



**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2009-10**

(session year)

**Joint**

(Assembly, Senate or Joint)

**Committee for Review of Administrative Rules ...**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



**State of Wisconsin • DEPARTMENT OF REVENUE**

2135 RIMROCK ROAD • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX (608) 266-5718 • <http://www.revenue.wi.gov>

*Jim Doyle*  
Governor

*Roger M. Ervin*  
Secretary of Revenue

March 5, 2010

Honorable Jim Holperin  
Co-Chair Joint Committee for Review  
of Administrative Rules  
Room 409 South State Capitol  
PO Box 7882  
Madison WI 53707-7882

Honorable Josh Zepnick  
Co-Chair Joint Committee for Review  
of Administrative Rules  
Room 219 North State Capitol  
PO Box 8952  
Madison WI 53708-8952

Re: Clearinghouse Rule 09-118

Dear Senator Holperin and Representative Zepnick:

Enclosed are copies of Clearinghouse Rule 09-118 in final draft form, and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats.

Sincerely,

Roger M. Ervin  
Secretary of Revenue

RME:DSK  
e:rules\116 Committees - JCRAR

Enclosure

## PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **create Tax 1.16; relating to the financial record matching program.**

---

### *Analysis by the Department of Revenue*

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

**Statutory authority:** s. 71.91 (8) (b), Stats.

**Explanation of agency authority:** Section 71.91 (8) (b), Stats., provides that the department shall promulgate rules specifying procedures to enter into agreements with financial institutions doing business in the state to operate the financial record matching program.

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

**Plain language analysis:** This proposed 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 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 proposed 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 proposed rule does not have a significant fiscal effect on the private sector.

**Effect on small business:** This proposed 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](mailto:dale.kleven@revenue.wi.gov), if you have any questions regarding this proposed rule.

---

**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) Pursuant to s. 71.91 (8) (a) 1., Stats., “account” means a demand deposit account, checking account, negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

(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. Any changes to the conditions of the agreement shall be submitted by the financial institution or the department at least 60 days prior to the effective date of the change.

(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 subd. 1. 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.

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 or the department's agent concerning information contained in the delinquent debtor file in accordance with s. 71.91 (8) (e), Stats.

(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 on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

#### Initial Regulatory Flexibility Analysis

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

Dated: \_\_\_\_\_

3/4/10

DEPARTMENT OF REVENUE

By: \_\_\_\_\_

Roger M. Ervin  
Secretary of Revenue

## DEPARTMENT OF REVENUE

### CLEARINGHOUSE RULE NUMBER 09-118

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

##### **Basis and Purpose of the Proposed Rule**

The rule is necessary to specify procedures to enter into agreements with financial institutions doing business in Wisconsin to operate the financial record matching program.

##### **Public Hearing**

A public hearing was held on February 11, 2010. No testimony was offered at the hearing.

##### **Legislative Council Staff Recommendations**

All Legislative Council staff recommendations have been incorporated in the proposed rule order, with the following exceptions:

- A general question was raised as to the Department's authority to receive, under the State matching option, data on all of a financial institution's financial accounts before a connection to a delinquent debtor has been established. Section 71.73(20), Wis. Stats., provides the authority for the department to investigate all delinquent taxes in the state and to perform other duties and adopt other procedures that are necessary to carry out its requirement to collect delinquent taxes. Section 71.91(8), Wis. Stats., provides the authority for the department to perform the financial record matching program and to enter into matching program agreements and to promulgate rules specifying procedures under the agreements with financial institutions. The State matching option was made available in the rule upon the request of small financial institutions, who found the financial institution matching option to be cost prohibitive.
- A recommendation was made to clarify, both in the rule and fiscal estimate, the quarterly payment per financial institution in an amount not to exceed \$125. The assumption used in preparing the rule and fiscal estimate was that since the financial record matching program piggybacks off the Financial Institution Data Match (FIDM) program for child support enforcement, and should not require significant changes for the majority of financial institutions; the actual costs may be an amount less than \$125. Under this assumption, the Department is unable to provide further clarification.
- A recommendation was made to clarify the prescription of electronic means for submission of financial records and the intent regarding the phrase "to the extent possible" in connection with submission of records by electronic means. The rule does not specify the electronic data exchange methods that must be used, as the program can handle many different means of data exchange. The Department or the Department's agent will work with each financial institution to find a method that meets the needs of both. Financial institutions currently participate successfully in the data exchange for the FIDM program using various methods to transmit files. Furthermore, while the Department would like to require electronic data transmissions, our financial institution partners have given feedback related to difficulty for some smaller financial institutions in using electronic methods.

