



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 24-038

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In the agency’s analysis for the proposed rule, the plain language analysis should be revised to include a narrative description of the effect of the proposed rule. An exhaustive discussion of the proposed rule is not necessary, but it should contain sufficient detail to enable a reader to understand the content of the proposed rule. [s. 1.01 (2) (b), Manual.]

b. In the agency’s analysis for the proposed rule, it could be helpful in the summary of federal regulations to identify the federal sources that are identified in the agency’s summary of factual data and analytical methodologies, particularly as two federal provisions are incorporated in a definition in the text of the proposed rule.

c. In s. Tax 3.10 (2) (b) 5., the numbering designations for the subdivision paragraphs should be “a.” and “b.”, rather than “i.” and “ii.”. [s. 1.10 (1) (a) (Example) and (b) 6., Manual.]

d. The following comments apply to s. Tax 3.10 (2) (d):

(1) The paragraph should be moved to follow par. (b), in order for the defined term to appear in alphabetical order. [s. 1.07 (2) (b) 3., Manual.]

(2) The definition states that “It shall be rebuttably presumed” that a certain type of location meets the definition. This statement is a substantive provision within a definition. Consider either rephrasing the statement to provide only defining information, or moving the substantive provision to a new provision outside of the definitions in sub. (2). [s. 1.07 (1) (d), Manual.]

e. In s. Tax 3.10 (2) (e) (intro.), the source designation “; Stats.,” should be inserted for the statutory cross-reference.

f. In s. Tax 3.10 (2) (e) 4., the statutory cross-references should be formatted as follows: “ss. 71.26 (1) (a) and 186.113 (20), Stats.”.

g. The following comments apply to s. Tax 3.10 (2) (j):

- (1) The paragraph should be moved to follow par. (g), in order for the defined term to appear in alphabetical order.
- (2) The parentheses around the phrase “including a natural person or fiduciary” should be removed, and the phrase should instead be set apart with commas. Alternatively, if appropriate, the clarification could be inserted as an explanatory note following the provision. [s. 1.06 (1) (c), Manual.]

h. In s. Tax 3.10 (5) (a) 3. (Examples), consider revising the labels to be “Example 1” and “Example 2”, to be consistent with the formatting used in current s. Tax 3.05 (4) (b) 1. (Examples). This will also help differentiate the example numbering from the text numbering. The same comment applies in par. (c) (Examples).

i. In s. Tax 3.10 (6) (a) 1. to 7., the numbering designations for each subdivision should be shown without parentheses; *i.e.*, the designations should be formatted as “1.”, rather than “(1.)”. Also, the text of subds. 1. to 6. should be revised to each end in a period. [s. 1.10 (1) (a) (Example) and (b) 5., Manual.]

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

a. In s. Tax 3.10 (title), a period should be inserted at the end of the title.

b. In s. Tax 3.10 (2) (b) (intro.), add the phrase “any of” before the phrase “the following:”. Also, the text of subds. 1. and 2. should be revised to each end in a period, rather than a semicolon.

c. In creating s. Tax 3.10 (3), the proposed rule states that a “commercial loan may qualify for the exemption in ss. 71.05 (1) (i) and 71.26 (1) (i), Stats., if the loan is provided to a person residing or located in this state.”. For clarity, due to the fact that this is not the only requirement, consider revising this provision to provide that “in order for a commercial loan to qualify” for the exemption, the loan “must be provided to a person residing or located in this state”.

d. The same comment applies with regard to s. Tax 3.10 (4). Also, the word “purpose” should be singular. Consider revising the provision to provide that “in order for a commercial loan to qualify” for the exemption, the proceeds “must be used primarily for a business or agricultural purpose in this state”.

e. The same comment applies with regard to s. Tax 3.10 (5) (intro.). Consider revising the provision to provide that “in order for a commercial loan to qualify” for the exemption, the loan “must be \$5,000,000 or less”.

f. Section Tax 3.10 (5) (intro.) includes a statement that “This subsection interprets the \$5,000,000 limitation.”. This appears to be intended as an introductory statement for the subunits. Consider removing that statement, and instead provide an introductory statement that identifies the relationship of the subunits and ends in a colon, such as, “All of the following apply to the \$5,000,000 limitation:”. [s. 1.11, Manual.]

g. In s. Tax 3.10 (5) (e) (intro.), the introductory statement should be revised to specify the relationship of the subunits. For example, it appears that the statement could be phrased along the following lines: “All of the following apply in computing income from aggregate commercial loans:”.

h. In s. Tax 3.10 (6) (a) (intro.) and (b), the plural phrase “Financial institutions” should be revised to the singular “A financial institution”, as the obligation to comply with the regulation is on each financial institution. [s. 1.05 (1) (c), Manual.]

i. In s. Tax 3.10 (6) (c), the phrasing should be revised to use the active voice, in order to identify to whom the obligation applies. For example, rather than stating that “The records ... shall be kept”, it could be phrased as “A financial institution shall keep the records...”. [s. 1.05 (1) (d), Manual.]