

09hr_JCR-AR_Misc_pt22



Details: Emergency Rule extension requests by Department of Revenue.
(FORM UPDATED: 08/11/2010)

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**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



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

February 2, 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 8953
Madison WI 53708-8953

Re: Emergency Rule Extension - Tax 2.85 and 11.90

Dear Senator Holperin and Representative Zepnick:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., a 60-day extension of the emergency rule creating Tax 2.85 and 11.90, relating to penalties for failure to produce records. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. The emergency rule is effective through March 17, 2010.

A permanent rule has been developed, but since it cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

Analysis

This proposed rule does the following:

- Reflects changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

Honorable Jim Holperin
Honorable Josh Zepnick
Page 2

- Provides guidance to Department employees and taxpayers so that the penalties can be administered in a fair and consistent manner. This includes providing a standard response time, a standard for noncompliance, and penalty waiver provisions.

Emergency rules are needed to provide timely guidance so that the penalties can be administered in a fair and consistent manner.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Ervin", with a long horizontal flourish extending to the right.

Roger M. Ervin
Secretary of Revenue

RME:DSK
e:rules285 1190 Emergency - Extension - JCRAR

Enclosure

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 71.80(9m) and 77.61(19), Stats., relating to penalties for failure to produce records.

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.80(9m) and 77.61(19), Stats.

Statutory authority: ss. 71.80(9m)(c), 77.61(19)(c), and 227.24, Stats.

Explanation of agency authority: Sections 71.80(9m)(c) and 77.61(19)(c), Stats., provide that the Department shall promulgate rules to administer the penalties for failure to produce records.

Section 227.24, Stats., provides an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: This emergency rule does the following:

- Reflects changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.
- Provides guidance to Department employees and taxpayers so that the penalties can be administered in a fair and consistent manner. This includes providing a standard response time, a standard for noncompliance, and penalty waiver provisions.

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 adopted statutory changes creating penalties for failure to produce records. Within these provisions are requirements that the Department promulgate rules to administer these penalties. The department has created this emergency rule to reflect these changes in Wisconsin's tax laws and comply with statutory requirements.

Analysis and supporting documents used to determine effect on small business:

As explained above, this emergency rule is created to reflect changes in Wisconsin's tax laws and comply with statutory requirements. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Anticipated costs incurred by private sector: This emergency rule does not have a significant fiscal effect on the private sector.

Effect on small business: This emergency 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, if you have any questions regarding this emergency rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this emergency rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

SECTION 1. Tax 2.85 is created to read:

Tax 2.85 Penalty for failure to produce records under s. 71.80(9m), Stats. (1) GENERAL. A person who fails to produce records or documents, as provided under ss. 71.74(2) and 73.03(9), Stats., that were requested by the department may be subject to the following penalties:

(a) The disallowance of deductions, credits, exemptions or income inclusion to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation under s. 71.80(9m), Stats., that is equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" include action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" or "documents" include both paper and electronic formats. Examples include, but are not limited to, bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e-mail, fax or any other written form.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the following notifications regarding the records requested:

(a) A first written request for records where the department allowed the person a minimum of 15 days for the records to be provided.

(b) A second written request for records where the department allowed the person a minimum of 30 days for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 71.80(9m), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to John Jones on May 5, 2010, allowing him until May 20, 2010 to provide the records requested. Mr. Jones does not provide the requested records to the department by May 20, 2010. The department issues a second written request for records to him on June 1, 2010, allowing him until July 1, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Mr. Jones does not provide the requested records by July 1, 2010. Therefore, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Mr. Jones not providing the records requested.

2) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions,

credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

3) The department issues a first written request for records to Corporation B on January 5, 2010, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by March 10, 2010, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation B not providing the records requested.

(4) WAIVER OF PENALTIES. (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.
2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.
3. Natural disaster such as tornado, flood or fire.
4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.
5. Any other unusual circumstance that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), may result in a reduction of the penalty provided in sub. (1)(a) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department, but would not result in a reduction of the penalty provided in sub. (1)(b) unless the person can show that under all the facts and circumstances providing the requested records at that time was reasonable or justified by factors beyond the person's control.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support interest expense deducted, the department issues a proposed audit report to Corporation C disallowing all the interest expense previously deducted. Additional tax of \$100,000 and penalty of \$25,000 results in the proposed audit report from disallowing this interest expense. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors

beyond the person's control. However, the records provided support half of the interest expense deduction previously claimed. Therefore, the interest expense adjustment is modified to reduce the proposed additional tax from \$100,000 to \$50,000, but the original proposed penalty of \$25,000 for failure to provide records remains.

