DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 06-063

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

Basis and Purpose of the Proposed Rule

The rule is necessary to reflect law changes relating to the apportionment of apportionable income.

Public Hearing

A public hearing was held on August 14, 2006. No testimony was offered at the hearing.

A comment concerning the definition of “income producing activity” in the proposed rule was received from Mr. Jeff Schoepke of Wisconsin Manufacturers & Commerce (WMC). His concern was that the definition as amended by the proposed rule order is unclear and no longer specifies that an income producing activity does not include an activity performed on behalf of a taxpayer, such as one conducted on its behalf by an independent contractor.

The department responded to this comment by clarifying the definition of “income producing activity” to specify that it **does** include the activities of persons acting on behalf of the taxpayer. This revised definition reflects the statutory changes made by 2005 Wisconsin Act 25 as to how the sales of a taxpayer are sourced to Wisconsin.

Legislative Council Staff Recommendations

All Legislative Council staff recommendations have been incorporated in the proposed rule order, except a recommendation to use the statutorily defined term “air carriers” in the rule instead of the term “direct air carriers” in Tax 2.39(3)(a), (b), and (c).

Chapter 71 of the statutes does not define the term “air carriers.” Section Tax 2.39(3)(a), (b), and (c), as repealed and recreated by this rule order, refers to "direct air carriers" to reflect changes in the transportation industry. The special apportionment formula prescribed in section Tax 2.46 is based on arrivals and departures of the taxpayer's aircraft, revenue tons handled by the carrier, and the carrier's originating revenue. Since an indirect air carrier is not directly involved in the operation of an aircraft, the use of the special ratios does not clearly reflect the income earned in the state by an indirect air carrier.

Regulatory Flexibility Analysis

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