

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-023

AN ORDER to create tax 2.32, relating to defining gross receipts for the recycling surcharge.

Submitted by **DEPARTMENT OF REVENUE**

02-01-00 RECEIVED BY LEGISLATIVE COUNCIL.

02-29-00 REPORT SENT TO AGENCY.

RS:WF:jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

May 4, 2000

Honorable Fred Risser
President, State Senate
Rm 220 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Scott Jensen
Speaker State Assembly
Rm 211 W State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 00-023

Dear Senator Risser and Representative Jensen:

This is to notify you, in accordance with s. 227.19(2), Stats., that the proposed rule order relating to defining "gross receipts" for the recycling surcharge is in final draft form. The proposed rule order was published in the **Wisconsin Administrative Register** on March 21, 2000. A public hearing was not required under the exception provided in s. 227.16(2)(e), Stats.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows:

Summary of Proposed Rule Order

Statutory authority: s.71.80(1)(c), Stats.

Statutes interpreted: subch. VII of ch. 77, Stats.

SECTION 1. Tax 2.32 is created, to define the term "gross receipts" as it applies to subch. VII of ch. 77, Stats., relating to the recycling surcharge.

As a result of a nonstatutory provision in 1999 Wis. Act 9, sec. 9143(3d), the department is required to submit proposed rules to define "gross receipts" under subch. VII of ch. 77, Stats., as affected by 1999 Wis. Act 9. The proposed rules are to be submitted to the Legislative Council staff under s. 227.15(1), Stats., no later than February 1, 2000.

May 4, 2000
Page 2

Sincerely,



Cate Zeuske
Secretary of Revenue

CZ:MPW:cll
e:rules\232 Committees - President Speaker

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 00-023
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to define "gross receipts" under subch. VII of ch. 77, Stats., relating to the recycling surcharge. The Department was required, under a nonstatutory provision in 1999 Wis. Act 9, to submit a proposed rule to define "gross receipts" as that term relates to the recycling surcharge, to the Legislative Council staff no later than February 1, 2000. The proposed rule was submitted timely.

Public Hearing

A public hearing was not required, pursuant to s. 227.16(2)(e), Stats.

Legislative Council Staff Recommendations

The Legislative Council staff reviewed the proposed rule and had no recommendations.

Regulatory Flexibility Analysis

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

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE
CREATING RULES**

The Wisconsin Department of Revenue proposes an order to create Tax 2.32, relating to defining gross receipts for the recycling surcharge.

Analysis by the Department of Revenue

Statutory authority: s.71.80(1)(c), Stats.

Statutes interpreted: subch. VII of ch. 77, Stats.

SECTION 1. Tax 2.32 is created, to define the term "gross receipts" as it applies to subch. VII of ch. 77, Stats., relating to the recycling surcharge.

As a result of a nonstatutory provision in 1999 Wis. Act 9, sec. 9143(3d), the department is required to submit proposed rules to define "gross receipts" under subch. VII of ch. 77, Stats., as affected by 1999 Wis. Act 9. The proposed rules are to be submitted to the Legislative Council staff under s. 227.15(1), Stats., no later than February 1, 2000.

SECTION 1. Tax 2.32 is created to read:

Tax 2.32 Recycling surcharge – gross receipts defined. (1) PURPOSE.

This section defines "gross receipts" for purposes of the recycling surcharge under subch. VII of ch. 77, Stats.

Note: For any taxable year, a recycling surcharge is imposed on: (a) individuals, estates, trusts, statutory employees and partnerships that have at least \$4,000,000 in gross receipts from a trade or business for the taxable year; (b) corporations and insurers that have at least \$4,000,000 in gross receipts from all activities for the taxable year; and (c) individuals, estates, trusts and partnerships engaged in farming that have at least \$1,000,000 in gross receipts from farming for the taxable year.

(2) DEFINITIONS. In subch. VII of ch. 77, Stats., and this section:

(a) "Gross receipts from all activities of corporations" means the sum of the following items reportable by corporations other than those listed in pars. (c) and (d):

1. Gross receipts or sales reportable on line 1a of federal form 1120, U. S. corporation income tax return.

2. Gross dividends reportable on line 4 of federal form 1120.
3. Gross interest income reportable on line 5 of federal form 1120.
4. Gross rents reportable on line 6 of federal form 1120.
5. Gross royalties reportable on line 7 of federal form 1120.
6. The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on lines 8 and 9 of federal form 1120.
7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

Note: In this subsection, line numbers of forms refer to the 1999 forms.