2) Since Mr. Smith does not provide the records requested regarding his cash business to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into income for unreported receipts. Additional tax of \$60,000, a negligence penalty of \$15,000 and a penalty for failure to produce records of \$15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment and negligence penalty are modified to reduce the additional tax from \$60,000 to \$12,000 and the negligence penalty from \$15,000 to \$3,000, but the original penalty for failure to produce records of \$15,000 remains.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from \$60,000 to \$12,000, the negligence penalty is reduced from \$15,000 to \$3,000 and the original penalty for failure to produce records of \$15,000 is waived.

SECTION 2. Tax 11.90 is created to read:

Tax 11.90 Penalty for failure to produce records under s. 77.61(19), Stats. (1) GENERAL. A person who fails to produce records or documents, as provided under ss. 73.03(9) and 77.59(2), Stats., that were requested by the department may be subject to the following penalties:

(a) The disallowance of deductions, credits, exemptions or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation under s. 77.61(19), Stats., that is equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" include action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" or "documents" include both paper and electronic formats. Examples include, but are not limited to, bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e-mail, fax or any other written form.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the following notifications regarding the records requested:

(a) A first written request for records where the department allowed the person a minimum of 15 days for the records to be provided.

(b) A second written request for records where the department allowed the person a minimum of 30 days for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 77.61(19), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to John Jones on May 5, 2010, allowing him until May 20, 2010, to provide the records requested. Mr. Jones does not provide the requested records to the department by May 20, 2010. The department issues a second written request for records to him on June 1, 2010, allowing him until July 1, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Mr. Jones does not provide the requested records by July 1, 2010. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Mr. Jones not providing the records requested.

2) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

3) The department issues a first written request for records to Corporation B on January 5, 2010, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by

March 10, 2010, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation B not providing the records requested.

(4) WAIVER OF PENALTIES. (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.
2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.
3. Natural disaster such as tornado, flood or fire.
4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.
5. Any other unusual circumstance that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), may result in a reduction of the penalty provided in sub. (1)(a) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department, but would not result in a reduction of the penalty provided in sub. (1)(b) unless the person can show that under all the facts and circumstances providing the requested records at that time was reasonable or justified by factors beyond the person's control.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support deductions for exempt sales, the department issues a proposed audit report to Corporation C disallowing all the deductions for exempt sales previously claimed. Additional tax of \$100,000 and penalty of \$25,000 results in the proposed audit report from disallowing the deductions for exempt sales. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided support half of the deductions for exempt sales previously claimed. Therefore, the deductions for exempt sales adjustment is modified to reduce the proposed additional tax from \$100,000 to \$50,000, but the original proposed penalty of \$25,000 for failure to provide records remains.

2) Since Mr. Smith does not provide the records requested regarding his cash business to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into taxable sales for unreported receipts. Additional tax of \$60,000, a negligence penalty of \$15,000 and a penalty for failure to produce records of \$15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records

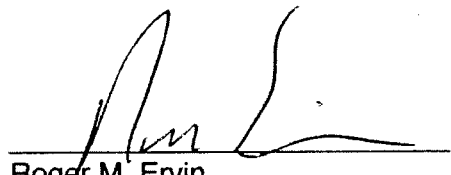
requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment and negligence penalty are modified to reduce the additional tax from \$60,000 to \$12,000 and the negligence penalty from \$15,000 to \$3,000, but the original penalty for failure to produce records of \$15,000 remains.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from \$60,000 to \$12,000, the negligence penalty is reduced from \$15,000 to \$3,000 and the original penalty for failure to produce records of \$15,000 is waived.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

DEPARTMENT OF REVENUE

Dated: October 14, 2009

By: 
Roger M. Ervin
Secretary of Revenue

E:Rules/285 1190 Proposed Order (emergency - v2)

FISCAL ESTIMATE FORM

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09-

INTRODUCTION #

Admin. Rule # Chapter Tax 2.85 & 11.90 Failure to Produce Records (emergency)

Subject PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

2009 Wisconsin Act 28 (the 2009-2011 budget bill) established penalties for the failure to produce tax records or documents that support information shown on tax returns. The penalties may include the disallowance of deductions, credits, exemptions, or the inclusion of income, taxable sales, or taxable purchases to which the records relate. In addition to other penalties, a penalty may be imposed equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce records. Act 28 further specified that the Department of Revenue shall promulgate administrative rules specifying a standard response time, a standard for noncompliance, and penalty waiver provisions.

