

WISCONSIN LEGISLATIVE COUNCIL STAFF



MAR 26 1999

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 99-035

AN ORDER to create Tax 1.12, relating to electronic funds transfer.

Submitted by **DEPARTMENT OF REVENUE**

02-18-99 RECEIVED BY LEGISLATIVE COUNCIL.

03-16-99 REPORT SENT TO AGENCY.

RS:WF:jal;rv

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

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CLEARINGHOUSE RULE 99-035

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section Tax 1.12 (11) (c) provides that the Secretary of Revenue's determination of whether it is an undue hardship to require a taxpayer to use electronic fund transfers for payments to the Department of Revenue is "not appealable." There does not appear to be any statutory authority for this paragraph. The department should either provide an explanation of the statutory authority for this paragraph or delete it from the rule.

2. Form, Style and Placement in Administrative Code

The second sentence of s. Tax 1.12 (3) (d) is explanatory in nature. If the department determines that this sentence is necessary, it should be placed in a note following par. (d). [See s. 1.09 (1), Manual. See, also, the second sentence of s. Tax 1.12 (3) (h).]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Tax 1.12 (3) (a) defines the term "ACH" in part to mean a central clearing facility operated by a federal reserve bank or a private sector organization on behalf of depository financial institutions. Subsection (3) (h) states that settlement in the ACH system generally occurs through federal reserve banks, implying that settlement may occur outside of a federal reserve bank. Finally, sub. (3) (i) defines the term "settlement date" to mean the date on which an exchange of funds with respect to an entry or entries is reflected on the books of the federal reserve bank. Given the

provisions of sub. (3) (a) and (h), should other entities be added to a federal reserve bank in sub. (3) (i)?

b. It is suggested that s. Tax 1.12 (4) be redrafted to require that a person who owes the taxes and fees described in sub. (4) must pay them using the EFT payment method. In addition, is it clear whether the \$40,000 or \$10,000 limits in sub. (4) apply to a person required to pay the taxes and fees enumerated in sub. (4) regardless of how many business locations that person has?

c. It is suggested that the word "year" in s. Tax 11.12 (4) (a) 1. be replaced with the word "year's." In addition, it is suggested that the word "payment" be placed after the word "withholding" in s. Tax 11.12 (4) (a) 2.

d. In s. Tax 11.12 (4) (a) 3., the quotation marks should be deleted.

e. Section Tax 11.12 (4) (a) 8. provides that the EFT payment method must be used for payments of alternate fuels tax when the "total tax due" in the prior calendar year was \$40,000 or more. Unless there is a difference in the meaning of the term "total tax due" and the term "tax due" which is used in other subdivisions of s. Tax 11.12 (4) (a), it is suggested that the word "total" be eliminated from subd. 8.

f. Section Tax 11.12 (4) (b) would be clearer if it were rewritten to read: "Any person not required to use the EFT payment method under par. (a) may elect to use the EFT payment method to pay or deposit the taxes or fees specified in par. (a).

g. It is suggested that s. Tax 11.12 (6) (c) be revised to state whether a person required to make payments using the EFT payment method on the date required under s. Tax 11.12 (5) is still required to make those payments on that date if the department has not confirmed the payment registration and provided payment instructions to the payer under s. Tax 11.12 (6) (c).

h. Section Tax 11.12 (7) (a) provides that ACH debit transfers shall be made using a touch tone telephone, computer with modem or "other department approved method." It is suggested that the word "a" be placed before the word "computer" and the word "modem." In addition, s. Tax 11.12 (7) (a) should provide information on-how a person determines whether there is another approved method of making ACH debit transfers.

i. Section Tax 11.12 (7) (a) 2. and (b) 2. and (10) are confusing. The language in sub. (7) requires transfers to be "initiated" before a certain time in order to be timely received. The language in sub. (10) requires payments or deposits to have a "settlement date" on or before the described due date in order to be considered timely. Does this mean that even if a payment is received by the settlement date, it is not considered timely if the payment was not initiated before a certain date? It is suggested that s. Tax 11.12 be redrafted to provide a clear answer to this question.

j. In the second sentence of the example following s. Tax 11.12 (10), should the phrase "or before" be inserted after the phrase "settle on"?

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

The Wisconsin Department of Revenue proposes an order to create Tax 1.12, relating to electronic funds transfer.

Analysis by the Department of Revenue

Statutory authority: ss. 73.029 and 227.11(2)(a), Stats.

Statutes interpreted: ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m), Stats.

