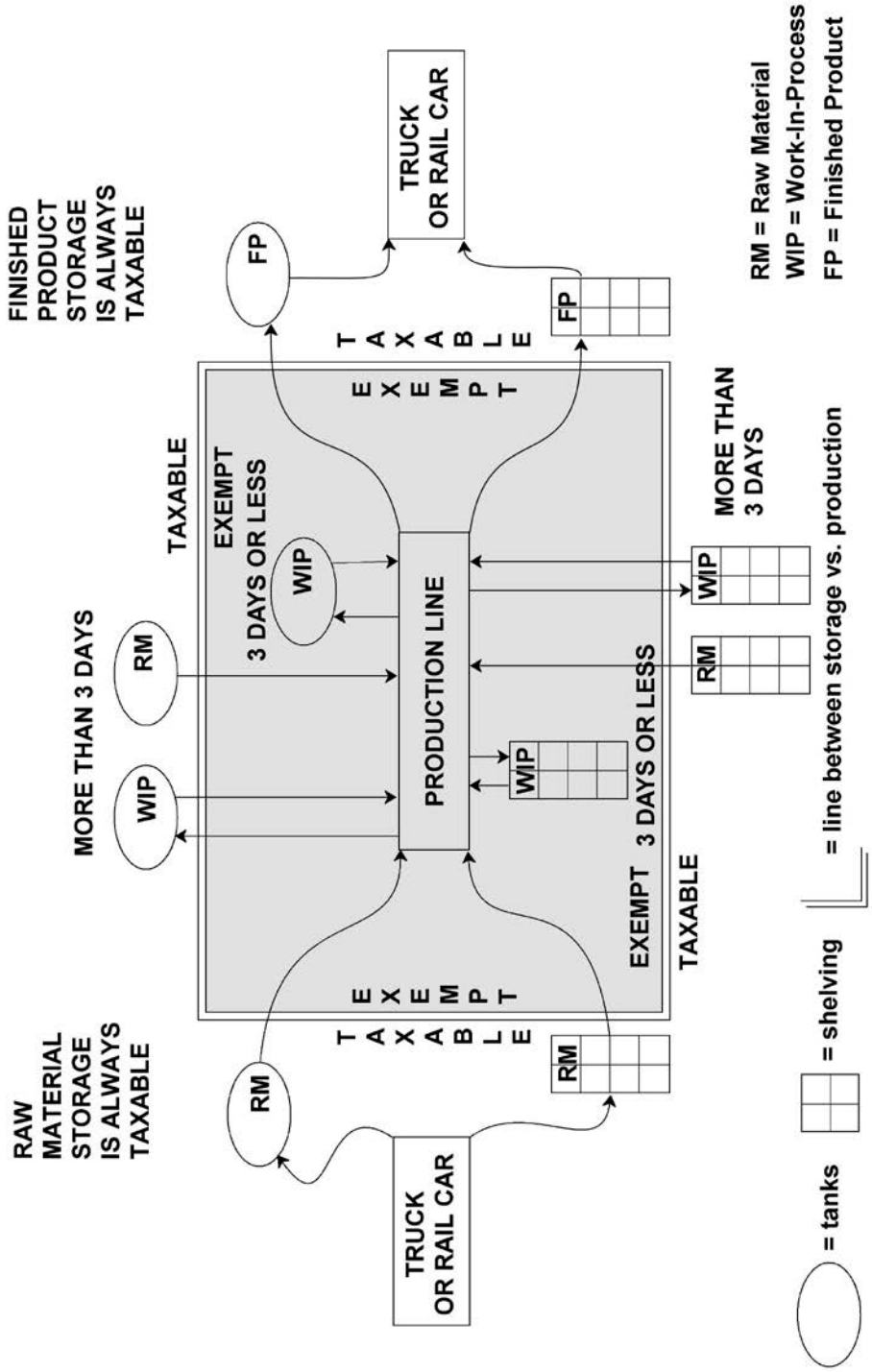


Figure 10-8
Interpreting sec. 70.11(27) Wis. Stats.
"3 Day Storage" for Work in Process



Computer related storage equipment that is exempt under sec. 70.11(39), Wis. Stats. includes, but is not limited to the following:

- F storage units at a newspaper that hold wire service news items typically more than 3 days;
- computer disk storage units that store software modules before being processed into finished product software. The finished product software, a component of a manufactured product, is then loaded into a computer.
- file servers used in pre-press work for the printing industry that store image files as raw material, work-in-process, or finished product; and
- file servers used in the machining industry to store exempt machining (application) software when not in use.

Definition of "Used Directly"

Section 70.11(27)(a)7., Wis. Stats. says, " 'Used directly' means used so as to cause a physical or chemical change in raw materials or to cause a movement of raw materials, work in process or finished products."

