

**Questions 4:**

- a. May the 6% state sales tax paid to State H (\$600), be claimed as a credit against the 5% Wisconsin state use tax due?
- b. What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- c. How should Company G report the additional use tax due in Wisconsin on this transaction?

**Answers 4:**

- a. Yes. The amount of state sales tax paid to State H (\$600), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The state sales tax paid to State H in excess of the Wisconsin state use tax due may not be claimed as a credit against the Wisconsin county use tax due.
- b. The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$500 (\$10,000 x 5%)	\$50 (\$10,000 x .5%)
Less: State H's Tax Paid *	<u>500</u> (\$10,000 x 5%)	<u>-0-</u>
Net Tax Due to Wisconsin	<u>\$ -0-</u>	<u>\$50</u>

\* **Note:** The amount of credit for the state sales tax paid to State H is limited to the amount of Wisconsin state use tax imposed on that same property or service. In addition, the excess state sales tax paid to State H may not be claimed as a credit against the Wisconsin county use tax due.

- c. Company G should report the additional Wisconsin state and county use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$-0-)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$-0-)$$

Since the purchase of the equipment by Company G was subject to another state's state sales tax which is equal to or greater than the state use tax due in Wisconsin, the state sales tax paid to the other state is used to reduce the state use tax due in Wisconsin

to zero. No entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for sales taxes paid to another state which offset the Wisconsin state use tax due.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$50)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$10,000)$$

The measure of additional county use tax due (\$10,000) should be reported on Schedule CT, column B, of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

**Example 5: Other State's State Sales Tax Paid on Property is More Than Wisconsin State Use Tax and No Tax Paid to Other State on Labor Charges**

**Facts 5:**

- Company I, located in Wisconsin, has equipment repaired in State J.
- The repair service provider located in State J charges Company I \$2,000 for repair parts and \$1,000 for labor.
- State J's 6.25% state sales tax is properly charged on the repair parts (\$2,000 x 6.25% = \$125).
- State J's state sales tax is not charged on the labor.
- Company I takes possession of the repaired equipment in State J and pays State J's state sales tax on the parts. No local sales tax applies in State J.
- Company I brings the repaired equipment into Wisconsin for use in a Wisconsin county that has not adopted the 0.5% county sales and use tax or the 0.1% stadium sales and use tax.

**Questions 5:**

- a. May State J's 6.25% state sales tax paid on the parts (\$125) be claimed as a credit against the 5% Wisconsin state use tax due?
- b. What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- c. How should Company I report the additional use tax due in Wisconsin on this transaction?

**Answers 5:**

- a. Yes. State J's state sales tax paid on the repair parts (\$125) may be claimed as a credit, under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due on the repair parts. The credit is limited to the amount of Wisconsin state use tax due on that same purchase (\$2,000 x 5% = \$100). Since State J's state sales tax was not paid on the labor, no credit may be claimed against the 5% Wisconsin state use tax due on the labor.
- b. No Wisconsin county use tax is due since the repaired item was not stored, used, or consumed in a county that has adopted the 0.5% county sales and use tax. The net amount of Wisconsin state use tax due is computed as follows:

	State J's State Sales Tax Paid (6.25%)	Wisconsin Use Tax Due (5%)	Amount of State J's Tax Allowed As Credit	Net Wisconsin Use Tax Due
Repair Parts = \$2,000	\$125	\$100	\$100 *	\$-0-
Repair Labor = \$1,000	\$-0-	\$50	\$-0-	\$50

\* **Note:** The amount of credit for sales and use tax paid to another state is limited to the amount of Wisconsin use tax imposed on that same property or service.

- c. Company I should report the additional Wisconsin state use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$50)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$1,000)$$

The measure of additional state use tax due (\$1,000) should be entered on line 17 of the Wisconsin Sales and Use Tax Return.

No county use tax is due since the equipment was brought into Wisconsin for use in a county that has not adopted the county sales and use tax and therefore, no entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for local sales taxes paid to another state which offset the Wisconsin county use tax due.