SECTION 1. Tax 1.12 is created to permit the Department of Revenue to require electronic funds transfer, or "EFT," to pay or deposit certain taxes and fees, including but not limited to corporate income and franchise tax; income tax withholding; general, county and special district, or "stadium," sales and use tax; fermented malt beverages tax; liquor, or "distilled spirits and wine," tax and administrative fee; cigarette tax; tobacco products tax; alternate fuels tax; general aviation fuel tax; motor vehicle fuel tax and petroleum inspection fee; and individual and fiduciary income tax, when the amounts due in the prior year equaled or exceeded a specified amount. The rule is being promulgated because it is the only method by which the department may require EFT as a payment method, as a result of the creation of s. 73.029, Stats., by 1997 Wis. Act 27.

In addition to providing for EFT payment requirements, the rule also provides information for taxpayers who elect to use EFT.

SECTION 1. Tax 1.12 is created to read:

Tax 1.12 Electronic funds transfer. (1) SCOPE. This section applies to any person who is required to or elects to pay or deposit taxes or fees by electronic funds transfer, or "EFT."

(2) PURPOSE. The purpose of this section is to specify which taxes and fees are required to be paid or deposited using the EFT payment method, to provide that certain persons not required to use the EFT payment method may elect to do so and to explain the procedures for using EFT.

(3) DEFINITIONS. In this section:

(a) "ACH" means automated clearing house, a central clearing facility operated by a federal reserve bank or a private sector organization on behalf of depository financial institutions in which depository financial institutions transmit or receive ACH entries.

(b) "ACH credit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the payer's financial institution to transfer the payment amount to the department's depository bank.

(c) "ACH debit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the department's depository bank to transfer the payment amount from the payer's account.

(d) "Electronic funds transfer" or "EFT" means any transfer of funds initiated through a terminal, telephone, computer or magnetic tape authorizing a financial institution to debit or credit an account for next day settlement. EFT is a payment method which allows funds to be transferred electronically from the payer's financial institution to the department's depository bank eliminating the need to prepare and process a paper check. (2)
Note.

(e) "Entry" means an electronic item representing the transfer of funds in the ACH system.

(f) "Financial institution" means any bank, savings and loan, credit union, industrial bank or other institution organized under either national or state banking laws capable of both accepting deposits and making loans.

(g) "Payer" means any person who is required to or elects to pay or deposit taxes or fees by electronic funds transfer.

(h) "Settle" or "settlement" means to transfer funds, or a transfer of funds, between two parties in cash or negotiable items or on the books of a mutual depository to complete one or more prior transactions and made subject to a final accounting. Settlement for the ACH system (5)
} note
generally occurs through the federal reserve banks.

(i) "Settlement date" means the date on which an exchange of funds with respect to an entry or entries is reflected on the books of the federal reserve bank.

(j) "Trace number" means a character code uniquely identifying each ACH entry.

what about other agents?
See (s)(a)

(4) REQUIREMENT OR ELECTION TO USE EFT. (a) Except as provided in sub. (11),

*a person's
Business
location*

the department requires that the following taxes and fees be paid or deposited using the EFT payment method:

1. Corporate income and franchise tax estimated tax payments and tax due with the tax return when the net tax less refundable credits on the prior ^{year} tax return was \$40,000 or more.

2. Income tax withholding when the required deposits were \$10,000 or more in the prior calendar year.

3. General, county and special district or "stadium" sales and use tax when the aggregate amount due in the prior calendar year was \$10,000 or more.

4. Fermented malt beverages tax when the tax due after the adjustment for any overpayment or additional amount due for a previous period was \$40,000 or more in the prior calendar year.

5. Liquor or "distilled spirits and wine" tax and administrative fee when the aggregate net amount of tax and fee due in the prior calendar year was \$40,000 or more.

6. Cigarette tax when the net tax due before printing and shipping costs was \$40,000 or more in the prior calendar year.

7. Tobacco products tax when the tax due in the prior calendar year was \$40,000 or more.

8. Alternate fuels tax when the total tax due in the prior calendar year was \$40,000 or more.

9. General aviation fuel tax when the tax due in the prior calendar year was \$40,000 or more.

10. Motor vehicle fuel tax and petroleum inspection fee when the aggregate amount due in the prior calendar year was \$40,000 or more.

11. Individual and fiduciary income tax estimated tax payments when the estimated tax payments as required under s. 71.09, Stats., were \$40,000 or more in the prior taxable year.

annual?

not to use EFT pmt meth under par.(a)

(b) Any person required ~~to pay or deposit taxes or fees specified in par. (a)~~ when the ~~prior year's amounts were less than those specified in par. (a)~~, may elect to use the EFT payment method to pay or deposit the taxes or fees.

(5) DATE FIRST EFT PAYMENT REQUIRED. The department shall notify a person when EFT payments or deposits are required. A 90-day EFT registration period shall follow the notification. The first required EFT payment or deposit ~~shall be~~^{is} due on the first payment due date following the end of the registration period.