Property used to create an artificial environment that directly causes necessary changes to work in process (value added) is "directly used" and exempt. Property that does not add value, but only maintains or preserves value is not "used directly," but is taxable storage equipment. Examples of preservation include preventing spoilage, maintaining a specific physical state or preventing the occurrence of unnecessary natural processes. Property used to protect materials from the weather or elements is buildings or building components. Exempt property "directly used" to create an artificial environment that directly changes work in process (value added) includes, but is not limited to the following:

- kilns used for drying or heating bricks, lumber, malt, pottery or other material that is work-in-process;
- heating equipment that slowly dries lumber (pre-dryers) or that cures or smokes meat that is work in process;
- humidification/dehumidification equipment that causes a necessary change to work in process, such as the germination of malt, curing of meat, creating flexibility in wood necessary for the woodworking process, or reduces static electricity in materials used in the printing process;
- refrigeration equipment that controls the necessary fermentation or aging of beer, that causes the rigidity in foodstuffs necessary for the manufacturing process or that quick freezes food stuff as part of the packaging process;
- air filtering equipment and building components exceeding that needed for normal building functions. They must reduce contamination of work-in-process from dust or foreign particles normally found in the air, not that resulting from a process. An example is equipment used in the assembly and production of electronic devices; and
- structures directly containing artificial environments such as those described above, when the use for sheltering people, machinery or for storing property is less than 5% of total use and there are no fixed or permanent work stations.

Property that preserves, maintains or protects, that is not "used directly" includes, but is not limited to the following:

- refrigeration equipment that preserves foodstuffs as work in process such as that found in meat packing plants, frozen food plants or canning plants;
- equipment maintaining work in process in the same gaseous or liquid state it was as raw material;
- clean in place (CIP) chemical storage vessels and CIP pumps and piping not affixed to and not an integral part of an exempt manufacturing machine; and
- air filtering equipment that reduces air contamination of work in process from dust or foreign particles produced by a manufacturing process (may qualify under waste treatment exemption).

Definition of "Used Exclusively"

Section 70.11(27)(a)8., Wis. Stats. says, " 'Used exclusively' means to the exclusion of all other uses except for other use not exceeding 5% of total use."

When equipment or structures are used to create an artificial environment to cause a necessary change to work in process (value added and exempt) and also storage (no value added and taxable), taxability is determined by whether the taxable use is more than 5% of total use. Two criteria that can be used to apply the 5% rule are time and floor area.

If the equipment or structures perform the dual uses sequentially and not simultaneously, then time is the proper criterion. Two examples are the following:

- a freezer structure or room is used first for quick freezing a foodstuff (exempt) and then for frozen storage of the foodstuff (taxable). If the average unit produced spends more than 5% of total time in frozen storage, the refrigeration equipment would be taxable. The structure would be a taxable building; or
- a structure or room is used part of the year for pre-drying lumber (exempt) and part of the year for simple storage of the lumber. If it is used more than 5% of the year for storage as opposed to drying, the structure would be a taxable building. The heating equipment is taxable unless only operated during the pre-drying process, then it would meet the exclusivity test and be exempt.

If the equipment or structures perform dual uses simultaneously then floor area is the proper criterion. Two examples are the following:

- the taxable and exempt uses occur in separate and distinct areas of a structure. If the taxable use occupies more than 5% of the floor area, the equipment and structure are taxable. A structure divisible by walls or floors, is partially exempted.
- dual uses occur simultaneously, but not in separate and distinct areas. If taxable use occupies more than 5% of the floor area daily the equipment and structure are taxable.

Manitowoc Co. v. City of Manitowoc (Court of Appeals) (1985) regarding the taxability of steel columns that simultaneously supported both exempt cranes and the building said, "The court noted that the columns supporting the building cannot be segregated into 'building columns' and 'crane columns.' The columns used for the crane work also support the building. They are therefore part of the building and, hence, they are 'building components'". Therefore, when dual uses occur simultaneously and there is no unit of measure for the two uses, the property should be taxed.

In construing a statute, an agency should avoid an interpretation which would lead to an absurd result even though it must disregard the strictest reading of the law. Therefore, there are two cases where something less than absolute exclusivity is allowed exemption. One is when a manufacturer has a group of fungible (any unit can replace another unit) machines used at different times for exempt and taxable purposes. The allocation of the machines between exempt and taxable uses is determined by the number of machines normally performing each function. For example, if 10 forklifts are used for production and warehouse activities, and 2 forklifts are normally found in the warehouse and 8 in the production line, then 2 are allocated taxable and 8 exempt. It would be absurd to require the manufacturer to keep the machines segregated. The other case is when an establishment produces products that are sold both on a wholesale basis (manufacturing) and on a retail basis (retail trade), and the two activities are not separate and distinct. And, the establishment is classified manufacturing because more than 50% of the sales are on a wholesale basis. Even though the production equipment produces product at times for retail sale, the equipment still qualifies for exemption. To classify an establishment manufacturing and then determine that there was no exempt manufacturing equipment would be an absurd result.

Manufacturing Computers Versus Exempt Administrative Computers

Section 70.11(39), Wis. Stats., exempts specific computers, including, " ...mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, systems software and prewritten software..." The section excludes from exemption the following, "...custom software, fax machines, copiers, equipment with embedded computerized components or telephone systems, including equipment that is used to provide telecommunications services as defined in sec. 76.80(3) Wis. Stats." Computer equipment used in a manufacturing "production process", (sec. 70.11(27)(a)5., Wis. Stats.) qualifies as an exemption as manufacturing "machinery", (sec. 70.11(27)(a)2., Wis. Stats.) Qualifying computer equipment not exempted as manufacturing equipment under sec. 70.11(27), Wis. Stats., is exempt under sec. 70.11(39), Wis. Stats.