**Example 6: Construction Contractors – Other State's State Sales Tax is More Than Wisconsin State Use Tax and No Local Tax Charged in Other State**

**Facts 6:**

- Construction Contractor K, located in Wisconsin, purchases materials for \$1,000 from a supplier located in State L.
- Construction Contractor K takes possession of the materials in State L.
- Construction Contractor K is properly charged State L's 6% state sales tax (\$60). No local sales tax is charged in State L.
- Construction Contractor K brings the materials to Wisconsin and stores them in a county that has not adopted the 0.5% county sales and use tax or the 0.1% stadium sales and use tax.
- Construction Contractor K then uses the materials in a real property construction activity in Wisconsin in a county that has adopted the 0.5% county tax, but has not adopted the 0.1% stadium sales and use tax.

**Questions 6:**

- a. May the 6% state sales tax paid to State L (\$60) be claimed as a credit against the 5% Wisconsin state use tax due?
- b. What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- c. How should Construction Contractor K report the additional use tax due in Wisconsin on this transaction?

**Answers 6:**

- a. Yes. The amount of state sales tax paid to State L (\$60) may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The credit is limited to the amount of Wisconsin state use tax imposed on that same purchase.
- b. The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$50 (\$1,000 x 5%)	\$ 5 (\$1,000 x .5%)
Less: State L's Tax Paid *	<u>50</u> (\$1,000 x 5%)	<u>.0</u> (\$0 x .5%)
Net Tax Due to Wisconsin	<u>\$-0-</u>	<u>\$ 5</u>

\* **Note:** The amount of credit for state and local sales tax paid to another state is limited to the amount of Wisconsin state and county use tax imposed on that same property or service.

- c. Construction Contractor K should report the additional Wisconsin state and county use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$-0-)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$-0-)$$

Since the purchase of the materials by Construction Contractor K was subject to another state's state sales tax which was equal to or greater than the state use tax due in Wisconsin, the state sales tax paid to the other state is used to reduce the state use tax due in Wisconsin to zero. No entry is required on the Wisconsin Sales and Use Tax Return to report the credit claimed for sales taxes paid to another state which offset the Wisconsin state use tax due.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$5)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$1,000)$$

The measure of additional county use tax due (\$1,000) should be reported on Schedule CT, column B, of the Wisconsin Sales and Use Tax Return, on the applicable line indicating the county in which the materials were used in the real property improvement.

**Example 7: Registered Vehicles — Other State's State Sales Tax is Less Than Wisconsin State Use Tax, But Other State's Local Sales Tax is More Than Wisconsin County Use Tax**

**Facts 7:**

- Individual M, located in Wisconsin, purchases a boat (an item required to be registered or titled in Wisconsin) for \$10,000 from a supplier located in State N.
- Individual M takes possession of the boat in State N.
- Individual M is required to pay State N's 4% state sales tax (\$10,000 x 4% = \$400) and State N's 1% local sales tax (\$10,000 x 1% = \$100).
- The boat is customarily kept in a Wisconsin county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.

**Questions 7:**

- a. May the 4% state sales tax (\$400) and 1% local sales tax (\$100) paid to State N be claimed as a credit against the 5% Wisconsin state and 0.5% county use tax due?
- b. What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- c. How should Individual M report the additional use tax due in Wisconsin on this transaction?