(5)

Example: An employer required to make semi-monthly deposits of withholding tax is notified of the EFT requirement on November 10, 1999. The first EFT deposit is due February 15, 2000, which is the first deposit due date following the end of the 90-day registration period.

(6) REGISTRATION FOR EFT. (a) Payers shall register with the department to use the EFT payment method before making EFT payments or deposits. Payers required to pay or deposit by EFT shall be notified by the department and given registration instructions. Persons who elect to pay or deposit by EFT may request an EFT registration packet from the department.

Note: A request for an EFT registration packet may be made by calling the department's forms request line at (608)266-1961, or by writing to Forms Request Office, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903.

(b) As part of the registration process, the payer shall provide a signed authorization statement to the department authorizing the department to make ACH debit transfers through its depository bank or to receive ACH credit transfers from the payer's financial institution.

(c) The department shall confirm the registration and provide payment instructions to the payer.

(5) Before the end of the period of the period - Payment requires anyone

(7) EFT PAYMENT PROCEDURES. EFT payments or deposits shall be credited by the department directly to the payer's tax account. The payer may use the ACH debit or ACH credit transfer option, or both, as follows:

(a) *ACH debit transfers.* 1. ACH debit transfers shall be made using a touch tone telephone, computer with modem or other department approved method. A toll free telephone

(5) If there are, list them

number and voice instructions shall be provided by the department for the payer to use when initiating an ACH debit transfer via telephone. Required payment information includes the tax type code for the tax being paid, the tax period date to which the payment should be applied, the amount of the payment and the effective date of the payment.

2. The payer shall initiate ACH debit transfers before 4:00 p.m. central standard time or central daylight savings time, as applicable, at least one business day before the prescribed due date of the payment in order to be timely received.

(b) *ACH credit transfers*. 1. A payer shall initiate ACH credit transfers through the payer's financial institution following directions specific to that financial institution.

2. In order to be timely received, ACH credit transfers shall be initiated in time for the payer's financial institution to settle the funds transfer on or before the due date of the payment.

(8) COSTS TO INITIATE EFT. (a) ACH debit transfers shall occur at no cost to the payer.

(b) Payers using ACH credit transfers are liable for any fees charged by the payer's financial institution.

(9) EVIDENCE OF EFT PAYMENT. A payer receives a trace number for each EFT transaction. The trace number given to the payer during the EFT transaction and included as part of the ACH entry is the payer's confirmation of payment or deposit and shall provide proof of the date and amount of the payment or deposit.

(10) DUE DATE OF EFT PAYMENT. (a) In order to be considered timely, EFT payments or deposits shall have a settlement date on or before the prescribed due date, or the revised due date as provided in par. (c), of the payment or deposit.

(b) Payments or deposits made by EFT with a settlement date later than the prescribed due date or revised due date of the payment or deposit shall be considered late and shall be ^{are} subject to all applicable late fees, penalties and interest.

(S)? why in rule?

(S) EFT

(S) A

(c) When the prescribed due date falls on a weekend or legal holiday, the payment due date is revised to be the first business day immediately following the weekend or holiday.

Example: If the prescribed due date falls on a Monday which is also memorial day, an ACH debit transfer must be initiated on or before the preceding Friday so that it has a settlement date on or before the following Tuesday, when the payment is due. A payer using an ACH credit transfer must work with the financial institution to initiate the transfer in time to settle on ^{or} before the revised payment due date.

(11) EXCEPTION TO EFT REQUIREMENT. (a) The secretary of revenue may waive the requirement to use the EFT payment method when the secretary determines that the requirement causes an undue hardship, if the person otherwise required to use EFT does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to Electronic Funds Transfer, Wisconsin Department of Revenue, P.O. Box 8912, Madison, WI 53708-8912.

2. Clearly indicates why the requirement causes an undue hardship.
3. Is current in all return and report filings and tax payments.

(b) In determining whether the EFT requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances which may prevent the payer from using the EFT method.

Examples: Examples of unusual circumstances include:

- 1) The person does not have access to a touch tone telephone.
 - 2) The person is physically unable to use a touch tone telephone.
 - 3) The telephone system available to the person is incompatible with the department's telephone system used for EFT registration or payments, or both.
2. Any other factor which the secretary determines is pertinent.

(c) The secretary of revenue's determination under this paragraph is not appealable. (1)

Note: Section Tax 1.12 interprets ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m), Stats.

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

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: _____

2-15-99

By: _____



Cate Zeuske
Secretary of Revenue

112 Proposed Order



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

June 24, 1999

JUN 25 REC'D

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 115 South State Capitol
PO Box 7882
Madison WI 53707-7882

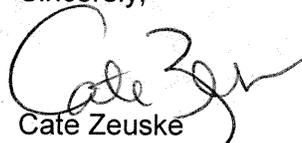
Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 15 North State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 99-035

Dear Senator Robson and Representative Grothman:

Copies of Clearinghouse Rule 99-035 in final draft form and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats., are enclosed.

