

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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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”?