A computer may perform both manufacturing and non-manufacturing functions. Computers used more than 5% for non-manufacturing functions do not qualify as exempt manufacturing equipment, but are exempt under sec. 70.11(39), Wis. Stats.

Manufacturing Equipment Versus Waste Treatment Equipment

In addition to the manufacturing machinery and equipment exemption found in sec. 70.11(27), Wis. Stats., there is an exemption for property used to treat industrial waste described in sec. 70.11(21), Wis. Stats. Chapter 6, of this manual provides waste treatment exemption information and definitions. Sometimes manufacturing machinery and exempt waste treatment property are intermingled within a manufacturing facility. The different activities must be identified first to determine what property is exempt manufacturing machinery and what property is exempt because it is involved in the treatment of industrial wastes.

Section 70.11(21)(a), Wis. Stats. says, "All property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under Chapter. 76, if the property is approved by the department of revenue...

According to sec. 70.11 (21)(ab), Wis. Stats., ""Industrial waste" means waste resulting from any process of industry, trade or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd. 3.b., and that would otherwise be considered superfluous, discarded or fugitive material. "Industrial waste" does not include other wastes, as defined in sec. 281.01(7), Wis. Stats." It also states, "Used exclusively" means to the exclusion of all other uses except any of the following:

a. For other use not exceeding 5 percent of total use.
b. To produce heat or steam for a manufacturing process, if the fuel consists of either 95 percent or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50 percent or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the woodchips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

If a manufacturer's process produces waste, any property used to remove the waste from the production line, store it or treat it to cause a physical or chemical change is exempt waste treatment property.

If a manufacturing process produces waste which is processed into a by-product for sale or reuse by the manufacturer, property moving the waste from the primary production line or storing it prior to further processing is exempt waste treatment property. Property used to further process the material into a by-product and move it to storage is exempt machinery and equipment. Property used to store the by-product as raw material when it is re-used or as a finished by-product if it is sold, is taxable machinery and equipment. A hypothetical example could be a paper manufacturer who collects the waste sludge, completes a granulation process on the sludge (adds value) and then sells the resultant by-product as cat litter or as a carrier for agricultural chemicals. Processing a waste into a by-product which is sold is manufacturing even if the activity does not turn a profit. This may occur

when it's less expensive to process the waste into a by-product than it is to ship it to a landfill.

The compacting or baling of clean waste paper, not mixed with other solid waste, at the plant of a waste processor is an exempt manufacturing activity and not a waste treatment activity. Compacting or baling waste paper or cardboard at non-waste processing businesses or at collection points of waste processors, is not an exempt manufacturing activity or an exempt waste treatment activity. It is a transportation activity because the primary purpose is maximizing the load transported.

Manufacturing Property Valuation

Annual Market Value Assessment

Annual assessment of manufacturing property is based on an analysis of self-reporting forms along with cyclical audit, physical inspection and appraisal. Self-reporting forms are used by manufacturers to report property they own and any changes that have taken place since the last assessment date. The Wisconsin Department of Revenue has issued three forms to be used by the owners of manufacturing property.

Manufacturing Real Estate Form (M-R)

Owners of manufacturing real estate report any changes in name and address; whether the property is vacant; if it was bought, sold or listed for sale; and if any appraisals were completed in the last year.

Schedule B summarizes changes made to the real property. The value derived on each of the schedules is carried forward to Schedule B.

Schedule YR lists the real estate asset accounts for a parcel, such as land and buildings. The owner reports the original cost balance in each of these accounts as of the last assessment date, all additions and deletions, and the balance as of this assessment date.

A page is provided for a sketch of new construction begun or completed in the last assessment year. Schedule R-1 lists the cost and type of materials used in the new construction. The owner reports the total cost of construction upon completion and the percent complete as of the assessment date.

Schedule R-2 lists remodeling of existing structures. The owner describes the changes made, the cost and an estimate of the increase in value resulting from the remodeling.

On Schedule R-3 the owner reports in detail any demolition of real property. The extent of demolition, area affected and the cost to raze.

The owner reports new land improvements on Schedule R-4. This includes the costs of paving, landscaping, railroad siding, sewer and water systems, etc.

Schedule R-5. The owner reports all current lease information on Schedule R-5.

On Schedule R-6, the owner reports changes in the status of waste treatment real estate items on the parcel. It may include new buildings, building additions or demolitions, change in area of land used for waste treatment, change in use of crops on vacant land or the fact that it is no longer being used for waste treatment.

Manufacturing Personal Property Form (M-P)

This form is used by the manufacturer to report all of its personal property located in a municipality. The owner reports any change in name or address and the location of the property. In addition, there are a number of schedules for the owner to complete.

Schedule A is a summary of the schedules that report taxable personal property. After each of the schedules is completed the values are carried forward to Schedule A.