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:cil
e:rules\112 Committees - JCRAR

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 99-035

SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to enable the department to require electronic funds transfer ("EFT") as a method for paying or depositing certain taxes or fees. The department may require EFT only by promulgating rules, as a result of the creation of s. 73.029, Stats., by 1997 Wisconsin Act 27. The rule specifies which taxes and fees are required to be paid or deposited using EFT, and it provides information for taxpayers who elect to use EFT even though not required to do so.

Public Hearing

A public hearing was not required, pursuant to s. 227.17(2)(e), Stats.

Legislative Council Staff Recommendations

All comments made by the Legislative Council Rules Clearinghouse have been incorporated into this proposed rule order, except that the change suggested in comment 5.e is not made because the phrase "total tax due" is necessary in regard to payments of alternate fuels tax.

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 1.12, relating to electronic funds transfer.

Analysis by the Department of Revenue

Statutory authority: ss. 73.029 and 227.11(2)(a), Stats.

Statutes interpreted: ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m), Stats.

SECTION 1. Tax 1.12 is created to permit the Department of Revenue to require electronic funds transfer, or "EFT," to pay or deposit certain taxes and fees, including but not limited to corporate income and franchise tax; income tax withholding; general, county and special district, or "stadium," sales and use tax; fermented malt beverages tax; liquor, or "distilled spirits and wine," tax and administrative fee; cigarette tax; tobacco products tax; alternate fuels tax; general aviation fuel tax; motor vehicle fuel tax and petroleum inspection fee; and individual and fiduciary income tax, when the amounts due in the prior year equaled or exceeded a specified amount. The rule is being promulgated because it is the only method by which the department may require EFT as a payment method, as a result of the creation of s. 73.029, Stats., by 1997 Wis. Act 27.

In addition to providing for EFT payment requirements, the rule also provides information for taxpayers who elect to use EFT.

SECTION 1. Tax 1.12 is created to read:

Tax 1.12 **Electronic funds transfer**. (1) SCOPE. This section applies to any person who is required to or elects to pay or deposit taxes or fees by electronic funds transfer, or "EFT."

(2) PURPOSE. The purpose of this section is to specify which taxes and fees are required to be paid or deposited using the EFT payment method, to provide that certain persons not required to use the EFT payment method may elect to do so and to explain the procedures for using EFT.

(3) DEFINITIONS. In this section:

(a) "ACH" means automated clearing house, a central clearing facility operated by a federal reserve bank or a private sector organization on behalf of depository financial institutions in which depository financial institutions transmit or receive ACH entries.

(b) "ACH credit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the payer's financial institution to transfer the payment amount to the department's depository bank.

(c) "ACH debit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the department's depository bank to transfer the payment amount from the payer's account.

(d) "Electronic funds transfer" or "EFT" means any transfer of funds initiated through a terminal, telephone, computer or magnetic tape authorizing a financial institution to debit or credit an account for next day settlement.

Note: The EFT payment method allows funds to be transferred electronically from the payer's financial institution to the department's depository bank eliminating the need to prepare and process a paper check.

(e) "Entry" means an electronic item representing the transfer of funds in the ACH system.

(f) "Financial institution" means any bank, savings and loan, credit union, industrial bank or other institution organized under either national or state banking laws capable of both accepting deposits and making loans.

(g) "Payer" means any person who is required to or elects to pay or deposit taxes or fees by electronic funds transfer.

(h) "Settle" or "settlement" means to transfer funds, or a transfer of funds, between two parties in cash or negotiable items or on the books of a mutual depository to complete one or more prior transactions and made subject to a final accounting.

(i) "Settlement date" means the date on which an exchange of funds with respect to an entry or entries is reflected on the books of the department's depository bank.

(j) "Trace number" means a character code uniquely identifying each ACH entry.

(4) REQUIREMENT OR ELECTION TO USE EFT. (a) Except as provided in sub. (11), the department requires a person who owes taxes and fees as described in subds. 1. to 11. to

pay or deposit the taxes and fees using the EFT payment method. The following taxes and fees are included in the EFT payment requirement:

1. Corporate income and franchise tax estimated tax payments and tax due with the tax return when the net tax less refundable credits on the prior year's tax return was \$40,000 or more.

2. Income tax withholding payments when the required deposits were \$10,000 or more in the prior calendar year.

3. General, county and stadium sales and use tax when the aggregate amount due in the prior calendar year was \$10,000 or more.

Note: See s. Tax 11.001(4) for the definition of stadium tax.

4. Fermented malt beverages tax when the tax due after the adjustment for any overpayment or additional amount due for a previous period was \$40,000 or more in the prior calendar year.

