



Details: Emergency Rules 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)

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(b) *Reorganizations.* 1. When a merger or acquisition occurs between two combined groups where the acquiring group has not made the controlled group election but the target group has made the controlled group election, the controlled group election of the target group terminates on the date of the transaction. However, the designated agent of either the acquiring group or the target group may make the controlled group election with respect to all corporations that are in its commonly controlled group as determined after considering the effect of the merger or acquisition, provided the requirements in sub. (2) are met and the election is not precluded by par. (c) or sub. (4) (b) 2.

2. When a merger or acquisition occurs between two combined groups where the acquiring group has made the controlled group election but the target group has not made the controlled group election, all corporations in the commonly controlled group as determined after considering the effect of the merger or acquisition are bound by the acquirer's controlled group election.

3. When a merger or acquisition occurs between two combined groups that have both made the controlled group election, the expiration date of the controlled group election for the entire commonly controlled group as determined after considering the effect of the merger or acquisition is the expiration date of the acquirer's controlled group election.

4. When a commonly controlled group that has made the controlled group election divests stock of one or more subgroups of members so that the subgroups are no longer in the commonly controlled group, those subgroups are no longer bound by the controlled group election, except if both the book value of total assets of a subgroup and its total fair market value are greater than those of the divesting group, then the subgroup is bound by the controlled group election and the controlled group election of the divesting group terminates on the date of the transaction.

(c) *Renewal.* 1. After the ten-year period described in par. (a), the designated agent may renew the election for another ten taxable years, without prior written approval from the department. The renewal shall be made on an original, timely filed return for the first taxable year after completion of the ten-year period. Except as provided in subd. 3., the requirements for a renewal of an election are the same as for making the original election as described in sub. (2).

2. If the election is not timely renewed as provided in subd. 1., the election is considered to be revoked by the designated agent. In the case of a controlled group election that is not timely renewed, a new election may not be permitted in any of the next three taxable years.

3. The designated agent may renew the election on an amended return filed after the end of the automatic 7-month extension period provided in ss. 71.24(7) or 71.44(3), Stats., only if the original return was consistent with the controlled group election remaining in place and that the failure to comply with the requirements of sub. (2) was due to oversight or mistake.

**(4) LIMITATION OF ELECTION.** A controlled group election may be disregarded by the department if the facts demonstrate that the election has the primary effect of tax avoidance rather than its intended purpose of simplifying the determination of items includable in a combined report. The following rules apply to this limitation:

(a) *Tax avoidance.* 1. A controlled group election may be considered to have the primary effect of tax avoidance if from the facts available to any corporation in the commonly controlled group at the time of the election, the election will not have meaningful continuing application. For example, and without limitation, the department would disregard the tax effect of a controlled group election made in anticipation of a sale of a business if by making the election the seller incurred a significantly lower tax liability on the transaction and after the sale all other corporations in the combined group would be included in the combined group even if the controlled group election were not in effect.

2. While subd. 1. presents one indicator from which the controlled group election may be considered to have the primary effect of tax avoidance, this paragraph in no way limits the scope of possible indicators.

(b) *Administration.* If the department finds it necessary to disregard the tax effect of the controlled group election or disallow the election, the department shall revoke the election for the entire commonly controlled group for all years open to adjustment. The following rules apply:

1. For each member of the commonly controlled group, the department shall recompute that member's tax liability in the manner it would have been computed had the controlled group election not been in place, and shall issue notices of assessment or refund accordingly within the statute of limitations provided under s. 71.77, Stats., including any extensions.

2. If the controlled group election is revoked under subd. 1., the commonly controlled group may not make a new election in any of the next three taxable years, but may make the election thereafter provided the election has the primary effect of simplifying the determination of items includable in a combined report rather than of tax avoidance.

**Note:** Section Tax 2.63 interprets s. 71.255(2m), Stats.

**Cross References:** See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.61(2)(b) for more information on the effect of the controlled group election. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.67 for more information on combined returns.