The proposed rule conforms Chapter Tax 2.85 and 11.90 to current law. In addition, the rule states circumstances whereby the penalties may be waived (including death, debilitating illness, natural disaster, or other circumstance the department deems pertinent). The proposal also specifies that the penalties for failure to produce records may be imposed after:

- a) a first written request for records is given where the department allows the person a minimum of 15 days for the records to be produced, and
- b) a second written request for records is given where the department allows the person a minimum of 30 days for the records to be provided and the second written request includes a statement explaining that if the requested records are not provided by the date specified that the penalties may be imposed.

The fiscal effect of these changes (a minimal increase in state revenues) was included in the fiscal estimates of 2009 Wisconsin Act 28. Consequently, this proposed rule has no fiscal effect.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Paul Ziegler 608 266-5773	09/01/09

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09
INTRODUCTION #

Admin. Rule #
 Tax 2.85 & 11.90
 Failure to Produce
 Records

Subject PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

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)	()	-
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	\$	\$ -

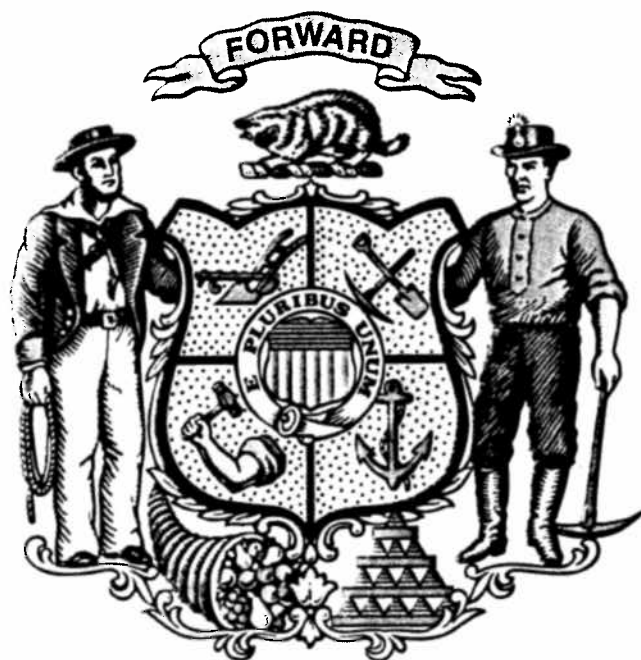
NET ANNUALIZED FISCAL IMPACT

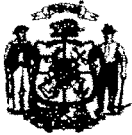
STATE

LOCAL

NET CHANGE IN COSTS \$ 0 \$ 0
 NET CHANGE IN REVENUES \$ 0 \$ 0

Agency/Prepared by Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Authorized Signature/Telephone No. Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Date 09/01/09
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State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

February 2, 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 8953
Madison WI 53708-8953

Re: Emergency Rule Extension – Chapter Tax 11

Dear Senator Holperin and Representative Zepnick:

I wrote you on December 18 requesting an extension of the Department of Revenue's emergency rule relating to sales and use tax and the streamlined sales tax laws passed in 2009 Act 2. A 60-day extension of the emergency rule revising Chapter Tax 11 is needed as provided under s. 227.24(2)(a), Stats. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective.

My letter of December 18 indicated that this rule expires on February 28. I want to clarify that the rule is effective through Saturday, February 27, 2010, and this is the last date on which approval of this extension request may occur.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. Public hearings were held on December 1 and 15, 2009, on both the emergency and permanent rules. However, since the permanent rule cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary. A brief analysis explaining the need for the rule follows.

Analysis

The proposed rule does the following:


- Reflects the changes in Wisconsin's sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin's sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement;
- Provides guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws;
- Removes incorrect and outdated information;
- Revises punctuation to improve readability and conform to Legislative Clearing House rules and requirements;
- Removes the term "gross receipts" from the rules and replaces it with "sales price," which is a newly defined term under the Streamlined Sales and Use Tax Agreement;
- Changes numerous references to "tangible personal property" that were previously contained in the rules to "tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats." because the definition of "tangible personal property" under previous law was amended and some items that were previously included in the definition of "tangible personal property" now have the sales and use tax specifically imposed on them in new sections of the statutes, specifically secs. 77.52 (1) (b), (c), and (d), Stats.;
- Renumbers various sections within the rules to improve readability;
- Adds additional information related to numerous statutory changes that were not previously reflected in the rules, including information related to new exemptions on items such as durable medical equipment for home use, mobility-enhancing equipment, prosthetic devices and food and food ingredients and certain admissions.
- Adds numerous definitions that were adopted to various rules including s. Tax 11.08, 11.09, 11.12, 11.29 and 11.66;
- Creates a new rule (s. Tax 11.945), specifically relating to the proper sourcing of transactions so a person will know whether the transaction is subject to Wisconsin sales and use tax and adds information relating to the sourcing of leases and rentals in s. Tax 11.29;
- Adds numerous listings of taxable and nontaxable items to various rules, including s. Tax 11.08, 11.09, 11.17, 11.45 and 11.51; and
- Adds additional information pertaining to exemption certificates in s. Tax 11.14.

Honorable Jim Holperin
Honorable Josh Zepnick
Page 3

Emergency rules are needed to be in conformity with the Streamlined Sales and Use Tax Agreement.

Thank you for your consideration in this matter.

Sincerely,



Roger M. Ervin
Secretary of Revenue

RME:DSK

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State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

December 18, 2009

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 8953
Madison WI 53708-8953

Re: Emergency Rule Extension – Chapter Tax 11

Dear Senator Holperin and Representative Zepnick:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., a 60-day extension of the emergency rule revising Chapter Tax 11, relating to sales and use tax. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule expires February 28, 2010.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. Public hearings were held on December 1 and 15, 2009, on both the emergency and permanent rules. However, since the permanent rule cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

Analysis

The proposed rule does the following:

- Reflects the changes in Wisconsin's sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin's sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement;
- Provides guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws;
- Removes incorrect and outdated information;
- Revises punctuation to improve readability and conform to Legislative Clearing House rules and requirements;
- Removes the term "gross receipts" from the rules and replaces it with "sales price," which is a newly defined term under the Streamlined Sales and Use Tax Agreement;
- Changes numerous references to "tangible personal property" that were previously contained in the rules to "tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats." because the definition of "tangible personal property" under previous law was amended and some items that were previously included in the definition of "tangible personal property" now have the sales and use tax specifically imposed on them in new sections of the statutes, specifically secs. 77.52 (1) (b), (c), and (d), Stats.;
- Renumbers various sections within the rules to improve readability;
- Adds additional information related to numerous statutory changes that were not previously reflected in the rules, including information related to new exemptions on items such as durable medical equipment for home use, mobility-enhancing equipment, prosthetic devices and food and food ingredients and certain admissions.
- Adds numerous definitions that were adopted to various rules including s. Tax 11.08, 11.09, 11.12, 11.29 and 11.66;
- Creates a new rule (s. Tax 11.945), specifically relating to the proper sourcing of transactions so a person will know whether the transaction is subject to Wisconsin sales and use tax and adds information relating to the sourcing of leases and rentals in s. Tax 11.29;
- Adds numerous listings of taxable and nontaxable items to various rules, including s. Tax 11.08, 11.09, 11.17, 11.45 and 11.51; and
- Adds additional information pertaining to exemption certificates in s. Tax 11.14.

Honorable Jim Holperin
Honorable Josh Zepnick
Page 3

Emergency rules are needed to be in conformity with the Streamlined Sales and Use Tax Agreement.

Thank you for your consideration in this matter.

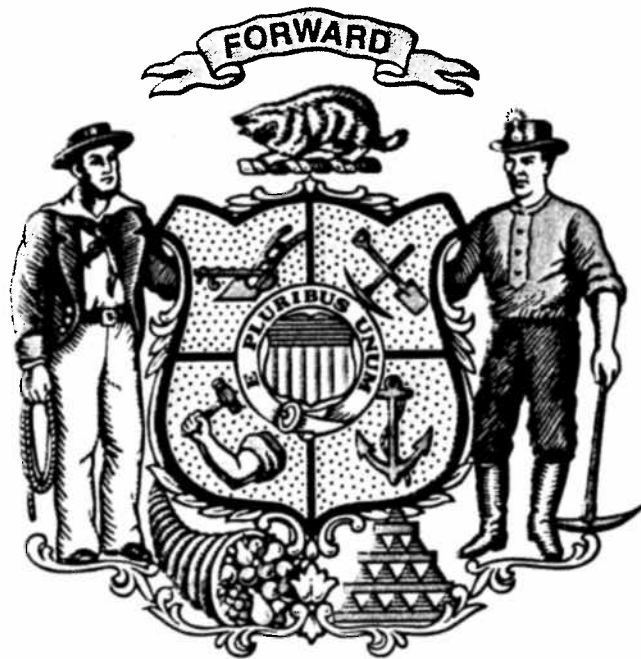
Sincerely,

Roger M. Ervin
Secretary of Revenue

RME:DSK

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

March 22, 2010

23 other states...