5. Liquor or "distilled spirits and wine" tax and administrative fee when the aggregate net amount of tax and fee due in the prior calendar year was \$40,000 or more.

6. Cigarette tax when the net tax due before printing and shipping costs was \$40,000 or more in the prior calendar year.

7. Tobacco products tax when the tax due in the prior calendar year was \$40,000 or more.

8. Alternate fuels tax when the total tax due in the prior calendar year was \$40,000 or more.

9. General aviation fuel tax when the tax due in the prior calendar year was \$40,000 or more.

10. Motor vehicle fuel tax and petroleum inspection fee when the aggregate amount due in the prior calendar year was \$40,000 or more.

11. Individual and fiduciary income tax estimated tax payments when the estimated tax payments as required under s. 71.09, Stats., were \$40,000 or more in the prior taxable year.

(b) Any person not required to use the EFT payment method under par. (a) may elect to use the EFT payment method to pay or deposit the taxes or fees specified in par. (a).

(5) DATE FIRST EFT PAYMENT REQUIRED. The department shall notify a person when EFT payments or deposits are required. A 90-day EFT registration period shall follow the notification. The first required EFT payment or deposit shall be due on the first payment or deposit due date following the end of the registration period.

Example: An employer required to make semi-monthly deposits of withholding tax is notified of the EFT requirement on November 10, 1999. The first EFT deposit is due February 15, 2000, which is the first deposit due date following the end of the 90-day registration period.

(6) REGISTRATION FOR EFT. (a) Payers shall register with the department to use the EFT payment method before making EFT payments or deposits. Payers required to pay or deposit by EFT shall be notified by the department as provided in sub. (5) and given registration instructions. Persons who elect to pay or deposit by EFT may request an EFT registration packet from the department.

Note: A request for an EFT registration packet may be made by calling the department's forms request line at (608)266-1961, or by writing to Forms Request Office, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903.

(b) As part of the registration process, the payer shall provide a signed authorization statement to the department authorizing the department to make ACH debit transfers through its depository bank or to receive ACH credit transfers from the payer's financial institution.

(7) EFT PAYMENT PROCEDURES. EFT payments or deposits shall be credited by the department directly to the payer's tax account. The payer may use the ACH debit or ACH credit transfer option, or both, as follows:

(a) *ACH debit transfers.* 1. ACH debit transfers shall be made using a touch tone telephone, a computer with a modem or another department approved method. A toll free telephone number and voice instructions shall be provided by the department for the payer to

use when initiating an ACH debit transfer via telephone. Required payment information includes the tax type code for the tax being paid, the tax period date to which the payment should be applied, the amount of the payment and the effective date of the payment.

Note: written requests for department approval of another ACH debit transfer method should be addressed to Electronic Funds Transfer, Wisconsin Department of Revenue, P.O. Box 8912, Madison WI 53708-8912.

2. The payer shall initiate ACH debit transfers before 4:00 p.m. central standard time or central daylight savings time, as applicable, at least one business day before the prescribed due date of the payment in order for the payment to have a settlement date on or before the prescribed due date.

(b) ACH credit transfers. 1. A payer shall initiate ACH credit transfers through the payer's financial institution following directions specific to that financial institution.

2. In order for the payment to have a settlement date on or before the prescribed due date, ACH credit transfers shall be initiated in time for the payer's financial institution to settle the funds transfer on or before the due date of the payment.

(8) COSTS TO INITIATE EFT. (a) ACH debit transfers shall occur at no cost to the payer.

(b) Payers using ACH credit transfers are liable for any fees charged by the payer's financial institution.

(9) EVIDENCE OF EFT PAYMENT. A payer receives a trace number for each EFT transaction. The trace number given to the payer during the EFT transaction and included as part of the ACH entry is the payer's confirmation of payment or deposit and shall provide proof of the date and amount of the payment or deposit.

(10) DUE DATE OF EFT PAYMENT. (a) In order for EFT payments and deposits to be considered received on or before the prescribed due date, EFT payments or deposits shall have a settlement date on or before the prescribed due date, or the revised due date as provided in par. (c), of the payment or deposit.

(b) Payments or deposits made by EFT with a settlement date later than the prescribed due date or revised due date of the payment or deposit shall be considered late and shall be subject to all applicable late fees, penalties and interest.

(c) When the prescribed due date falls on a weekend or legal holiday, the payment due date is revised to be the first business day immediately following the weekend or holiday.

Example: If the prescribed due date falls on a Monday which is also memorial day, an ACH debit transfer must be initiated on or before the preceding Friday so that it has a settlement date on or before the following Tuesday, when the payment is due. A payer using an ACH credit transfer must work with the financial institution to initiate the transfer in time to settle on or before the revised payment due date.