Schedule YP is used by the manufacturer to list the personal property accounts within the municipality, such as manufacturing machinery and equipment; furniture, fixtures and office equipment; leasehold improvements; and projects in progress. The owner lists the original cost balance in each account as of the last assessment date, all additions and deletions, and the balance as of the current assessment date.

The manufacturer reports the total of all equipment lease or rent payments. Schedules L or LC must also be completed as explained below and should correlate with this entry.

Schedule S is used to report non-production supplies. Included are items used in the normal course of business such as office supplies, research and development materials, wrapping materials, selling and advertising supplies, and janitorial and cleaning supplies.

Schedules M, D, C, and F are used for the following personal property:

M – Machinery, Tools, Patterns and Shop Equipment

D – Copiers, Telephone Systems and Equipment

C – Computers and software exempt under sec. 70.11(39), Wis. Stats., computers and software exempt as manufacturing production equipment and fax machines not used as copiers

F – Furniture, Fixtures, and Office Equipment

The original cost of assets is reported by year of acquisition as of the last assessment date. The original cost of additions and deletions are reported by year of acquisition. The additions and deletions are either added to or subtracted from the original costs as of last year's assessment date to yield the original cost by year of acquisition as of the current assessment date. Exempt assets are noted in a separate column on Schedule M and then deducted. The resulting balance is multiplied by a conversion factor which adjusts for cost

increases and depreciation to produce an estimate of the "true cash value" of the assets. This procedure is more fully explained in Chapter 16, Valuation of Fixed Assets. For field audit purposes, the manufacturer must keep an asset list at their place of business showing all personal property and whether the assets are reported as taxable or exempt.

Schedule L and LC are used for leased personal property. The manufacturer should report: the name and address of the owner; the type of equipment; the quantity; the brand name and model number of the equipment; the gross annual rent; and the manufacturer's estimate of value as of the assessment date.

Schedules B, LI, O and LB use similar formats for reporting assets. The manufacturer reports a description of the property, the year acquired, the cost of acquisition, and the manufacturer's estimate of value as of the assessment date.

Schedule B - Is used to report boats and watercraft subject to Wisconsin general property taxation.

Schedule LI - Is for reporting all leasehold improvements. These are real estate components owned by someone other than the land and building owner.

Schedule O - Is for reporting all other personal property not reported on another schedule. The manufacturer should give an adequate description of the property to enable the Department to determine if it should be assessed as real or personal property and whether it is taxable or exempt.

Schedule LB - Is for reporting all buildings on leased land. They are real estate items owned by someone other than the landowner. The Department values them like other real estate.

Section 70.35(3), Wis. Stats., states that personal property returns filed with the local assessor are confidential records of the assessor's office. This statute also applies to manufacturing personal property forms (M-P) filed under sec. 70.995(13), Wis. Stats.

Leased Equipment Form (M-L)

This form is used by anyone who owns and leases personal property to a manufacturer. On this form the owner reports: the name of the lessee and where the equipment is located; the type of equipment; the quantity; the brand name and model number of equipment; lease dates and number; the year manufactured or acquired; the cost or price; the gross rent; whether it is a capitalized lease; and the owner's estimate of value.

Personal Property Asset List

A manufacturer must file a personal property asset list with the M-P form to initially get any of its machinery and equipment exempted. Failure to file the asset list results in taxing all of the manufacturer's machinery and equipment. Listings provided in subsequent years will not result in retroactive exemption. Simply completing the M-P form's Schedule M is not adequate because it only includes costs and does not identify the assets reported. Since

first-time filers lack experience regarding the manufacturing machinery and equipment exemption, the Department needs to review their initial classification of assets. This prevents erroneous exemption or taxation, and omitted property assessments.

The manufacturer must update and maintain the personal property asset list annually. Failure to provide a complete and usable list for the field audit results in taxable personal property estimated at 20% of the total machinery and equipment value on Schedule M. Insuring assessment of all taxable value is the goal.

Penalties

The law provides penalties for failure to file required forms by the due date or by any extension granted. Section 70.995(12)(c), Wis. Stats. states, "...the taxpayer shall pay to the department of revenue a penalty of $25 if the form is filed 1 to 10 days late; $50 or 0.05% of the previous year's assessment, whichever is greater, but not more than $250 if the form is filed 11 to 30 days late; and $100 or 0.1% of the previous year's assessment, whichever is greater, but not more than $750, if the form is filed more than 30 days late. Penalties are due [and payable to the department] 30 days after they are assessed and are delinquent if not paid on or before that date. The department may refund all or part of any penalty it assesses under this paragraph if it finds reasonable grounds for late filing." Equipment lessors must file one M-L form for each of the Department's administrative areas where they lease to a manufacturer. Failure to file results in issuance of a filing penalty. The department will not enter a penalty if the department did not assess the property during the previous year.