**Answers 7:**

- a. Yes. The amount of state sales tax paid to State N (\$400) may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State N (\$100) may be claimed as a credit under sec. 77.71(3), Wis. Stats., against the 0.5% county use tax due. The **local** sales tax paid to State N in excess of the Wisconsin county use tax due may not be claimed as a credit against the Wisconsin **state** use tax due.

b. The net amount of Wisconsin state and county use tax due is computed as follows:

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$500 (\$10,000 x 5%)	\$50 (\$10,000 x .5%)
Less: State N's Tax Paid *	<u>400</u> (\$10,000 x 4%)	<u>50</u> (\$10,000 x .5%)
Net Tax Due to Wisconsin	<u>\$100</u>	<u>\$-0-</u>

\* **Note:** The amount of credit for state and local sales tax paid to another state is limited to the amount of Wisconsin state and county use tax imposed on that same property or service.

c. Individual M should report the additional Wisconsin state and county use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$100)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$2,000)$$

The additional Wisconsin state use tax due by Individual M on the purchase of the boat (\$100) should be entered in Section 3, line 4 of Form 9400-193 "Boat Registration and Titling Application" (Rev. 12-91), at the time the boat is registered in Wisconsin.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$-0-)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$-0-)$$

Since the purchase of the boat by Individual M was subject to a local tax in State N which was equal to or greater than the county use tax due in Wisconsin, the local sales tax paid to the other state is used to reduce the county use tax due in Wisconsin to zero. No entry is required to report the credit claimed for local sales taxes paid to another state which offset the county use tax due in Wisconsin.

**Example 8: Other State's State and Local Sales Tax Improperly Paid**

**Facts 8:**

- Company O, located in Wisconsin, purchases \$200 of office supplies from Company Q located in State P.

- The office supplies are shipped by common carrier from Company Q to Company O's offices located in a Wisconsin county that has adopted the 0.5% county sales and use tax, but has not adopted the 0.1% stadium sales and use tax.
- Company Q charges State P's 6% state sales tax (\$200 x 6% = \$12) and State P's 0.5% local sales tax (\$200 x 0.5% = \$1) on the transaction.

**Questions 8:**

- May the 6% state sales tax and 0.5% local sales tax paid to State P be claimed as credits against the 5% Wisconsin state and 0.5% county use tax due?
- What amount of Wisconsin state and county use tax must be paid to Wisconsin on this transaction?
- How should Company O report the additional use tax due in Wisconsin on this transaction?

**Answers 8:**

- No. State P's state and local sales taxes paid on this transaction may not be claimed as credits under secs. 77.53(16) and 77.71(2), Wis. Stats., respectively, against the 5% Wisconsin state and 0.5% county sales tax due because the tax was not **properly** owed to State P. Company Q should not charge State P's state and local sales tax on this transaction because the sale occurred in Wisconsin.

To obtain a refund of the State P's state and local sales tax improperly imposed on the transaction, Company O should contact Company Q.

- Company O must pay the 5% Wisconsin state use tax (\$10) and the 0.5% Wisconsin county use tax (\$1) due on this transaction.
- Company O should report the Wisconsin state and county use tax due as follows:

» **Computation of State Use Tax Due**

Purchase Price of Office Supplies		State Tax Rate		State Use Tax Due
(\$200)	x	(5%)	=	(\$10)

The measure of additional Wisconsin state use tax due by Company O on the purchase of the office supplies (\$200) should be entered on line 17 of the Wisconsin Sales and Use Tax Return.

» **Computation of Additional County Use Tax Due**

Purchase Price of Office Supplies		County Tax Rate		County Use Tax Due
(\$200)	x	(0.5%)	=	(\$1)

The measure of additional Wisconsin county use tax due by Company O on the purchase of the office supplies (\$200) should be entered on Schedule CT, column B of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

**Example 9: Other State's State or Local Sales or Use Tax Imposed AFTER Wisconsin State or County Sales or Use Tax Imposed****Facts 9:**

- Company R, located in Wisconsin, purchases materials for \$5,000 from Supplier S located in State T. No sales or use tax was paid on the purchases of those materials.
- The materials are stored in Wisconsin in a county that has adopted the 0.5% county sales and use tax, but which has not adopted the 0.1% stadium sales and use tax.
- Company R pays the 5% Wisconsin state use tax (\$250) and the 0.5% county use tax (\$25) since the materials are stored in Wisconsin.
- Company R transports the materials in Company R's trucks to State T and uses the materials in a real property construction activity.
- Company R is required to pay State T's state use tax (\$5,000 x 6% = \$300), since the materials were consumed in State T in a real property construction activity.