(11) EXCEPTION TO EFT REQUIREMENT. (a) The secretary of revenue may waive the requirement to use the EFT payment method when the secretary determines that the requirement causes an undue hardship, if the person otherwise required to use EFT does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to Electronic Funds Transfer, Wisconsin Department of Revenue, P.O. Box 8912, Madison, WI 53708-8912.

2. Clearly indicates why the requirement causes an undue hardship.
3. Is current in all return and report filings and tax payments.

(b) In determining whether the EFT requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances which may prevent the payer from using the EFT method.

Examples: Examples of unusual circumstances include:

- 1) The person does not have access to a touch tone telephone.
 - 2) The person is physically unable to use a touch tone telephone.
 - 3) The telephone system available to the person is incompatible with the department's telephone system used for EFT registration or payments, or both.
2. Any other factor which the secretary determines is pertinent.

Note: Section Tax 1.12 interprets ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m), Stats.

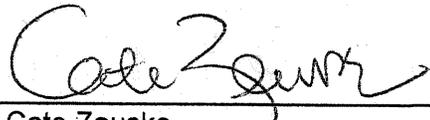
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

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: 4-25-99

By: 
Cate Zeuske
Secretary of Revenue

112 Proposed Order

LRB or Bill No./Adm. Rule No.
TAX 1.12
 Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject **Electronic Funds Transfer**

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

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

Local: No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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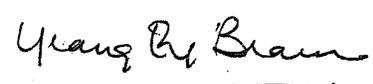
Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

Tax 1.12 is created to permit the Department of Revenue (DOR) to require electronic funds transfer (EFT) to pay income, sales and excise taxes. In general, EFT could be required for persons or businesses with prior calendar year deposits of \$40,000 or more. For income tax withholding and sales tax, EFT could be required for those with prior calendar year deposits of \$10,000 or more. EFT could be accomplished by debit transfers with costs paid by DOR or credit transfers with costs paid by the taxpayer. The department may waive the EFT requirement in specific cases.

In August 1998, approximately 30% of withholding collections came from voluntary use of EFT. It is not currently possible to use EFT for sales tax deposits. The rule would not have a significant effect on state tax collections. With increased EFT, state GPR investment income could increase by perhaps \$1 million annually because funds would be available sooner than without EFT. Some of this increase would be from voluntary use of EFT, and some from required use.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) Wisconsin Department Of Revenue Bruce Biermeier, 266-7396	Authorized Signature/Telephone No. Yeang-Eng Braun (608) 266-2700 	Date 10/7/98
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1997 Session

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect
DOA-2047(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB OR Bill No./Adm. Rule No.	Amendment No.
Tax 1.12	

Subject

Electronic Funds Transfer

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringe (FTE Position Changes)	\$	\$ -
State Operations-Other Costs	(FTE)	(FTE)
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned	See Text	-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$ See Text	\$ -

	NET ANNUALIZED FISCAL IMPACT	
	STATE	LOCAL
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUES	\$ See Text	\$

Agency/Prepared by: (Name & Phone No.) Wisconsin Department Of Revenue Bruce Biermeier, 266-7396	Authorized Signature/Telephone No. Yeang-Eng Braun <i>Yeang Eng Braun</i> (608) 266-2700	Date 10/17/98
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State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

June 24, 1999

Honorable Judy Robson
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 115 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Glenn Grothman
Co-Chair, Joint Committee for Review
of Administrative Rules
Rm 15 North State Capitol
PO Box 8952
Madison WI 53708

Re: Clearinghouse Rule 99-054

Dear Senator Robson and Representative Grothman:

Copies of Clearinghouse Rule 99-054 in final draft form and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats., are enclosed.

Sincerely,


Cate Zeuske
Secretary of Revenue

CZ:MPW:cil
e:rules\1105 Committees - JCRAR

Enclosure

cc: Deputy Revisor

DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 99-054
SECTION 227.19(2) AND (3), STATS., REPORT

Need for Proposed Rule

The rule is necessary to:

- Reflect law changes relating to: sales of food and beverages by institutions of higher education; and the exemption for purchases by joint local water authorities.
- Reflect two Circuit Court decisions, relating to transportation charges separately incurred by a buyer from a carrier independent of the retailer.
- Provide additional information or clarification relating to: taxable admissions; the taxability of lodging facility rentals; items a Wisconsin governmental unit may use to document its exempt purchases; nontaxable gross receipts of governmental units; the taxability of meals; and the exemption for food and beverages sold by health care facilities.
- Reflect the creation of a new multipurpose exemption certificate.
- Update style and format in conformity with Legislative Council Rules Clearinghouse standards.

Public Hearing

A public hearing was not required, pursuant to s. 227.17(2)(e), Stats.

Legislative Council Staff Recommendations

The Legislative Council staff reviewed the proposed order and had no recommendations for changes.