**Tax 2.64 Alternative Apportionment for Combined Groups Including Specialized Industries.** (1) **SCOPE.** Section 71.255(5)(a), Stats., provides that a combined group is generally required to use the modified sales factor method to apportion its combined unitary income. However, s. 71.255(5)(b), Stats., provides that a qualifying combined group may petition the department to use an alternative apportionment method. This section provides rules relating to the eligibility requirements, continuity, and limitations of this privilege.

(2) **ELIGIBILITY REQUIREMENTS.** (a) *Qualifying combined group.* A qualifying combined group is a combined group for which 30 percent or more of the combined unitary income would, in the absence of combined reporting, be required to be apportioned using more than one factor under a method described in ss. Tax 2.46, 2.47, 2.475, 2.48, 2.50, or 2.502.

(b) *Requirements for petition.* The designated agent of the combined group requesting an alternative apportionment method shall file a petition no less than 60 days before filing the first original, timely filed return using the alternative method. If a return using the modified sales factor method has already been timely filed without an extension, the designated agent may file an amended return using the alternative method if it files a petition no less than 60 days before

the end of the automatic 7-month extension period provided in ss. 71.24(7) or 71.44(3), Stats., as applicable, and the petition is approved by the department. The petition shall include the following:

1. The full name, address, and federal employer identification number of each member of the combined group.

2. The combined group's taxable year for which the alternative apportionment method as requested would begin to be effective.

3. A description of the alternative apportionment method requested.

4. A complete and precise statement of the reasons for the modification requested, including why the modified sales factor method would result in an unfair representation of the degree of unitary business activity in this state. This statement shall provide clear and convincing evidence of its assertions.

5. A calculation of the combined group's tax liability for the first taxable year to which the petition applies and for the previous taxable year, using the apportionment method prescribed in s. 71.255(5)(a), Stats., for both years. For the previous taxable year's computation, this amount shall be computed as if a combined report including those same corporations were required in the previous taxable year, even if it was before s. 71.255, Stats., was in effect.

6. A calculation of the combined group's tax liability for the first taxable year to which the petition applies and for the previous taxable year, similar to the calculation in subd. 5., but using the requested apportionment method instead of the modified sales factor method.

7. A calculation of each combined group member's tax liability for the first taxable year to which the petition applies and for the previous taxable year, similar to the calculations in subds. 5. and 6., computed as if each corporation were not a member of the combined group and using the method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

8. A statement as to whether any combined group member is being audited by the department at the time of the petition.

(c) *Limitation.* The department may not grant a taxpayer's petition for an alternative apportionment method if the alternative method would result in a lower tax liability than the sum of the tax liabilities of the combined group members computed as if they were not members of a combined group and using the apportionment method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

(d) *Approval or rejection.* 1. The petition shall be approved by the department in writing. The department shall approve or reject the petition within 45 days after receiving it. However, failure of the department to act within 45 days or acceptance of a return using the alternative apportionment method does not constitute approval of the petition or method used. The department may, after receipt and review of the petition, require additional information necessary to determine whether the modified sales factor method does not fairly represent the degree of unitary business activity in this state. If the department does not have all the required information to approve the petition, the 45-day period described in this paragraph is suspended until the information is provided. Filing of a petition does not affect the accrual of interest on underpayment of estimated taxes.

2. If the designated agent timely files a petition as described in par. (b) but does not receive an order from the department approving or rejecting the petition before the due date of the return, the designated agent must file the return using the modified sales factor method. If the department subsequently approves the petition, the designated agent may amend the return using the approved method, in which case the amended return must contain the attachments described in par (e).

(e) *Attachments to return.* For each combined return on which the alternative apportionment method is used, the designated agent shall include the following documentation with the return:

1. A copy of the department's written approval for the alternative apportionment method.
2. A calculation of the combined group's tax liability computed as if it used the modified sales factor method instead of the alternative apportionment method.
3. A calculation of each combined group member's tax liability for the taxable year included in the combined return computed as if each corporation were not a member of the combined group and using the apportionment method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

**(3) CONTINUITY AND LIMITATIONS.** (a) *Continuity.* 1. If the department approves the alternative apportionment method, the combined group engaged in that unitary business shall continue to use the alternative apportionment method for six taxable years following the first year for which the alternative method was approved, except as provided in par (b).