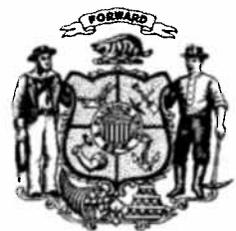
## **Regulatory Flexibility Analysis**

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

e:rules116 Committees – Report



# WISCONSIN STATE LEGISLATURE





---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **09-118**

AN ORDER to create Tax 1.16, relating to the financial records matching program.

Submitted by **DEPARTMENT OF REVENUE**

12-21-2009 RECEIVED BY LEGISLATIVE COUNCIL.

01-25-2010 REPORT SENT TO AGENCY.

RNS:SG

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]  
Comment Attached            YES             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 09-118

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

Section 71.91, Stats., relates only to delinquent taxes. Does the department's authority under this section permit the collection of data on all individual financial accounts, under the state matching option, before a connection to a delinquent debtor has been established?

#### 2. Form, Style and Placement in Administrative Code

a. In the fiscal estimate to the proposed rule, is it accurate to note that the rule has no fiscal effect by reason of the fiscal effect being included in the fiscal estimate for 2009 Act 28? While referenced in s. 71.91 (8) (b), Stats., the presence of a quarterly \$125 payment per financial institution and mandatory reporting by state financial institutions suggests that the fiscal effect of the proposed rule could be clarified. Additionally, the proposed rule states the payment is an amount "not to exceed \$125." Although this phrase repeats the statutory directive, the department should specify the amount of the quarterly payment. If the department intends to make a quarterly payment of \$125, it should specify that amount in s. Tax 1.16 (3) (c).

b. In s. Tax 1.16 (3) (a), the department states that it will prescribe the electronic means of submission for financial records. The department should clarify that prescription in the proposed rule. What is the department's intent regarding the inclusion of the phrase "to the extent possible" in connection with submission of records by electronic means?

c. In s. Tax 1.16 (3) (b) 1. b., the department should reference “subd. 1. a.” rather than “subpar. a.” [See s. 1.07 (2), Manual.]

d. The presence of the sentence “Sixty days notice is required for any changes to the conditions of the contract.” in s. Tax 1.16 (3) (b) 1. c. suggests that the department may change its policy regarding disclosure or retention of information on non-delinquent account holders. Is this the department’s intent? Is it the department’s intent to apply this requirement only to the disclosure of information related to the “state matching option” under s. Tax 1.16 (3) (b) 1.? If the department intends for a 60-day notice to be required relating to any changes to the agreement, the sentence should be moved out of subd. par. c. For example, the department could place the sentence in s. Tax 1.16 (3) (a), which would apply the 60-day notice to agreements formed under either option of the financial record matching program.

Additionally, the department should clarify who may give the notice. Is it only the department, or may the financial institution change the conditions? Also, should “Sixty days” be “At least 60 days”?

As it relates to any notice, the department should refer to “agreement” rather than “contract” in order to be consistent with other references in the rule.

e. Based on the description of the “financial institution matching option,” under what circumstances would a financial institution obtain information about non-delinquent account holders as suggested by s. Tax 1.16 (3) (b) 2. c.? Section 71.91 (8) (e), Stats., describes confidentiality obligations of financial institutions related to the financial record matching program. As an alternative, the department could refer to compliance with s. 71.91 (8) (e), Stats., in the department’s agreement.