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
REPEALING, RENUMBERING, AMENDING, REPEALING
AND RECREATING AND CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.94(2)(d); renumber Tax 11.05(3)(m) to (u) and Tax 11.87(1)(e) and (f); amend Tax 11.05(2)(a), (d), (f) and (i), (3)(d) and (L) and (4)(a) and (b)2., Tax 11.87(1)(b), (2)(c) and (3)(a) and Tax 11.94(1)(d) and (2)(a) and (c); repeal and recreate Tax 11.87(3)(c); and create Tax 11.05(3)(m), (w) and (x) and (4)(b)3., relating to governmental units; meals, food, food products and beverages; and Wisconsin sales and taxable transportation charges.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(4)(a)3., (14r) and (15)(a)3., 77.52(2)(a) and 77.54(9a), (20)(c) and (20m), Stats.

SECTION 1. Tax 11.05(2)(a) and the example following, sub. (2)(d) and sub. (3)(d) are revised, to provide additional information regarding the facilities to which admissions are taxable.

A note is added at the end of Tax 11.05(2)(b), to reference Tax 11.51 for a list of taxable food products.

Tax 11.05(2)(d) is further revised, to update style per Legislative Council Rules Clearinghouse (Clearinghouse) standards.

Tax 11.05(2)(f) is revised, to reflect the renumbering of sub. (3)(p) as explained in section 2.

Tax 11.05(2)(i) is revised, to clarify that the paragraph applies to the rental of lodging facilities that are available to the public.

Tax 11.05(3)(L) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 2 AND 3. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v) and new Tax 11.05(3)(m) is created, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

Tax 11.05(3)(w) and (x) are created, to list additional items which are not taxable.

SECTION 4. Tax 11.05(4)(a) is revised, to reflect the exemption for purchases of joint local water authorities, as a result of the creation of s. 77.54(9a)(em), Stats., by 1997 Wis. Act 184.

Tax 11.05(4)(b)2. and the note following are revised, to reflect the creation of a new multipurpose exemption certificate, Form S-211, which replaces various other exemption

certificates.

SECTION 5. Tax 11.05(4)(b)3. is created, to reflect that a Wisconsin governmental unit may provide its certificate of exempt status number to a retailer to document that its purchases are exempt.

SECTION 6. Tax 11.87(1)(b) is revised, to include a reference to s. 77.54(20m), Stats., as created by 1997 Wis. Act 237.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e), to alphabetize definitions per Clearinghouse standards.

A note is added at the end of Tax 11.87(1)(h), to reference Tax 11.51 for lists of taxable and exempt items.

SECTION 8. Tax 11.87(2)(c) and the example are revised and a note is added, to clarify the taxability of meals.

Tax 11.87(3)(a) is revised, to clarify the exemption for food and beverages sold by health care facilities.

SECTION 9. Tax 11.87(3)(c) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 10 AND 11. Tax 11.94(1)(d) and (2)(a) are revised, to update style per Clearinghouse standards.

Tax 11.94(2)(c) is revised, to reflect two Circuit Court decisions, *Rhineland Paper Company, Inc. vs. Wisconsin Department of Revenue* (97CV 1051, December 18, 1997) and *Trierweiler Construction and Supply Co., Inc. vs. Wisconsin Department of Revenue* (97CV 1444, December 12, 1997). The Circuit Court held that sales price does not include transportation costs separately incurred by the buyer from a carrier independent of the retailer.

Consequently, Tax 11.94(2)(d) and the example following are repealed, because the answer may vary, depending on the facts. Taxability must be determined on a case-by-case basis.

SECTION 1. Tax 11.05(2)(a), (d), (f) and (i) and (3)(d) and (L) are amended to read:

Tax 11.05(2)(a) Admissions to ~~recreational~~ facilities if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

Note to Revisor: Replace the example at the end of sub. (2)(a) with the following:

Example: Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

Note to Revisor: Add the following note at the end of Tax 11.05(2)(b):

Note: See s. Tax 11.51 for a list of food products subject to tax.

(d) Charges for access to or use of athletic facilities, such as baseball and softball diamonds, stadiums and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature.

(f) Sales of maps, plat books, photocopies or other printed material, except as provided in sub. (3)~~(p)~~(g).

(i) Rental of lodging facilities, available to the public, to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges or universities operated by governmental units.

(3)(d) Rental of buildings or space, such as offices, warehouses and meeting rooms, not used for activities which are amusement, athletic, entertainment or recreational in nature.

(L) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employes, residents or guests; ~~meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals;~~ and meals sold to the elderly or handicapped by "mobile meals on wheels."

SECTION 2. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v).

SECTION 3. Tax 11.05(3)(m), (w) and (x) are created to read:

Tax 11.05(3)(m) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.

2. The meals, food, food products or beverages are furnished to a national football league team.

(w) Parking tickets.