**Question 9:** May State T's 6% state use tax be claimed as a credit against the 5% Wisconsin state use tax due?

**Answer 9:** No. State T's 6% use tax paid may not be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due on the materials stored in Wisconsin because the Wisconsin taxes were properly incurred **before** State T's taxes were imposed.

**Example 10: Other State's Sales or Use Tax Paid on a Transaction Subject to Wisconsin State and County SALES Tax (not USE tax)****Facts 10:**

- Company U, located in State V, purchases materials for \$1,000 from Supplier W who is also located in State V.
- Company U stores the materials in State V before they are transported to Wisconsin in Company U's trucks for use in a job in a Wisconsin county that has adopted the 0.5% county tax but has not adopted the 0.1% stadium sales and use tax.
- Company U is required to pay State V's 6% use tax (\$60) on its cost of the materials because the materials are stored in State V, and then used in a construction job, which under State V's law is considered a real property construction activity.
- Under Wisconsin law, the construction job is considered a sale and installation of tangible personal property (not a real property construction activity).
- Company U is liable for the 5% Wisconsin state SALES tax (\$100) and the 0.5% Wisconsin county SALES tax (\$10) on its retail selling price (\$2,000) of the materials and installation, to Customer X located in Wisconsin.

**Questions 10:**

- May State V's 6% state **sales or use** tax be claimed as a credit by Company U against the 5% Wisconsin state and 0.5% county SALES tax due?
- What amount of Wisconsin state and county SALES tax must be collected on this transaction?

**Answers 10:**

- No. State V's 6% state **sales or use** tax may not be claimed by Company U as a credit, under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state and 0.5% county SALES tax due on this transaction.

Since Wisconsin is imposing a SALES tax under sec. 77.52(1) on the transaction between **Company U and Customer X** (Company U's customer), and

State V is imposing a sales or use tax on the transaction between **Company U and Supplier W**, no credit for the sales or use tax paid to State V on the materials may be used to offset the **SALES** tax owed to Wisconsin.

Although there is a provision in Chapter 77, Wis. Stats., which allows the amount of Wisconsin state and county **USE** tax due under sec. 77.53, Wis. Stats., to be offset by the amount of state and local sales or use tax paid to another state, there is no provision in Chapter 77, Wis. Stats., which allows the sales or use tax paid to another state to be used to reduce the amount of Wisconsin **SALES** tax due under sec. 77.52(1), Wis. Stats..

- b. Company U must charge the 5% Wisconsin state **SALES** tax (\$100) and the 0.5% county **SALES** tax (\$10) on this transaction.

**Example 11: State and Local Sales Tax Paid to Other State is Less Than Wisconsin State, County, and Stadium Use Tax**

**Facts 11:**

- Company Y, located in Wisconsin, purchases equipment for \$1,000 from a supplier located in State Z.
- Company Y takes possession of the equipment in State Z.
- Company Y is properly charged State Z's 4% state sales tax (\$1,000 x 4% = \$40) and State Z's 0.3% local sales tax (\$1,000 x 0.3% = \$3).
- Company Y brings the equipment into Wisconsin for use in a county that has adopted both the 0.5% county sales and use tax, and the 0.1% stadium sales and use tax.

**Questions 11:**

- a. May the 4% state sales tax (\$40) and the 0.3% local sales tax (\$3) paid to State Z, be claimed as credits against the 5% Wisconsin state, 0.5% county, and 0.1% stadium use tax due?
- b. What amount of Wisconsin state, county, and stadium use tax must be paid to Wisconsin on this transaction?

- c. How should Company Y report the additional use tax due in Wisconsin on this transaction?

