

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 23, 2018
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3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
Chapter Tax 2.82 – Nexus

4. Subject
Activity Level to Create Nexus

5. 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	6. Chapter 20, Stats. Appropriations Affected
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7. Fiscal Effect of Implementing the Rule

<input type="checkbox"/> No Fiscal Effect	<input checked="" type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/>
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Decrease Existing Revenues	Decrease Costs	
<input type="checkbox"/> Could Absorb Within Agency's Budget			

8. The Rule Will Impact the Following (Check All That Apply)

<input checked="" type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).
\$ minimal

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?
 Yes No

11. Policy Problem Addressed by the Rule

This rule order clarifies the level of activity and/or types of activities that, when performed by an out-of-state business, establishes nexus in Wisconsin.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Wisconsin Taxation Committee (WICPA), Wisconsin Manufacturers and Commerce (WMC), Wisconsin Association of Accountants (WAA), Tax Executives Institute (TEI), Independent Business Association of Wisconsin (IBAW), Wisconsin Independent Businesses (WIB), National Federation of Independent Businesses (NFIB), Council on State Taxation (COST), and National Association of Computerized Tax Processors (NACTP).

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule would affect revenue in two offsetting ways. First, the rule would create nexus and a filing requirement for taxpayers that currently do not have a requirement to file a return and pay tax to WI. This would raise corporate income and franchise taxes and individual income taxes (via income from pass-through entities).

The gain in revenue from creating nexus and a filing requirement will likely be offset, in whole or in part, by a loss of revenue that results from a reduction in throwback sales. Just as nexus is created for taxpayers who currently are not filing returns in

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Wisconsin, taxpayers that currently file Wisconsin returns and do business in multiple states will use the new nexus standard to determine if they have nexus in another state. If a taxpayer determines they would have nexus in a state where they are currently throwing back sales to their Wisconsin sales factor, those sales would no longer be thrown back and the taxpayer's sales factor would be lower, resulting in a reduction in income taxable to Wisconsin.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Under current Tax 2.82, nexus is created in Wisconsin based on a list of activities that are performed "regularly" or that are described as "usual or frequent." This proposed rule clarifies the level of activity that qualifies as "regularly" generally means 15 or more days of activity.

16. Long Range Implications of Implementing the Rule

Out-of-state businesses may incur costs to file a Wisconsin income/franchise tax return if they are considered to have nexus because of the rule changes.

17. Compare With Approaches Being Used by Federal Government

Federal constitutional provisions: Article I, Section 8 of the U.S. Constitution grants congress the power to regulate commerce with foreign nations and among the several states. States are prohibited from levying a tax which imposes a burden on interstate or foreign commerce.

Federal Public Law 86-272: Under Public Law 86-272, a state may not impose its franchise or income tax on a business selling tangible personal property, if the only activity of that business is the solicitation of orders by its salesperson or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be limited to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation under Public Law 86-272 is lost. This law does not prohibit states from imposing franchise/income tax on out-of-state businesses that sell services, real estate, or intangibles into a state.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Most states do not have laws or regulations that establish a clear threshold or standard of activities that create nexus. Nexus is often determined on a case-by-case basis.

Michigan – A corporation has nexus with Michigan for corporate income tax purposes if that corporation has a physical presence in the state for a period of more than one day during the tax year, if the corporation actively solicits sales in the state and has gross receipts of \$350,000 or more sourced to the state, or if the corporation has an ownership interest or beneficial interest in a flow-through entity, directly, or indirectly through one or more flow-through entities, that has substantial nexus in the state.

Illinois: – The question of nexus in Illinois is highly fact-dependent. Tax is imposed on every corporation for the privilege of earning or receiving income in the state. The only threshold imposed relates to sample or display rooms. Maintaining a sample or display room in excess of 14 days will create income tax nexus for an out-of-state business.

Minnesota – There is no standard or threshold that would create nexus in Minnesota. Tax is imposed on every entity that obtains or regularly solicits trade or business from within the state.

19. Contact Name	20. Contact Phone Number
Jen Chadwick	608-266-8253

This document can be made available in alternate formats to individuals with disabilities upon request

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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FISCAL ESTIMATE FORM

2017 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 17-
INTRODUCTION #
Admin. Rule # 2.82

Subject
 Activity Level to Create Nexus

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 checked="" type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be Possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input checked="" 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	3. <input type="checkbox"/> Increase 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
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input 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:

Under current Tax 2.82, nexus is created in Wisconsin based on a list of activities that are performed "regularly" or that are described as "usual or frequent." This proposed rule clarifies the level of activity that qualifies as "regularly" generally means 15 or more days of activity.

The proposed rule would affect revenue in two offsetting ways. First, the rule would create nexus and a filing requirement for taxpayers that currently do not have a requirement to file a return and pay tax to WI. This would raise corporate income and franchise taxes and individual income taxes (via income from pass-through entities).

The gain in revenue from creating nexus and a filing requirement will likely be offset, in whole or in part, by a loss of revenue that results from a reduction in throwback sales. Just as nexus is created for taxpayers who currently are not filing returns in Wisconsin, taxpayers that currently file Wisconsin returns and do business in multiple states will use the new nexus standard to determine if they have nexus in another state. If a taxpayer determines they would have nexus in a state where they are currently throwing back sales to their Wisconsin sales factor, those sales would no longer be thrown back and the taxpayer's sales factor would be lower, resulting in a reduction in income taxable to Wisconsin.

While specific taxpayers may experience either an increase or decrease in tax liability, it is anticipated that the overall net change in tax revenue would be minimal.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue Michael Oakleaf (608) 261-5173	Authorized Signature/Telephone No. Robert Schmidt (608) 266-5773	Date January 10, 2018
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FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2017 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 17
INTRODUCTION

Admin. Rule #
Tax 2.82

Subject

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)	(FTE)	(- FTE)
State Operations-Other Costs		-
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		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ minimal _____	\$ _____

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Michael Oakleaf (608) 261-5173	Robert Schmidt (608) 266-5773	January 10, 2018