2. No later than 60 days before filing the first return for a period subsequent to the expiration of the seven-year period in subd. 1., the designated agent of the combined group shall file a new petition with the department in order to continue using the alternative apportionment method. The new petition is subject to the same requirements as the original petition except that the designated agent shall include the calculations described in sub. (2) (b) 5. to 7. for the first year to which the renewed election applies and each of the years to which the previous election applied.

(b) *Limitations.* 1. If the sum of the tax liabilities of the combined group members for the taxable year computed as if they were not combined group members, as reported in the attachment described in sub. (2)(e)3., is greater than the combined group's tax liability using the alternative apportionment method, the combined group may not use the alternative method for the taxable year. Instead, the combined group shall use the modified sales factor method. For each of the remaining taxable years in the seven-year period described in par. (a)1., the combined group shall use the alternative apportionment method to the extent the limitations of this paragraph do not apply.

2. If the combined group is no longer a qualifying combined group as described in sub. (2)(a), the combined group may no longer use the alternative apportionment method beginning with the year the combined group no longer qualifies. If it subsequently becomes a qualifying combined group in a later taxable year, the designated agent of the group may file a new petition for an alternative apportionment method.

**Note:** Mail petitions for alternative apportionment methods to: Administration Technical Services – Corporations Unit, Wisconsin Department of Revenue, P.O. Box 8933, Mail Stop 6-40 Madison, WI 53708-8933.

**Note:** This section interprets s. 71.255(5)(b), Stats.

**Cross References:** See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.67 for more information on combined returns.

**Tax 2.65 Designated Agent of Combined Group. (1) SCOPE.** Section 71.255(7), Stats., requires every combined group to have a designated agent to act on behalf of the group. This section provides rules relating to identifying the designated agent and describes the scope and limitations of the agency relationship.

**(2) IDENTIFYING DESIGNATED AGENT. (a) Eligibility.** The combined group may select any member as the designated agent, subject to a limitation that the designated agent's taxable year shall be the same as the combined group's taxable year.

**(b) Creation of agency.** A combined group shall appoint a designated agent. The corporation which files, or will file, the first combined return for the combined group is deemed to be appointed as the designated agent. If no combined return is filed, the department shall appoint the parent corporation of the combined group to be the designated agent, or if there is no parent corporation, the department may appoint any corporation in the combined group to be the designated agent.

**(c) Continuity of agency into future years.** Once a member of the combined group is appointed as the designated agent, it shall remain the designated agent of that group for all future years unless one of the following applies:

1. The designated agent leaves the combined group, in which case the corporation which files, or will file, the first combined return after the date the designated agent leaves is deemed to be appointed as the new designated agent.

2. Except as provided in subd. 3., the combined group, or portion of the combined group that includes the designated agent, is acquired by another combined group, in which case the corporation which files, or will file, the first combined return after the date of the acquisition is deemed to be appointed as the new designated agent.

3. The designated agent ceases to exist, in which case the designated agent shall notify the department in writing that another member of the combined group (or successor corporation of any member of the combined group) will thereafter act as designated agent for that taxable year and any prior taxable years. The member appointed for that taxable year and any prior taxable years need not be the new designated agent for all future taxable years. The substitute designated agent will succeed to the rights and responsibilities of the former designated agent and may in turn appoint another designated agent for future taxable years. If the designated agent fails to notify the department in writing of the new designated agent, the department may select a surviving member of the combined group to act as the designated agent.

4. Where subd. 2. does not apply, the designated agent is still a member of the combined group but submits a written request to the department for another combined group member to act as designated agent, and the department grants the request.

**Note:** Send requests to change the combined group's designated agent and notifications of successor designated agents to: Corporation Processing Unit, Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

(d) *Continuity of agency for prior years.* The designated agent of a combined group for a prior taxable year shall continue to act as the designated agent for that taxable year unless the designated agent ceases to exist, in which case par. (c) 3. applies, or the designated agent submits a written request to the department for another combined group member to act as designated agent, and the department grants the request.