Honorable Jim Holperin
Co-Chair Joint Committee for Review
of Administrative Rules
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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 8953
Madison WI 53708-8953

Re: Emergency Rule Extension – Chapter Tax 11

Dear Senator Holperin and Representative Zepnick:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., an additional 60-day extension of the emergency rule revising Chapter Tax 11, relating to sales and use tax. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule is effective through April 28, 2010.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. Public hearings were held on December 1 and 15, 2009, on both the emergency and permanent rules. However, since the permanent rule cannot be in place before the emergency rule expires, an additional 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

Analysis

The proposed rule does the following:

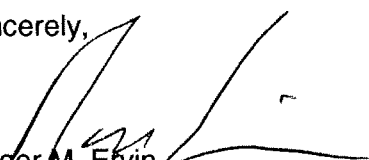
- Reflects the changes in Wisconsin's sales and use tax laws due to the adoption of the statutory changes needed to bring Wisconsin's sales and use tax laws into compliance with the Streamlined Sales and Use Tax Agreement;
- Provides guidance to Department employees and taxpayers so that they can properly apply the Wisconsin sales and use tax laws;
- Removes incorrect and outdated information;
- Revises punctuation to improve readability and conform to Legislative Clearing House rules and requirements;
- Removes the term "gross receipts" from the rules and replaces it with "sales price," which is a newly defined term under the Streamlined Sales and Use Tax Agreement;
- Changes numerous references to "tangible personal property" that were previously contained in the rules to "tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats." because the definition of "tangible personal property" under previous law was amended and some items that were previously included in the definition of "tangible personal property" now have the sales and use tax specifically imposed on them in new sections of the statutes, specifically secs. 77.52 (1) (b), (c), and (d), Stats.;
- Renumbers various sections within the rules to improve readability;
- Adds additional information related to numerous statutory changes that were not previously reflected in the rules, including information related to new exemptions on items such as durable medical equipment for home use, mobility-enhancing equipment, prosthetic devices and food and food ingredients and certain admissions.
- Adds numerous definitions that were adopted to various rules including s. Tax 11.08, 11.09, 11.12, 11.29 and 11.66;
- Creates a new rule (s. Tax 11.945), specifically relating to the proper sourcing of transactions so a person will know whether the transaction is subject to Wisconsin sales and use tax and adds information relating to the sourcing of leases and rentals in s. Tax 11.29;
- Adds numerous listings of taxable and nontaxable items to various rules, including s. Tax 11.08, 11.09, 11.17, 11.45 and 11.51; and
- Adds additional information pertaining to exemption certificates in s. Tax 11.14.

Honorable Jim Holperin
Honorable Josh Zepnick
Page 3

Emergency rules are needed to be in conformity with the Streamlined Sales and Use Tax Agreement.

Thank you for your consideration in this matter.

Sincerely,



Roger M. Ervin
Secretary of Revenue

RME:DSK

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

April 9, 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 8953
Madison WI 53708-8953

Re: Emergency Rule Extension - Tax 2.85 and 11.90

Dear Senator Holperin and Representative Zepnick:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., an additional 60-day extension of the emergency rule creating Tax 2.85 and 11.90, relating to penalties for failure to produce records. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. The emergency rule is effective through May 16, 2010.

A permanent rule has been developed, but since it cannot be in place before the emergency rule expires, an additional 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

Analysis

This proposed rule does the following:

- Reflects changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

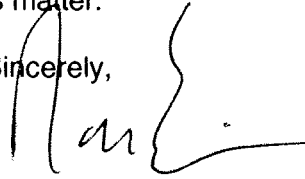
Honorable Jim Holperin
Honorable Josh Zepnick
Page 2

- Provides guidance to Department employees and taxpayers so that the penalties can be administered in a fair and consistent manner. This includes providing a standard response time, a standard for noncompliance, and penalty waiver provisions.

Emergency rules are needed to provide timely guidance so that the penalties can be administered in a fair and consistent manner.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Ervin", with a long horizontal flourish extending to the right.

