



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

Sales and Use Taxes

Equipment used exclusively for recycling
W 0848002 (p. 14)

✱ W 0848002 ✱

September 5, 2008

Type Tax: Sales and Use Taxes

Issue: Equipment used exclusively for recycling

Statutes: Section 77.54(26m), Wis. Stats. (2005-06)

This letter responds to your request for a private letter ruling dated March 24, 2008.

Facts, as provided:

In your letter, you indicated Company A is in the process of building a waste recycling facility. Company A is preparing to buy a front-end loader, a small back-hoe, and eight roll-off containers to separate recyclable materials.

In a subsequent telephone conversation, you indicated Company A will transport the recyclable materials to its new waste recycling facility. The front-end loader and back-hoe will be used at the new facility to load and unload the recyclable materials to and from trucks, as well as to move the recyclable materials throughout the facility.

At the new facility, the recyclable materials will be hand-sorted. The hand-sorting of recyclable materials is the only activity that will be performed at the new facility. The sorted materials will then be transported to other locations where recycling activities will be performed by other parties.

It is my understanding that the roll-off containers will be used to separate the recyclable materials at the point of collecting the waste from consumers and then will be used to bring such waste materials to the new facility. The roll-off containers may also be used to separate the waste once it has come into the new facility and to transport the sorted materials to the other parties’ facilities where the recycling activities will be performed.

Question:

Do Company A’s purchases of the front-end loader, back-hoe, and roll-off containers qualify for exemption under sec. 77.54(26m), Wis. Stats. (2005-06)?

Answer:

No, Company A’s purchases of the front-end loader, back-hoe, and roll-off containers do not qualify for exemption under sec. 77.54(26m), Wis. Stats. (2005-06), since the equipment is not used exclusively and directly in waste reduction and recycling activities.

Analysis:

Section 77.54(26m), Wis. Stats. (2005-06), provides an exemption from Wisconsin sales and use taxes for machinery and equipment used exclusively and directly in waste reduction and recycling activities which **reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste**. Company A’s collection equipment (roll-off containers) is used *prior* to the waste reduction or recycling activities. The conveyance equipment (front-end loader and back-hoe) is not used *directly* in the waste reduction and recycling activities.

In the case of *Wisconsin Department of Revenue v. Parks-Pioneer Corporation* (Wisconsin Court of Appeals, District IV, June 25, 1992), the Court held that lugger and roll-off boxes used to collect solid waste and transport it to Parks-Pioneer's facility for further processing did not perform an integral function in waste reduction or recycling activities because the actual recycling took place **after** the materials were collected and transported to Parks-Pioneer's facility.

Relying on the decision in *Parks-Pioneer*, the Commission concluded, in *Ruef's Sanitary Service, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 13, 1994) (CCH 400-064), that "curb sorters" that were mounted on motor vehicle chassis and used to collect, sort, and transport recyclable materials did not qualify for exemption from sales tax as equipment used exclusively and directly for waste reduction or recycling. While the curb sorters at issue may have been used exclusively for waste reduction or recycling activities, the Commission stated that they were not used "directly" in these activities, because they did not perform an "integral function" in the activities.

In addition, the Wisconsin Tax Appeals Commission held in the case of *Browning-Ferris Industries of Wisconsin, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission 97-S-282, January 13, 2000) (CCH 400-469), that bins and storage containers "are simply receptacles into which recyclable and waste material is placed prior to petitioner's collecting and transporting it to a facility where the actual recycling occurs. These items do not perform an 'integral function' in recycling activities and are therefore not 'directly' used in recycling activities under the test articulated in *Parks-Pioneer*." This decision was affirmed by the Dane County Circuit Court on September 28, 2000. In that decision, the Dane County Circuit Court held that although the bins and storage containers "are related to an activity that recycles solid waste, they are not used *directly* in that activity." This decision was affirmed by the Court of Appeals on June 18, 2001 (CCH 400-549). The Wisconsin Supreme Court denied the taxpayer's petition for redetermination.

Based on the above court decisions, the collection, sorting, and transporting of waste that occurs *prior to* the recycling activity is not a waste reduction or recycling activity for purposes of the exemption in sec. 77.54(26m), Wis. Stats. (2005-06).

Front-end loaders and back-hoes that are used to load a motor vehicle that is collecting and transporting recyclable materials to a recycling facility or used to unload the recyclable materials after they have arrived at a recycling facility are not used *directly* in a waste reduction or recycling activity and do not qualify for the exemption provided in sec. 77.54(26m), Wis. Stats. (2005-06).

I have enclosed a copy of the article titled "Motor Vehicles, Machinery, and Equipment Used in Waste Reduction or Recycling Activities," which was published in *Wisconsin Tax Bulletin* 123 (January 2001). Examples of equipment that does and does not qualify for exemption are provided in this tax release. The tax release can also be accessed at www.revenue.wi.gov/ise/wtb/123tr.pdf.

NOTE: The new recycling facility is not a manufacturing facility for Wisconsin sales and use tax purposes. If, in the future, the facility engages in the business of manufacturing, as described below, purchases of machinery and equipment, such as the front-end loader and back-hoe, may qualify for the exemption under sec. 77.54(6)(a), Wis. Stats. (2005-06), if this equipment is used *within the scope of the manufacturing process*.

Section 77.54(6m), Wis. Stats. (2005-06), provides that "manufacturing" for purposes of the exemption under sec. 77.54(6)(a), Wis. Stats. (2005-06), is (1) the *production by machinery* of (2) a new article with a different (3) form, (4) use and (5) name from existing materials (6) by a process popularly regarded as manufacturing. Each of these six elements of manufacturing must be met for a process to fall within the definition of manufacturing.

Section 77.54(6)(a), Wis. Stats. (2005-06), provides an exemption from Wisconsin sales and use tax for "[m]achines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment."

Therefore, if machinery and equipment, such as a front-end loader and back-hoe, are used exclusively and directly within the scope of a process that is manufacturing, as defined above, Company A may purchase the front-end loader and back-hoe without tax by providing its vendor with a properly completed exemption certificate (Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*) claiming the exemption for manufacturing machinery and

specific processing equipment. The scope of the manufacturing process includes "...the conveyance of raw materials and supplies **from plant inventory to the work point of the same plant**, conveyance of work in progress directly **from one manufacturing operation to another in the same plant** and conveyance of finished products **to the point of first storage on the plant premises...**" (Section Tax 11.39(2)(a), Wis. Adm. Code (October 1997 Register).) Section Tax 11.39(2)(b), Wis. Adm. Code (October 1997 Register), also provides that **"(m)anufacturing does not include storage, deliv-**

ery to or from the plant, repairing or maintaining facilities or research and development." (Emphasis added.)

You may wish to refer to Publication 203, *Sales and Use Tax Information for Manufacturers*, for additional information about what businesses meet the definition of manufacturing, the scope of the manufacturing process, and the exemption for manufacturing machinery and specific processing equipment (copy of publication enclosed). This publication may also be accessed at www.revenue.wi.gov/pubs/pb203.pdf.