**Note:** Send requests to change the combined group's designated agent and notifications of successor designated agents to: Corporation Processing Unit, Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908. However, if the request relates to prior taxable years that are under audit, the designated agent may submit the written request to the department's representative that has notified the designated agent of the audit.

(e) *Designated agent for purposes of resolving disputes over combined group membership.* If the department determines that one or more corporations are members of a combined group and no combined return was filed, the group of corporations the department asserts is a combined group may appoint a member of that group as the designated agent solely for purposes of contesting the department's determination. The appointment of a designated agent under this paragraph may not be construed as a concession by either the corporations or the department regarding the existence of a combined group or the proper composition of a combined group.

**(3) SCOPE AND LIMITATIONS OF AGENCY.** (a) *Duties of designated agent.* The designated agent is generally required to act on behalf of the combined group in its own name in all matters relating to the combined return. This includes performing the following duties:

1. Filing the combined return, including the reporting of any separate entity items attributable to combined group members.
2. Filing any extension of time to file the combined return.
3. Filing any amended combined returns or claims for refunds or credits relating to the combined return, including any separate entity items attributable to combined group members.
4. Sending and receiving all correspondence with the department regarding the combined return, except that if correspondence relates to separate entity items or a payment made by another member of the combined group as provided in s. Tax 2.66(2), the department may send the correspondence to that other member or the designated agent, or both.
5. Remitting taxes applicable to the combined return, including estimated taxes, except as otherwise provided in s. Tax 2.66.
6. Participating on behalf of the group in any investigation or hearing by the department regarding the combined return, including producing all information requested and filing any appeal. Unless provided otherwise in writing, any appeal filed by the designated agent relating to the combined return shall be considered filed by all members of the combined group, including any corporations that were not included in the combined return but which the department asserts are members the combined group.

7. Executing waivers, closing agreements, powers of attorney, and other documents relating to the combined return. Unless the department and taxpayer agree otherwise in writing, any waiver, closing agreement, power of attorney, or other document executed by the designated agent relating to the combined return shall be considered executed by all members of the combined group, including any corporations that were not included in the combined return but which the department asserts are members of the combined group.

8. Receiving assessment notices regarding the combined return. Subject to par. (f), a notice received by the designated agent is considered received by all members of the combined group, including any corporations that were not included in the combined return but which the department asserts are members of the combined group. If a notice relates to separate entity items that are attributable to a combined group member other than the designated agent, the designated agent may submit a written request to the department to reissue the notice or a portion of the amount of the notice to the combined group member responsible for the separate entity items. The designated agent shall submit the written request on or before the due date shown on the notice.

**Note:** Send written requests to reissue notices relating to separate entity items to: Wisconsin Department of Revenue, Mail Stop 5-257, P.O. Box 8906, Madison, WI 53708-8906.

9. Receiving any refunds relating to the combined return.

(b) *Exclusivity.* Except as provided in this paragraph, no person other than the designated agent shall have authority to act for or represent itself or the combined group regarding the duties listed in par. (a). A combined group member, or a corporation which the taxpayer asserts is a combined group member, may assume any of the duties listed in par. (a) under any of the following conditions:

1. By election of the designated agent or the applicable combined group member, a combined group member may perform any of the duties listed in par. (a) to the extent those duties relate to separate entity items. This may include the filing of a separate return to report the member's separate entity items, subject to the requirements of par. (c).

2. A combined group member may make estimated payments on its own behalf to the extent allowed in s. Tax 2.66(2).

3. If a combined return was filed, the department may allow any corporation which it asserts should be added to or eliminated from the combined group to represent itself after receipt of a written request from the corporation. However, that corporation shall still be bound by any action taken by the designated agent before the corporation's request to represent itself has been accepted by the department.

**Note:** A corporation that wishes to represent itself should submit the written request to the department's representative that has notified the corporation of the department's assertion.

(c) *Reporting of separate entity items.* If a combined group member chooses to file a separate Wisconsin return to report its separate entity items rather than having the designated agent include them in the combined return in the manner described in s. Tax 2.67(2)(d)3., the member shall consider the totality of its share of items from the combined return plus its separate entity items for purposes of applying any limitations, so that its total net tax plus recycling surcharge does not differ from the amount that would have been due if the separate



entity items had been included in the combined return. The combined group member shall submit a copy of the combined return with its separate return.