**Answers 11:**

- a. Yes. The amount of state sales tax paid to State Z (\$40), may be claimed as a credit under sec. 77.53(16), Wis. Stats., against the 5% Wisconsin state use tax due. The amount of local sales tax paid to State Z (\$3) may be claimed as a credit under sec. 77.71(2), Wis. Stats., against the 0.5% county and 0.1% stadium use tax due.
- b. The net amount of Wisconsin state, county, and stadium use tax due is computed as follows:

	<b>State Use Tax</b>
Wisconsin Use Tax Due	\$50 (\$1,000 x 5%)
Less: State Z's Tax Paid	<u>40</u> (\$1,000 x 4%)
Net Tax Due to Wisconsin	<u>\$10</u>

Since the local tax paid to State Z (\$3) is less than the **combined** county and stadium use tax due in Wisconsin, (\$1,000 x 0.6% = \$6), the credit for the local sales and use tax paid to State Z must be allocated between the county and stadium use tax due to Wisconsin. An allocation method acceptable to the department is as follows:

» **Amount Allocated to County Tax**

Local Tax Paid to State Z	x	5/6 *	=	Local Tax Allowed as Credit Against County Tax
(\$3)		(0.8333)		(\$2.50)

» **Amount Allocated to Stadium Tax**

Local Tax Paid to State Z	x	1/6 *	=	Local Tax Allowed as Credit Against Stadium Tax
(\$3)		(0.1667)		(\$0.50)

\* The 5/6-1/6 allocation is used because 5/6 of the combined county and stadium use tax due (0.5% county tax rate + 0.1% stadium tax rate = 0.6%) results from the county tax and 1/6 of the combined county and stadium use tax due results from the stadium use tax due.

	State Use Tax	County Use Tax
Wisconsin Use Tax Due	\$5.00 (\$1,000 x .5%)	\$1.00 (\$1,000 x .1%)
Less: State Z's Tax Paid	<u>2.50</u> (See above)	<u>0.50</u> (See above)
Net Tax Due to Wisconsin	<u>\$2.50</u>	<u>\$0.50</u>

c. Company Y should report the additional Wisconsin state, county, and stadium use tax due as follows:

» **Computation of Additional State Use Tax Due**

$$\frac{\text{Additional State Use Tax Due } (\$10)}{\text{State Tax Rate } (.05)} = \text{Measure of State Use Tax Due } (\$200)$$

The measure of additional state use tax due (\$200) should be entered on line 16 of the Wisconsin Sales and Use Tax Return.

» **Computation of Additional County Use Tax Due**

$$\frac{\text{Additional County Use Tax Due } (\$2.50)}{\text{County Tax Rate } (.005)} = \text{Measure of County Use Tax Due } (\$500)$$

The measure of additional county use tax due (\$500) should be reported on Schedule CT, column B of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

» **Computation of Additional Stadium Use Tax Due**

$$\frac{\text{Additional Stadium Use Tax Due } (\$0.50)}{\text{County Tax Rate } (.001)} = \text{Measure of Stadium Use Tax Due } (\$500)$$

The measure of additional stadium use tax due (\$500) should be reported on Schedule CT, column D, of the Wisconsin Sales and Use Tax Return, on the applicable county's line.

## 5 Farming Exemption – Containers for Hay or Silage

**Statutes:** Section 77.54(3m), Wis. Stats. (1993-94)

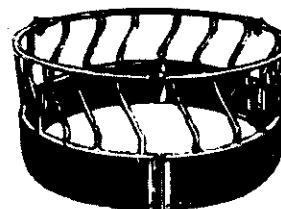
**Law:** Section 77.54(3m), Wis. Stats. (1993-94), provides an exemption from Wisconsin sales and use tax for containers for fruits, vegetables, grain, and animal wastes used exclusively in the business of farming.

**Question:** Are containers for hay or silage, which are used exclusively in the business of farming, exempt from Wisconsin sales and use tax under sec. 77.54(3m), Wis. Stats. (1993-94)?

**Answer:** Yes. Containers for hay or silage qualify for exemption under sec. 77.54(3m), Wis. Stats. (1993-94), if used exclusively in farming.