Roger M. Ervin
Secretary of Revenue

RME:DSK

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Enclosure

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 71.80(9m) and 77.61(19), Stats., relating to penalties for failure to produce records.

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.80(9m) and 77.61(19), Stats.

Statutory authority: ss. 71.80(9m)(c), 77.61(19)(c), and 227.24, Stats.

Explanation of agency authority: Sections 71.80(9m)(c) and 77.61(19)(c), Stats., provide that the Department shall promulgate rules to administer the penalties for failure to produce records.

Section 227.24, Stats., provides an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: This emergency rule does the following:

- Reflects changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.
- Provides guidance to Department employees and taxpayers so that the penalties can be administered in a fair and consistent manner. This includes providing a standard response time, a standard for noncompliance, and penalty waiver provisions.

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 adopted statutory changes creating penalties for failure to produce records. Within these provisions are requirements that the Department promulgate rules to administer these penalties. The department has created this emergency rule to reflect these changes in Wisconsin's tax laws and comply with statutory requirements.

Analysis and supporting documents used to determine effect on small business: As explained above, this emergency rule is created to reflect changes in Wisconsin's tax laws and comply with statutory requirements. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Anticipated costs incurred by private sector: This emergency rule does not have a significant fiscal effect on the private sector.

Effect on small business: This emergency 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, if you have any questions regarding this emergency rule.

Place where comments are to be submitted and deadline for submission:
Comments may be submitted to the contact person shown below no later than one week after the public hearing on this emergency rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

SECTION 1. Tax 2.85 is created to read:

Tax 2.85 Penalty for failure to produce records under s. 71.80(9m), Stats. (1) GENERAL. A person who fails to produce records or documents, as provided under ss. 71.74(2) and 73.03(9), Stats., that were requested by the department may be subject to the following penalties:

(a) The disallowance of deductions, credits, exemptions or income inclusion to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation under s. 71.80(9m), Stats., that is equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" include action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" or "documents" include both paper and electronic formats. Examples include, but are not limited to, bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e-mail, fax or any other written form.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the following notifications regarding the records requested:

(a) A first written request for records where the department allowed the person a minimum of 15 days for the records to be provided.

(b) A second written request for records where the department allowed the person a minimum of 30 days for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 71.80(9m), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to John Jones on May 5, 2010, allowing him until May 20, 2010 to provide the records requested. Mr. Jones does not provide the requested records to the department by May 20, 2010. The department issues a second written request for records to him on June 1, 2010, allowing him until July 1, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Mr. Jones does not provide the requested records by July 1, 2010. Therefore, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Mr. Jones not providing the records requested.

2) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions,

credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

3) The department issues a first written request for records to Corporation B on January 5, 2010, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by March 10, 2010, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation B not providing the records requested.

(4) **WAIVER OF PENALTIES.** (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.
2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.
3. Natural disaster such as tornado, flood or fire.
4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.
5. Any other unusual circumstance that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), may result in a reduction of the penalty provided in sub. (1)(a) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department, but would not result in a reduction of the penalty provided in sub. (1)(b) unless the person can show that under all the facts and circumstances providing the requested records at that time was reasonable or justified by factors beyond the person's control.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support interest expense deducted, the department issues a proposed audit report to Corporation C disallowing all the interest expense previously deducted. Additional tax of \$100,000 and penalty of \$25,000 results in the proposed audit report from disallowing this interest expense. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors

beyond the person's control. However, the records provided support half of the interest expense deduction previously claimed. Therefore, the interest expense adjustment is modified to reduce the proposed additional tax from \$100,000 to \$50,000, but the original proposed penalty of \$25,000 for failure to provide records remains.

2) Since Mr. Smith does not provide the records requested regarding his cash business to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into income for unreported receipts. Additional tax of \$60,000, a negligence penalty of \$15,000 and a penalty for failure to produce records of \$15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment and negligence penalty are modified to reduce the additional tax from \$60,000 to \$12,000 and the negligence penalty from \$15,000 to \$3,000, but the original penalty for failure to produce records of \$15,000 remains.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from \$60,000 to \$12,000, the negligence penalty is reduced from \$15,000 to \$3,000 and the original penalty for failure to produce records of \$15,000 is waived.

