tax001_EmR0935.pdf **Revenue – Creates Tax 1.16 – EmR0935**

Publication Date: **December 22, 2009**
Effective Dates: **December 22, 2009 through May 20, 2010**

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 71.91 (8), Stats., relating to the financial record matching program.

Analysis by the Department of Revenue

Statutes interpreted: s. 71.91 (8), Stats.

Statutory authority: s. 227.24, Stats.

Explanation of agency authority: Section 227.24, Stats., provides an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Related statute or rule: ss. 71.78 (1) and 77.61 (5) (a), Stats.

Plain language analysis: This emergency rule does the following:

- Provides procedures under which the department and a financial institution doing business in Wisconsin shall enter into an agreement for the exchange of data for purposes of operating the financial record matching program.
- Provides the two methods under which the department and a financial institution doing business in Wisconsin may exchange data under the financial record matching program.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the emergency rule.

Comparison with rules in adjacent states:

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2009 Wisconsin Act 28 created the financial record matching program. Among the provisions created is a requirement for the department to promulgate rules specifying procedures to enter into agreements with financial institutions doing business in Wisconsin. The department has created this emergency rule order to comply with this statutory requirement.

Analysis and supporting documents used to determine effect on small business: Currently all financial institutions doing business in the state are required to participate in the financial records matching program according to s. 49.853, Stats., operated by the Wisconsin Department of Children and Families. There is no impact on smaller financial institutions.

Anticipated costs incurred by private sector: This emergency rule does not have a significant fiscal effect on the private sector.

Effect on small business: This emergency rule does not have a significant effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this emergency rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this emergency rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

.

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of the financial record matching program.

It is necessary to promulgate this rule order to provide procedures so that the program can be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

SECTION 1. Tax 1.16 is created to read:

Tax 1.16 Financial record matching program. (1) PURPOSE. The purpose of this section is to specify procedures under which the department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under s. 71.91 (8), Stats.

(2) DEFINITIONS. In this section:

(a) "Account" has the meaning given in s. 71.91 (8) (a) 1., Stats.

(b) "Financial institution" has the meaning given in s. 49.853 (1) (c), Stats.

(3) PROCEDURES. (a) A financial institution doing business in this state shall enter into an agreement with the department to participate in the exchange of data on a quarterly basis. To the extent feasible, the information required under this agreement shall be submitted by electronic means prescribed by the department. The financial institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement. The department shall review the agreement and, if all conditions have been met, shall sign the agreement and provide the financial institution with a copy of the signed agreement.

(b) A financial institution shall elect one of the following options for the exchange of data described in par. (a):

1. 'State matching option.' This option is also known as the "all accounts method." If this option is elected, the agreement described in par. (a) shall include the following:

a. The financial institution agrees to provide an electronic file to the department or department's agent on a quarterly basis. The file contains the name, social security number or federal employer identification number of all persons having an ownership interest in an account maintained at the financial institution, together with a description of each person's interest.

b. The department or department's agent will perform a match against the delinquent debtor file. Upon the request of the department or the department's agent, the financial institution shall provide the department, for each delinquent debtor who matches information provided by the financial institution under subpar. a., the delinquent debtor's address of record, account number, account type and the balance of the account.

c. The department or department's agent agrees not to disclose or retain information received from the financial institution concerning account holders who are not delinquent debtors. Sixty days notice is required for any changes to the conditions of the contract.

2. 'Financial institution matching option.' This option is also known as the "matched accounts method." If this option is elected, the agreement described in par. (a) shall include the following:

a. The department or department's agent agrees to provide the financial institution an electronic file on a quarterly basis. The file contains the names and social security numbers or federal employer identification numbers of delinquent debtors.

b. The financial institution agrees to return a file of matched records to the department or department's agent. The return file of matched records contains the delinquent debtor's name, social security number or federal employer identification number, address of record, account number, account type, the nature of the delinquent debtor's ownership interest in the account and the balance of the account at the time that the record match is made.

c. The financial institution agrees not to disclose or retain information received from the department concerning account holders who are not delinquent debtors.

(c) A financial institution may request reimbursement from the department for costs associated with participating in the financial record matching program in an amount not to exceed $125 for each calendar quarter that the financial institution participates in the program.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.