(b) "Gross receipts from all activities of exempt organizations taxable as corporations" means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on line 1a of federal form 990-T, exempt organization business income tax return.
2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990-T.
3. Gross rents includable in computing rent income on line 6 of federal form 990-T.
4. Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on line 7 of federal form 990-T.
5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990-T.
6. Gross investment income includable in computing investment income on line 9 of federal form 990-T.
7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990-T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990-T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(c) "Gross receipts from all activities of insurance companies" means the sum of the following items reportable by insurance companies:

1. Gross premiums earned reportable on lines 1 and 8 of schedule A on federal form 1120-PC, U. S. property and casualty insurance company income tax return.

2. Gross dividends reportable on line 2 of schedule A, or line 2 of schedule B if applicable, on federal form 1120-PC.

3. Gross interest income reportable on line 3a of schedule A, or line 1a of schedule B if applicable, on federal form 1120-PC.

4. Gross rents reportable on line 4 of schedule A, or line 3 of schedule B if applicable, on federal form 1120-PC.

5. Gross royalties reportable on line 5 of schedule A, or line 4 of schedule B if applicable, on federal form 1120-PC.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 6 and 7 of schedule A, or lines 5 and 7 of schedule B if applicable, on federal form 1120-PC.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(d) "Gross receipts from all activities of tax-option (S) corporations" means the sum of the following items reportable by S corporations:

1. Gross receipts or sales reportable on line 1a of federal form 1120S, U. S. corporation income tax return for an S corporation.

2. Gross rents includable in computing the income from real estate and other rental activities reportable on lines 2 and 3a of schedule K on federal form 1120S.

3. Gross interest income reportable on line 4a of schedule K on federal form 1120S.

4. Gross dividends reportable on line 4b of schedule K on federal form 1120S.

5. Gross royalties includable in computing royalty income reportable on line 4c of schedule K on federal form 1120S.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on line 4 of federal form 1120S and lines 4d, 4e, 4f and 5 of schedule K on federal form 1120S.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(e) "Gross receipts from farming, of individuals, estates, trusts and partnerships engaged in farming" means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on lines 1, 4, 5a, 6a, 7a, 8a and 9 of federal schedule F, profit or loss from farming.

2. The gross sales price of farm assets, including livestock, includable in computing ordinary income or loss on federal form 4797, sales of business property.

(f) "Gross receipts of exempt organizations taxable as trusts" means the total receipts or sales from all trade or business activities other than farming, reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include any of the following:

1. Gross receipts or sales reportable on line 1a of federal form 990-T, exempt organization business income tax return.

2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990-T.

3. Gross rents includable in computing rent income on line 6 of federal form 990-T.

4. Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on line 7 of federal form 990-T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990-T

6. Gross investment income includable in computing investment income on line 9 of federal form 990-T.

7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990-T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990-T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(g) "Gross receipts of individuals, estates, trusts and statutory employees" means the total receipts or sales from all trade or business activities other than farming, reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include any of the following:

1. Gross receipts or sales reportable on line 1 of federal schedule C, profit or loss from business.

2. Gross receipts reportable on line 1 of federal schedule C-EZ, net profit from business.

3. The gross sales price of assets includable in computing ordinary income or loss on federal form 4797, sales of business property.

Note: See par. (e) for information relating to individuals, estates and trusts engaged in farming.

(h) "Gross receipts of partnerships" means the total receipts or sales from all trade or business activities other than farming, reportable by partnerships for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include the sum of the following:

1. Gross receipts or sales reportable on line 1a of federal form 1065, U. S. partnership return of income.

2. Gross receipts, other than farm receipts, passed through from other partnerships and fiduciaries and includable in computing the amount on line 4 of federal form 1065.

3. The gross sales price from the sale or disposition of business assets, other than farm assets, includable in computing the net gain or loss on line 6 of federal form 1065.

4. Gross receipts from the rental of tangible personal property.

5. Other gross receipts includable in computing other income or loss on line 7 of federal form 1065.

Note: See par. (e) for information relating to partnerships engaged in farming.

Note: Section Tax 2.32 interprets subch. VII of ch. 77, Stats.

Note: Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9, to replace the expired temporary recycling surcharge with a recycling surcharge, effective for taxable years beginning on or after January 1, 2000. This section applies to the recycling surcharge imposed for taxable years beginning on or after January 1, 2000.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

3/2/00

By: _____



Cate Zeuske
Secretary of Revenue

e:Rules\232 Proposed Order

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Tax 2.32

Subject

Recycling Surcharge - Definition of Gross Receipts

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be Possible to Absorb
 Within Agency's Budget Yes No

 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This rule defines gross receipts for purposes of the recycling surcharge, as required by section 9143 (3d) of 1999 Wisconsin Act 9. To the extent that gross receipts as defined in this rule are the receipts intended by the Legislature to be subject to the recycling surcharge in enacted in Act 9, this rule has no fiscal effect.

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue Dennis Collier, (608) 266-5773	Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 	Date 1/12/2000
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