SECTION 2. Tax 11.90 is created to read:

Tax 11.90 Penalty for failure to produce records under s. 77.61(19), Stats. (1)
GENERAL. A person who fails to produce records or documents, as provided under ss. 73.03(9) and 77.59(2), Stats., that were requested by the department may be subject to the following penalties:

(a) The disallowance of deductions, credits, exemptions or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation under s. 77.61(19), Stats., that is equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" include action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" or "documents" include both paper and electronic formats. Examples include, but are not limited to, bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e-mail, fax or any other written form.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the following notifications regarding the records requested:

(a) A first written request for records where the department allowed the person a minimum of 15 days for the records to be provided.

(b) A second written request for records where the department allowed the person a minimum of 30 days for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 77.61(19), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to John Jones on May 5, 2010, allowing him until May 20, 2010, to provide the records requested. Mr. Jones does not provide the requested records to the department by May 20, 2010. The department issues a second written request for records to him on June 1, 2010, allowing him until July 1, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Mr. Jones does not provide the requested records by July 1, 2010. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Mr. Jones not providing the records requested.

2) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

3) The department issues a first written request for records to Corporation B on January 5, 2010, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by

March 10, 2010, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation B not providing the records requested.

(4) WAIVER OF PENALTIES. (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.
2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.
3. Natural disaster such as tornado, flood or fire.
4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.
5. Any other unusual circumstance that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), may result in a reduction of the penalty provided in sub. (1)(a) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department, but would not result in a reduction of the penalty provided in sub. (1)(b) unless the person can show that under all the facts and circumstances providing the requested records at that time was reasonable or justified by factors beyond the person's control.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support deductions for exempt sales, the department issues a proposed audit report to Corporation C disallowing all the deductions for exempt sales previously claimed. Additional tax of \$100,000 and penalty of \$25,000 results in the proposed audit report from disallowing the deductions for exempt sales. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided support half of the deductions for exempt sales previously claimed. Therefore, the deductions for exempt sales adjustment is modified to reduce the proposed additional tax from \$100,000 to \$50,000, but the original proposed penalty of \$25,000 for failure to provide records remains.

2) Since Mr. Smith does not provide the records requested regarding his cash business to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into taxable sales for unreported receipts. Additional tax of \$60,000, a negligence penalty of \$15,000 and a penalty for failure to produce records of \$15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records

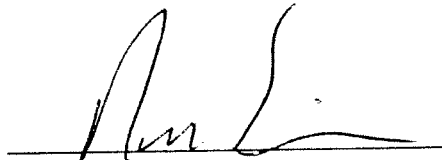
requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment and negligence penalty are modified to reduce the additional tax from \$60,000 to \$12,000 and the negligence penalty from \$15,000 to \$3,000, but the original penalty for failure to produce records of \$15,000 remains.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from \$60,000 to \$12,000, the negligence penalty is reduced from \$15,000 to \$3,000 and the original penalty for failure to produce records of \$15,000 is waived.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

DEPARTMENT OF REVENUE

Dated: October 14, 2009

By: 
Roger M. Ervin
Secretary of Revenue

E:Rules/285 1190 Proposed Order (emergency - v2)

FISCAL ESTIMATE FORM

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09-
INTRODUCTION #
Admin. Rule # Chapter Tax 2.85 & 11.90 Failure to Produce Records (emergency)

Subject PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

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 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 Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

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

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

2009 Wisconsin Act 28 (the 2009-2011 budget bill) established penalties for the failure to produce tax records or documents that support information shown on tax returns. The penalties may include the disallowance of deductions, credits, exemptions, or the inclusion of income, taxable sales, or taxable purchases to which the records relate. In addition to other penalties, a penalty may be imposed equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce records. Act 28 further specified that the Department of Revenue shall promulgate administrative rules specifying a standard response time, a standard for noncompliance, and penalty waiver provisions.

The proposed rule conforms Chapter Tax 2.85 and 11.90 to current law. In addition, the rule states circumstances whereby the penalties may be waived (including death, debilitating illness, natural disaster, or other circumstance the department deems pertinent). The proposal also specifies that the penalties for failure to produce records may be imposed after:

- a) a first written request for records is given where the department allows the person a minimum of 15 days for the records to be produced, and
- b) a second written request for records is given where the department allows the person a minimum of 30 days for the records to be provided and the second written request includes a statement explaining that if the requested records are not provided by the date specified that the penalties may be imposed.