(d) *Unauthorized acts.* The department is not bound by unauthorized acts made with respect to a combined return by a corporation that is not the designated agent. The department may choose to receive the benefits or assume the obligations of unauthorized acts, in which case the department is bound only if it takes affirmative steps to expressly manifest its intent to receive the benefits or assume the obligations of the acts.

(e) *Failure to act.* If the designated agent is unable or unwilling to fulfill its obligations with respect to the combined return, is unresponsive, or has not been identified to the department, the department may appoint a new designated agent, or it may deal directly with any member of the combined group in respect to its share of the combined return items in which case each member shall have full authority to act for itself.

(f) *Joint and several liability.* Under s. 71.255 (1) (n), Stats., the members of a combined group shall be jointly and severally liable for the combined tax, penalty, and interest attributable to the combined unitary income, net of any loss carryforwards and credits applied. This paragraph does not apply to any tax, interest, or penalty attributable to separate entity items. Although the department may send correspondence, notices, refunds, assessments, or other documents relating to any combined group member's separate entity items to the designated agent, and the designated agent may choose to pay any tax, interest, or penalty on behalf of a combined group member, the tax, interest, or penalty attributable to separate entity items is ultimately the responsibility of the combined group member or members to which the separate entity items are attributable.

(g) *Confidentiality provisions.* The designated agent is an agent under s. 71.78(4)(e), Stats. Therefore, the department may provide information relating to any member of the combined group to the designated agent, including information relating to the member's separate entity items.

**Note:** This section interprets s. 71.255(7), Stats.

**Cross References:** See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.66 for more information on combined estimated tax requirements. See s. Tax 2.67 for more information on combined returns.

**Tax 2.66 Combined Estimated Tax Payments. (1) SCOPE.** In general, s. 71.255(7)(b)5., Stats., provides that only the designated agent of a combined group may make estimated tax payments applicable to a combined return. This section provides exceptions to the general rule, explains the estimated tax requirements, and provides rules for applying estimated payments and overpayments.

**(2) SEPARATE ESTIMATED PAYMENTS.** (a) *When separate estimated payments are allowed.* Although the designated agent is always authorized to make estimated payments on behalf of any and all of its combined group members, a combined group member other than the designated agent may make estimated payments on its own behalf if any of the following apply:

1. For the first taxable year for which a combined group files a combined return, any member of the group may make estimated payments on its own behalf.

2. For the first taxable year for which a corporation is a member of a combined group, that corporation may make estimated payments on its own behalf.

3. Any combined group member may make estimated payments on its own behalf to the extent those payments relate to separate entity items.

(b) *Reporting of separate estimated payments.* If a combined group member other than the designated agent makes separate estimated payments and applies those payments to the combined return, the designated agent shall notify the department of those payments on a department-prescribed form filed with the combined return. This notification authorizes the department to apply the separate estimated payments to the combined return.

**Note:** The form prescribed for notifying the department of separate estimated payments to be applied to the combined return is Part IV of Form 4M, Combined Group Member-Level Data.

**(3) DETERMINATION OF REQUIRED ESTIMATED PAYMENTS.** (a) *General.* If a combined return is filed, the amount of any addition to tax under s. 71.84(2), Stats., shall be computed as if the combined group were one corporation. "Tax shown on the return" and "tax for the taxable year" as defined in s. 71.29(1)(b), Stats., have the same meaning with respect to a combined return as to a separate return.

(b) *Computation of thresholds.* Since, as provided in par. (a), "tax shown on the return" has the same meaning with respect to a combined return as to a separate return, the amounts of the following thresholds are the same regardless of the number of combined group members included in the combined return:

1. Section 71.29(7), Stats., which provides that no interest on underpayment is required if the tax shown on the return for the taxable year is less than \$500.

2. Section 71.29(9), Stats., which provides that for corporations that have Wisconsin net incomes of less than \$250,000 and whose preceding taxable year was a 12-month taxable year, estimated payments may be based on the lesser of 90 percent of tax shown on the return for the current taxable year or the tax shown on the return for the preceding year.