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Telephone Company Assessment

Assessment Notices, Tax Bills, and the Appeal Process

Section 76.81, Wis. Stats. says, "There is imposed a tax on the real property of, and the tangible personal property of, every telephone company... Except as provided in s. 76.815, the rate for the tax imposed ... is the net rate for the prior year for the tax under Chapter 70

in the taxing jurisdictions where the description or item is located." Taxing jurisdictions consist of the municipality, county, state, school district, technical college district, town sanitary district, public inland lake protection and rehabilitation district, and metropolitan sewerage district.

The first step in the tax calculation process is equating the full-value assessments to the assessment level for all other property within the individual taxation district. Then the equated assessment is multiplied times the combined tax rate (based on assessed value) for the taxation district.

Assessment notices and tax bills are generally mailed to telephone companies by October 1. Payment of the tax bill is due November 10. The Bureau attaches a property list with all assessments to each company's tax bill.

Companies may appeal assessments. A company with a question about the assessment should first contact the Department of Revenue office that made the assessment. Sometimes, the question arises because of a mathematical error made either in completing or auditing the return or because of a misunderstanding of the assessment process. The Bureau can resolve these situations without the need for formal appeal. If not satisfied, or if the question concerns the valuation of the property, then the company can go through the appeal process. Companies may appeal the market value shown on the assessment notice to Dane County circuit court within 30 days of issuance of the notice.

Reference of Other Statutes in the Telephone Company Tax Sections

Section 76.84(4), Wis. Stats. says, "Sections 76.03(4), 76.05, 76.06, 76.075, 76.08, 76.09, 76.13(1), (2) and (3), 76.14, 76.18, 76.22, 76.23, 76.25 and 76.28(4) to (6), as they apply to the tax under subchapter I, apply to the tax under this subchapter." Subchapter I covers Public Utilities and Subchapter IV covers the Telephone Tax. Therefore, even though a cross-referenced section may say light, heat and power" companies and not mention telephone companies, under sec. 76.84, Wis. Stats., that section applies to telephone companies.

Calendar of Events for Telephone Company Assessment

Date	**Activity**
January 1	DOR mails telephone property report form (T-forms) and property list to telephone companies. Date of assessment of telephone company property.
March 1	Completed T-forms due to DOR. Last day for telephone company to request filing extension from DOR.
March-Sept.	DOR processes T-forms and determines annual assessments.
May-Jan.	Appraisal and field audit of telephone company property.
Early Oct.	Assessment notices and tax bill sent to telephone companies.

Oct. – Nov. Appeals must be filed within 30 days of notice of assessment.

Definition of Telephone Company

Activities Included in the Definition of Telephone Company

Section 76.80(4), Wis. Stats. says, " 'Telephone company' means any person that provides to another person telecommunications services, including the resale of services provided by another telephone company." Section 76.80(3), Wis. Stats. says, " 'Tele-communications services' means the transmission of voice, video, facsimile or data messages, including telegraph messages, ..." To qualify as a telephone company, a business must have "transmission facilities," or provide "telecommunications facilities," or provide "telecommunication services."

Telephone companies include local exchange, competitive local exchange, inter-exchange, digital subscriber line, commercial mobile service (cellular), reseller and pay phone companies. Also included as part of a "telephone company" are service centers, stores or kiosks they operate to provide customer service, in addition to selling telephones.

Subsidiary Activities in Support of the Telephone Company

A circuit court decision in *T. Pewaukee v. Ameritech Services Inc.*, case number 98CV646, said subsidiary support services done for a telephone company are included as telephone company operations. The decision said a subsidiary that "provides centralized computer, purchasing and other services for the benefit of the AOC telephone companies" is exempt from taxation pursuant to section 70.112(4) which includes property of a telephone company." The court said these activities meet the standard of "used and useful" in the operation of the telephone companies business.

Activities Excluded From the Definition of Telephone Company

Section 76.80(3), Wis. Stats. says, " 'Telecommunications services' means ..., except that 'telecommunications services' does not include cable television, radio, one-way radio paging or transmitting messages incidentally to transient occupancy in hotels, and defined in s. 354.61(3)."

Section 76.80(4), Wis. Stats. says, " 'Telephone company' does not include a person who operates a private shared telecommunications system, as defined in s.196.201(1), and who is not otherwise a telephone company." Section 196.201(1), Wis. Stats., says "In this section, 'private shared telecommunications system' means ... to provide telecommunications service through privately owned customer premises ...or ... where the cost of service is shared ... persons who are not affiliated interest under s. 196.52, and where ... not used to offer telecommunications service for sale directly or indirectly to the general public." Therefore, a trucking company's 2-way radio service used solely for its own business, is not a telephone company. Neither is a company providing 2-way radio service to trucking companies or others, unless interconnected with the public switched networks. To qualify as a "commercial mobile service" the system must interconnect with public switched networks.

Internet Service Providers (ISP) are not telephone companies and are subject to local assessment. An ISP provides content but not transmission. Examples of ISP's include businesses like America On-Line (AOL), Excite, and Yahoo! Such things as computers, modems, and routers are exempt as computer equipment under sec. 70.39, Wis. Stats. The exemption, however, terminates at the hub connecting the computer equipment to the transmission line. If a telephone company offers a separate and distinct ISP service, it should be locally assessed. A definition of "separate and distinct" follows under the description of Personal Property Account Classification. Other non-telephone company activities include but are not limited to:

- Service centers, stores or kiosks operate by non-telephone companies or "Authorized Dealers," (Radio Shack, etc.) on behalf of a telephone company;
- Printing and publishing telephone book yellow pages;
- Bars, restaurants and gas stations that secondarily own a few semi-public pay phones for clientele.