The fiscal effect of these changes (a minimal increase in state revenues) was included in the fiscal estimates of 2009 Wisconsin Act 28. Consequently, this proposed rule has no fiscal effect.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by Wisconsin Department of Revenue	Authorized Signature/Telephone No.	Date
Paul Ziegler 608 266-5773	Paul Ziegler 608 266-5773	09/01/09

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09
INTRODUCTION #

Admin. Rule #
 Tax 2.85 & 11.90
 Failure to Produce
 Records

Subject PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

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:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringe	\$	\$ -
(FTE Position Changes)	()	-
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	-
B. State Costs by Source of Funds		
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	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0
Agency/Prepared by Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Authorized Signature/Telephone No. Wisconsin Department of Revenue Paul Ziegler 608 266-5773	Date 09/01/09





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

April 12, 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 8953
Madison WI 53708-8953

Re: Emergency Rule Extension – Tax 1.16

Dear Senator Holperin and Representative Zepnick:

To provide for additional time necessary to promulgate a permanent rule, I am requesting, under s. 227.24(2)(a), Stats., a 60-day extension of the emergency rule creating Tax 1.16, relating to the financial records matching program. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule is effective through May 20, 2010.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. A public hearing was held on February 11, 2009, on both the emergency and permanent rules. However, since the permanent rule cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting an Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

Analysis

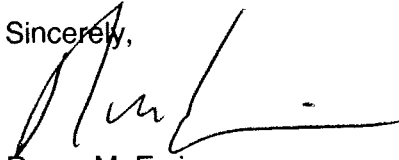
The proposed rule does the following:

- 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.

Emergency rules are needed to provide procedures so that the financial records matching program can be administered in a fair and consistent manner.

Thank you for your consideration in this matter.

Sincerely,



Roger M. Ervin
Secretary of Revenue

RME:DSK

e:rules116 Emergency - Extension - JCRAR

Enclosure

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 71.91 (8), Stats., relating to the financial record matching program.

Analysis by the Department of Revenue

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

Statutory authority: s. 227.24, Stats.

Explanation of agency authority: Section 227.24, Stats., provides an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

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

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

Effect on small business: This emergency 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, if you have any questions regarding this emergency rule.

Place where comments are to be submitted and deadline for submission:
Comments may be submitted to the contact person shown below no later than one week after the public hearing on this emergency rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of the financial record matching program.

It is necessary to promulgate this rule order to provide procedures so that the program can be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

SECTION 1. Tax 1.16 is created to read:

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) "Account" has the meaning given in s. 71.91 (8) (a) 1., Stats.

(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.

(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 subpar. 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. Sixty days notice is required for any changes to the conditions of the contract.

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 concerning account holders who are not delinquent debtors.

(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 upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

Dated: _____

12/16/09

DEPARTMENT OF REVENUE

By: _____

Roger M. Ervin
Secretary of Revenue

E:Rules/116 Proposed Order (emergency - v2)

FISCAL ESTIMATE FORM

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09-
INTRODUCTION #
Admin. Rule # Tax 1.16 Emergency

Subject

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

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 |
| 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 |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

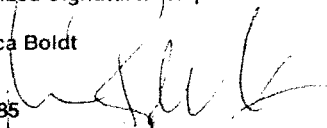
The proposed emergency rule sets out procedures for the financial records matching program as created by 2009 Act 28.

The law is silent with regards to the procedures to be used. The rule creates two options for participation by financial institutions in the match program. Under the state match option, the financial institution provides the state with information on account owners for the purpose of matching those records with a list of delinquent debtors to the state. Under the financial institution match option, the Department provides a list of delinquent debtors to the financial institution, and the financial institution will return to the state information on account owners that match the delinquent debtor file.

The fiscal effect of the financial records matching program was included in the fiscal estimate for 2009 Act 28. As such, the rule has no fiscal effect.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.) Wisconsin Department of Revenue Michael Oakleaf 216-5173	Authorized Signature/Telephone No. Rebecca Boldt  261-6785	Date November 9, 2009
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FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

2009 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 09

Admin. Rule #

INTRODUCTION #

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:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
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		
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.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

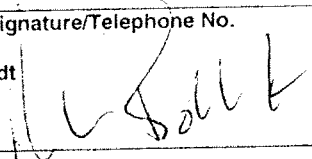
STATE

LOCAL

NET CHANGE IN COSTS \$ _____ \$ _____
NET CHANGE IN REVENUES \$ See text \$ _____

Agency/Prepared by: (Name & Phone No.)
Wisconsin Department of Revenue
Michael Oakleaf
261-5173

Authorized Signature/Telephone No.
Rebecca Boldt
266-6785



Date
November 9, 2009