Examples of containers which qualify if used exclusively in farming include:

- Plastic bags, plastic sleeves, and plastic sheeting used to contain hay or silage.
- Round bale feeders used to hold hay. (Round bale feeders are portable round containers which hold hay. The hay is accessible to livestock through openings in the feeder.)



round bale feeder

□

## 6 Manufacturing Exemptions – Effect of Cherney Decision

**Statutes:** Section 77.54(2), (6)(a), (6m), and (6r), Wis. Stats. (1993-94)

**Wis. Adm. Code:** Sections Tax 11.39(2) (October 1995 Register), Tax 11.40 (April 1994 Register), and Tax 11.41 (March 1991 Register)

**Background:** The Wisconsin Tax Appeals Commission has held in the case of *Cherney Microbiological Services, Inc. vs. Wisconsin Department of Revenue* (94-S-209, April 23, 1996, revised July 15, 1996), that a testing laboratory was entitled to claim exemption from Wisconsin sales or use tax on certain purchases under sec. 77.54(2), Wis. Stats. The Commission explained that virtually all of the quality control tests performed by Cherney were on samples supplied by manufacturers and, since the department has ruled that testing when performed by a manufacturer is part of the manufactur-

ing process, Cherney was entitled to claim exemption on those purchases, even though it was not itself a manufacturer.

The department filed a Notice of Nonacquiescence dated July 22, 1996, with respect to a portion of the decision.

**Question 1:** What effect does the Notice of Nonacquiescence filed by the department have on the conclusions reached by the Wisconsin Tax Appeals Commission in the *Cherney* decision?

**Answer 1:** The Notice of Nonacquiescence filed by the department in response to the *Cherney* decision applies **only** to that portion of the decision that allowed exemption from sales or use tax for (a) equipment and (b) items (e.g., maps, books, and uniforms) not incorporated, consumed, or destroyed in performing testing services on work-in-process samples for manufacturers.

**Question 2:** What is the department's position as a result of the *Cherney* decision and the department's filing of a Notice of Nonacquiescence as they pertain to the sales and use tax exemptions relating to manufacturing?

**Answer 2:** The following describes the department's position as a result of the *Cherney* decision and the Notice of Nonacquiescence filed by the department.

#### A. Consumables

Under sec. 77.54(2), Wis. Stats. (1993-94), persons performing services, where those services would fall within the scope of manufacturing if they were performed by a manufacturer in manufacturing tangible personal property destined for sale, are entitled to claim exemption from Wisconsin sales or use tax for tangible personal property (except fuel and electricity) consumed or destroyed or losing its identity in performing those services.

Exemption from sales or use tax applies to the property consumed or destroyed or losing its identity, even though the service provider is not a manufacturer (i.e., does not produce a new item with a different form, use, or name from existing materials through use of machinery by a process popularly regarded as manufacturing). The services must be performed on tangible personal property destined for sale.

Tangible personal property consumed or destroyed or losing its identity in the performance of services outside the scope of manufacturing is not exempt from Wisconsin sales or use tax.

The scope of manufacturing is defined in sec. Tax 11.39(2), Wis. Adm. Code (October 1995 Register) and through Commission and Court decisions.

**Note:** Although the *Cherney* decision involved a testing laboratory, the position described in Part A above also applies to other service providers who meet the conditions described in Part A above.

#### B. Machinery and Equipment

Section 77.54(6)(a), Wis. Stats. (1993-94), requires that for exemption from sales or use tax to apply to machinery and specific processing equipment, they must be exclusively and directly **used by a manufacturer** in manufacturing tangible personal property. It is still the department's position that machinery and equipment used by testing laboratories and other service providers are not exempt from Wisconsin sales or use tax, if the laboratories or other service providers are not manufacturers of tangible personal property (i.e., do not produce a new item with a different form, use, or name from existing materials through use of machinery by a process popularly regarded as manufacturing). □