Personal Property Account Classification

Multiple Activities Are Separate and Distinct

The Department uses a 2-step process to classify the personal property of companies with multiple activities. The first step is to determine if the two activities are separate and distinct. For purposes of business classification, an establishment is defined as an economic unit, generally at a single physical location where business is conducted or where services are performed. Where distinct and separate economic activities are performed at a single physical location, each activity should be treated as a separate establishment wherever all the following occur:

- Employment in each economic activity is significant; and
- Separate reports can be prepared on the sales or receipts, number of employees, their wages and salaries and other establishment type data.

The Department defines "significant employment" as at least one full-time employee totally dedicated to the activity.

The Department will assess and tax the personal property of separate and distinct telecommunications activities at the same location as a non-telecommunication activity. Likewise, municipalities will tax separate and distinct non-telecommunication activities at the same location as a telephone company.

Examples include, but are not limited to the following:

- A separate and distinct internet service provider activity (non-telecommunications) at a telephone company (telecommunications) is taxed locally;
- A separate and distinct cable television activity (non-telecommunications) at a telephone company is taxed locally;

- A separate and distinct internet access provider activity (telecommunications) at a cable television company (non-telecommunications) is taxed by the State.
- A separate and distinct telephone service activity (telecommunications) at a cable television company (non-telecommunications) is taxed by the State.

Multiple Activities Are Not Separate and Distinct

The Department classifies establishments by their primary activity. The principal service rendered determines primary activity. "Value added" best determines principal product of the establishment. Value added is rarely possible to obtain. Other criteria to determine the primary activity are value of production, value of receipts or revenues, value of sales, and employment or payroll.

There are businesses with telecommunications and non-telecommunications activities that are not separate and distinct (converged services). Telephone company classification depends on the primary (more than 50%) source of revenue. Examples of such businesses include, but are not limited to the following:

- Telephone companies who also provide cable television activity using the same distribution/transmission system;
- Telephone companies who also provide an internet service provider activity using the same equipment;
- Cable television companies who also provide telephone service using the same distribution/transmission system.
- Cable television companies who also provide high-speed internet access using the same distribution/transmission system.

Assessment of Leased Property and Property on Easements

Section 76.03(4), Wis. Stats. says, "Every person, company or companies, as defined in s.76.02, shall be the representative of every title and interest in the property so operated or used either as owner, lessee or otherwise, and notice to the operating and using company or companies shall be notice to all interests in the property for the purposes of taxation. The assessment and taxation of the property of any company in the name of the operating or using company or companies shall be deemed and held an assessment and taxation of all the title and interest in such property of any kind or nature." According to *Wisconsin Telephone Company vs. Milwaukee*, 85 WIS. 2d 447, 271 N.W. 2d 362 (1978), use is the criterion for classification as property subject to the telephone company tax, not ownership. Property owned by a telephone company and leased to a non-operator is not subject to the telephone tax. Where a telephone company is the lessee of personal operating property, the telephone company is listed on the state assessment roll, not the owner. Government property leased and used for operating property is taxable to the telephone company, except for property leased from a water utility formed under sec. 198.22, Wis. Stats.

Some telephone company property is on right-of-way easements. Such property is assessed to the telephone company as personal property and the land is assessed by the municipal assessor to the owner of the land.

Some businesses lease tower space to telephone companies for placement of antennae. The Bureau assesses towers predominantly used by telephone companies. A tower may be predominantly used by telephone companies, also have non-telephone company users, and be owned by a non-telephone company business. In that case, the Bureau will assess the tower to the non-telephone company business. Municipal assessors assess towers predominantly used by non-telephone company businesses. Factors the Bureau considers in deciding predominant use include, but are not limited to, number of users and income.

Classification of Real Estate With a Combination of Uses

2001 Wis. Act 16 created sec. 70.112(4)(b), Wis. Stats. to be effective for the January 1, 2003 assessment. It states, "If real or tangible personal property is used more than 50%, as determined by the department of revenue, in the operation of a telephone company that is subject to the tax imposed under s. 76.81, the department of revenue shall assess the property and that property shall be exempt from the general property taxes imposed under this chapter. If real or tangible personal property is used less than 50%, as determined by the department of revenue, in the operation of a telephone company that is subject to the tax imposed under s. 76.81, the taxation district in which the property is located shall assess the property and that property shall be subject to the general property taxes imposed under this chapter."

Section 70.11(39), Wis. Stats. Computer Exemption and Telephone Companies

Section 70.11(39), Wis. Stats. exempts specific computers, including, "... mainframe computers, minicomputers, personal computers, networked personal computers, servers, terminals, monitors, disk drives, electronic peripheral equipment, tape drives, printers, basic operational programs, systems software and prewritten software."