(x) Charges for lessons.

SECTION 4. Tax 11.05(4)(a) and (b)2. are amended to read:

Tax 11.05(4)(a) Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof of Wisconsin, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 281.43(4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., local exposition district under subch. II of ch. 229, Stats., joint local water authority created under s. 66.0735, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

(b)2. An A Wisconsin sales and use tax exemption certificate, form S-207 or S-209

S-211.

Note to Revisor: Replace the note at the end of sub. (4)(b)2. with the following:

Note: Form S-211 is available from any department of revenue office.

SECTION 5. Tax 11.05(4)(b)3. is created to read:

Tax 11.05(4)(b)3. Its certificate of exempt status number that the retailer should record on the invoice or other document it keeps as part of its records.

Note to Revisor: In the second note at the end of Tax 11.05, remove the word "and" before part (t) and add the following at the end of the note:

; and (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41.

SECTION 6. Tax 11.87(1)(b) is amended to read:

Tax 11.87(1)(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20) and (20m), Stats.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e).

Note to Revisor: Add the following note at the end of Tax 11.87(1)(h):

Note: See s. Tax 11.51 to determine which items are exempt food and which items are taxable food.

SECTION 8. Tax 11.87(2)(c) and (3)(a) are amended to read:

Tax 11.87(2)(c)(title) ~~Food components of meals~~ Meals. Food items which comprise or are components of a meal shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere for

consumption either on or off the seller's premises.

Note to Revisor: 1) Replace the example at the end of sub. (2)(c) with the following:

Example: A basket of chicken with cole slaw and french fries sold "to go" is a taxable meal.

2) Add the following note after the example at the end of sub. (2)(c):

Note: See s. Tax 11.51 for a definition of meal.

(3)(a) Meals, food, food products or beverages except soda water beverages, fermented malt beverages and intoxicating liquor, sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., or day care centers registered under ch. 48, Stats., and served on their premises. However, if an affiliated organization sells the items, the exemption does not apply.

Note to Revisor: Do not change the example at the end of sub. (3)(a).

SECTION 9. Tax 11.87(3)(c) is repealed and recreated to read:

Tax 11.87(3)(c) *Institutions of higher education.* Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.
2. The meals, food, food products or beverages are furnished to a national football league team.

Note to Revisor: 1) Replace the first note at the end of Tax 11.87 with the following:

Note: Section Tax 11.87 interprets ss. 77.51(4)(c)2., (14)(b) and (f) and (15)(c)1. and 77.54(20) and (20m), Stats.

2) In the second note at the end of Tax 11.87, remove the word "on" in parts (a) and (c), remove the word "and" before part (c), and add the following at the end of the note:

; (d) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; and (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237.

SECTION 10. Tax 11.94(1)(d) and (2)(a) and (c) are amended to read:

Tax 11.94(1)(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser ~~shall not be~~ are not subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of the sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(2)(a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

Note to Revisor: Do not change the example at the end of sub. (2)(a).

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14(2)(c) based on the "sales price" of the goods to the purchaser. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the

purchaser. The "sales price" does not include transportation charges paid by the Wisconsin purchaser to a carrier independent of the seller when the purchaser arranges for the transportation.

SECTION 11. Tax 11.94(2)(d) is repealed.

Note to Revisor: Replace the first note at the end of Tax 11.94 with the following:

Note: Section Tax 11.94 interprets ss. 71.51(4)(a)3., (14)(intro.) and (d), (14r) and (15)(a) and 77.52(1), Stats.

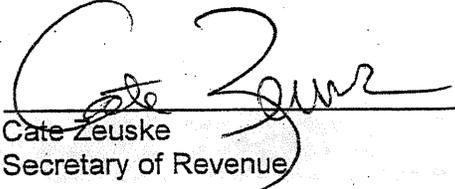
The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

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: 3-15-99

By: 

Cate Zeuske

Secretary of Revenue

rules/1105 Proposed Order

1999 Session

FISCAL ESTIMATE

ORIGINAL UPDATED

DOA-2048 N(R10/98)

CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

TAX 11.05, 11.87, 11.94

Amendment No. if Applicable

Subject

Sales and Use Tax Treatment Relating to Governmental Units, Food and Beverage Products and Transportation Charges

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

The proposed order reflects changes in the treatment for sales of meals by institutions of higher learning enacted in 1997 Wisconsin Acts 27 and 41, an exemption for local water authorities enacted in 1997 Act 184, and Circuit Court decisions relating to the treatment of transportation costs. Other changes clarify existing language to reflect the Department's current position, and alter style and format to conform to Legislative Council Clearinghouse standards. These rule changes do not have a fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue

John T. Stott, (608) 266-9706

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

Yeang Eng Braun

Date

3/3/99