The section excludes from exemption the following, " ... custom software, fax machines, copiers, equipment with embedded computerized components or telephone systems, including equipment that is used to provide telecommunications services, as defined in s. 76.80(3)."

A computer may perform both telecommunications services (transmission) and non-telecommunications functions (administration). Computers used more than 50% for telecommunications services are taxable.

Internet Access Versus Internet Service Provider Equipment

Internet access provider equipment, whether digital subscriber line equipment used by telephone companies or similar equipment used by cable television companies, is taxable telecommunications equipment. Computer equipment such as servers and routers involved in the transmission of 2-way communications is taxable telecommunications equipment. At the customer's premises, the high-speed internet access telecommunications activity ends at the outside of the customer's building.

An internet service provider's, computers, modem banks, routers, etc. are exempt under sec. 70.11(39), Wis. Stats., however that exempt activity ends at the hub which connects the computer equipment to a transmission line.

Assessment Procedures According to sec. 70.995, Wis. Stats.

Section 76.82, Wis. Stats. says, "The department, using the methods that it uses to assess property under s.70.995, shall assess the property that is taxable under s. 76.81, including property that is exempt under s. 70.11(27) from the tax under chapter. 70, at its value as of January 1."

5-Year Cycle

Section 70.995(7)(b), Wis. Stats. says, "Each 5 years, or more frequently if the department of revenue's workload permits and if in the department's judgment it is desirable; the department of revenue shall complete a field audit or on-site appraisal at full value under ss. 70.32(1) and 70.34 of all manufacturing property in this state."

Chapter 70 Applies by Reference to the Telephone Company Tax

Section 70.995(13), Wis. Stats. says, "In the sections of this chapter relating to assessment of property, when the property involved is a manufacturing property subject to assessment under this section, the terms 'local assessor' or 'assessor' shall be deemed to refer also to the department of revenue..."

Self-Reporting Form and Penalty

Filing and Extensions

Section 76.83, Wis. Stats. says, "On or before March 1, every telephone company shall send to the department a completed form that the department prescribes. Upon written request, the department may extend the time for filing the report by no more than 30 days." Telephone companies will file separate self-reporting forms for real estate and personal property.

Penalty for Late Filing and Failure to File

Section 76.28(6), Wis. Stats., applies to subchapter IV and says, "(a) The records, books, accounts and papers of any ... company are subject to inspection... (b) If any ... company ... fails to file a report within the time prescribed ... unless ... due to reasonable cause ... there shall be added ... 5% of the amount of such fees ... for not more than one month, with an additional 5% for each additional month or fraction thereof ... not exceeding 25% in the aggregate. (c) If any ... company fails to make a report ... the department may enter ... a sum representing ... the license fees [property tax], together with penalties and interest ... as estimated by the department. Notice ... shall be given by certified mail, and unless a report ... is filed within 15 days of such notice, such estimated assessment shall become final. Thereafter the ... company assessed shall be forever barred from questioning the correctness of the same in any action or proceeding."

No Appeal Without Filing

Section 76.05(1), Wis. Stats. says, "If any company ... shall refuse or neglect to make any reports required by s. 76.04 [s. 76.83] ... such company shall be estopped to question or impeach ... the department except upon satisfactory proof of fraud or mistake injurious to the company." (2) says, "No company shall be allowed in any action or proceeding ... unless such company ... filed ... a ... complete report of the facts and information prescribed by s.76.04 [s.76.83]..."

Statutes for Assessment Notices, Tax Bills, and Appeals

Section 76.84, Wis. Stats. says, (1) "On or before October 1, the department shall notify each telephone company ... of the assessed value of its property. (2) On or before November 1, the department shall notify each telephone company ... of the amount of that tax." Section 76.08, Wis. Stats. says, "Notice of the assessments ... shall be given by certified mail to each company ... on or before the assessment date..." On or before October 1, the department will notify each telephone company of the assessed value of its property. Tax bills will generally be included in that mailing. Payment of the tax bill is due November 10.

Failure of DOR to Meet Date of Mailing Notices Does Not Invalidate the Tax

Section 76.18, Wis. Stats. says, "The provisions in this subchapter prescribing a date ... an act shall be performed ... by the department shall be deemed directory only, and no failure to perform any such act ... within the time prescribed therefore shall affect the validity of such act ... unless it appears that substantial injustice has resulted therefrom..."

Appeal Process

Section 76.84, Wis. Stats., applies the appeal process from sec.76.08(1), Wis. Stats., which says, "Any company aggrieved by the assessment ... may have its assessment ... redetermined by the Dane County circuit court if within 30 days after notice of assessment ... is mailed to the company... Upon the filing of the summons and complaint the court shall set the matter for hearing without a jury. ... The department may be named as the defendant ... on the request of the secretary of revenue, the attorney general may participate with or serve in lieu of departmental counsel."

Payment of Taxes

Section 76.13(2a), Wis. Stats. says, "taxes levied under this section shall be paid to the department in semiannual installments, on May 10 and November 10, on a partially estimated basis. The May 10 payment shall be at least 50% of the total tax assessed for the previous calendar year or 40% of the tax assessed for the current calendar year. Any amounts not paid when due shall become delinquent and shall be subject to interest under s.76.14. ... Companies with a tax liability under this section of less than $2,000 are not required to make semiannual payments but shall pay the full amount of taxes due on or before November 10."

Omitted Property

Section 76.09, Wis. Stats. says, "Any property ... which has been omitted from assessment ... in any of the 5 next previous years ... shall be entered by the department upon its assessment and tax roll once additionally for each year so omitted..."

Utilities, Pipelines, Railroads, and Airlines

For purposes of property taxation, railroads and airlines are included under utilities, along with traditional utilities such as power and light companies, pipelines, and rural electric associations (REA).

DOR requires utility companies to identify whether property owned or leased is used in the operation of the utility. If it is operating property, it is exempted from the general property tax under Sec. 70.112 (4) Wis. Stats., and is instead taxed under various other statutes including those in Sec. 76.01 to 76.26 and Sec.76.28, Wis. Stats.

Each utility determines whether a property is operating or non-operating and that determines how they report their taxable assets and/or gross receipts to the Department of Revenue. DOR requires the utility to report operating property on state prescribed forms UT-149O (Operating Utility - Owned Real Property) or form UT-149 (Operating Utility, Leased Real Property). Property recorded on these two forms *should not be assessed locally*. Utility companies that own or lease real property but do not use it in their operations are required to complete form UT-149NO. This property *should be locally assessed*.

If the assessor has questions regarding use of the property, whether based on inspection or other knowledge, the assessor should direct questions to the contact person shown on the form. The assessor should also monitor lease expiration dates on form UT-149 to ensure that property no longer being leased is returned to the roll and assessed for property tax purposes.

Prior to 2010, DOR provided municipal assessors with of list of utilities, along with contact names and phone numbers. Due to Sec 76.30 Wis. Stats., this information is now considered confidential and may no longer be released by the DOR.

In order to ensure that assessors have the needed information, the revised forms require that the utility provide the assessor with a copy of UT-149 and/or UT-149O. The forms should be filed by February 15 whenever there is a change in the status of real property (new purchase or lease, lease expiration, discontinued use). The exemption is effective even if the utility fails to meet the February 15 deadline. If discovered after the extension of the current year's tax roll, the assessor adjusts the late exemption discovery through a correction to the following year's assessment roll (Sec 70.43 Wis. Stats).

Administrative Structure of the Manufacturing & Utility Bureau

The Manufacturing & Utility Bureau is in the Division of State and Local Finance. The Bureau consists of a central office and four district offices throughout the state.

Manufacturing District Offices

District Supervisor	Counties
EAU CLAIRE DISTRICT OFFICE MANUFACTURING & UTILITY BUREAU 610 GIBSON ST STE 7 EAU CLAIRE WI 54701-2650 **Phone Number:** 715-836-4925 **Fax Number:** 715-836-6690 **E-mail:** mailto:mfgtel79@revenue.wi.gov	Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Juneau, La Crosse, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Price, Rusk, St Croix, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, Wood
GREEN BAY DISTRICT OFFICE MANUFACTURING & UTILITY BUREAU 200 N JEFFERSON ST STE 126 GREEN BAY WI 54301-5100 **Phone Number:** 920-448-5191 **Fax Number:** 920-448-5210 **E-mail** mailto:mfgtel81@revenue.wi.gov	Brown, Calumet, Door, Florence, Fond Du Lac, Forest, Green Lake, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Oconto, Outagamie, Portage, Shawano, Sheboygan, Waupaca, Waushara, Winnebago
MADISON DISTRICT OFFICE MANUFACTURING & UTILITY BUREAU P O BOX 8909 MS 6-301 MADISON WI 53708-8909 **Phone Number:** 608-267-8992 **Fax Number:** 608-267-1355 mailto:mfgtel76@revenue.wi.gov	Columbia, Crawford, Dane, Dodge, Grant, Green, Iowa, Jefferson, Lafayette, Richland, Rock, Sauk, Walworth, **Waukesha*** ***Towns of**: Delafield, Eagle, Genesee, Lisbon, Merton, Mukwonago, Oconomowoc, Ottawa, Summit, Vernon, Waukesha **Villages of**: Big Bend, Chenequa, Dousman, Eagle, Hartland, Lac La Belle, Merton, Mukwonago, Nashotah, North Prairie, Oconomowoc Lake, Pewaukee, Sussex, Wales. **Cities of**: Delafield, Oconomowoc, Pewaukee, Waukesha
MILWAUKEE DISTRICT OFFICE MANUFACTURING & UTILITY BUREAU STATE OFFICE BUILDING 819 N 6TH ST RM 530 MILWAUKEE WI 53203-1606 **Phone Number:** 41-227-4456 **Fax Number:** 414-227-4095 **E-mail:** mailto:mfgtel77@revenue.wi.gov	Kenosha, Milwaukee, Ozaukee, Racine, Washington, **Waukesha*** ***Town of** Brookfield **Villages of**: Butler, Elm Grove, Lannon, Menomonee Falls **Cities of**: Brookfield, Milwaukee, Muskego, New Berlin