(c) *Effect of separate entity items.* The amount of net income and tax shown on a combined return includes net income and tax attributable to separate entity items. If the combined return includes separate entity items of a corporation that would otherwise be a combined group member except that it has no items that are subject to combination under the water's edge rules of s. Tax 2.61(4), the corporation is considered a combined group member for purposes of determining required estimated payments.

**Example:** Combined Group AB consists of Member A and Member B. Group AB filed a combined return for calendar year 2010. The 2010 return includes \$30,000 of net tax attributable to Member A's items and \$20,000 attributable to Member B's items, including \$5,000 attributable to B's separate entity items. The 2010 combined return also includes \$10,000 of net tax from the separate entity items of Corporation C, which would be a combined group member except that none of its items are subject to combination under the water's edge rules. If Group AB is not eligible to base its estimated taxes on its 2009 net tax under the provisions of par. (b), Group AB's required estimated tax payments for purposes of its 2010 combined return are \$60,000 (= \$30,000 + \$20,000 + \$10,000).

(d) *Annualized income installment method.* For purposes of the annualized income installment method provided in s. 71.29(9)(c) and (10)(c), Stats., the previous year's apportionment percentage for a combined group equals the sum of the combined group members' modified sales factor numerators as determined under s. Tax 2.61(7)(a) for the combined group's preceding taxable year, divided by the combined group's modified sales factor denominator as determined under s. Tax 2.61(7)(b) for the combined group's preceding taxable year.

(e) *Change in membership.* For purposes of applying par. (a) and except as provided in par. (f), the combined group's "tax shown on the return" for the current taxable year or the preceding taxable year is the tax shown on the combined return for the applicable year, without regard to corporations that have joined or left the group.

**Example:** Group JK files a combined return for the calendar year 2009. During 2010, Member J acquires L and L becomes a member of the combined group. If the group qualifies to determine its estimated tax obligations for 2010 based on its preceding year's tax liability, its preceding year's tax liability only includes the tax shown on Group JK's 2009 combined return; it does not include any tax liability from L's 2009 separate return.

(f) *First combined return year.* The following rules apply to the computation of required estimated payments for the first year that a combined group files a combined return:

1. If the total of the combined group's Wisconsin net income reported on the combined return is less than \$250,000, the required estimated payments may be based on the sum of the members' tax shown on their Wisconsin returns for the preceding year as provided by s. 71.29(9)(a) 2., Stats., but only if all combined group members filed a Wisconsin return which covered a full 12 months in the preceding taxable year. If a member was included in the combined return of another combined group in the preceding taxable year, its tax shown on the return for that year is the tax attributable to the sum of its share of combined unitary income and income from separate entity items reported on that return.

2. If one or more combined group members did not file a Wisconsin return which covered 12 months in the preceding taxable year, the combined group shall base its required estimated payments on 90 percent of the tax shown on the combined return as provided under s. 71.29(9)(a) 1. or (10)(b), Stats., as applicable.

3. The previous year's apportionment percentage for purposes of the annualized income installment method equals the sum of the current combined group members' apportionment factor numerators from their returns for the preceding taxable year, divided by the sum of the apportionment factor denominators from their returns for the preceding taxable year. If a member was included in the combined return of another combined group in the preceding taxable year, its apportionment percentage for this purpose is its modified sales factor numerator for that taxable year as determined under s. Tax 2.61(7)(a), divided by its separate company denominator for that taxable year as determined under s. Tax 2.61(7)(b).

4. For purposes of subds. 1. to 3., if a combined group member has a taxable year different than the combined group's taxable year, the member's preceding taxable year is its taxable year most recently ended before the first day of the combined group's taxable year.

**(4) RULES FOR APPLYING ESTIMATED PAYMENTS AND OVERPAYMENTS.** (a) *Separate returns filed in year following combined return year.* If a combined group terminates and the former members properly file separate returns in the subsequent year, any combined

estimated payments made for that year shall be credited against the separate tax liabilities of the former members of the combined group in the manner allocated by the designated agent. The designated agent shall notify the department of the manner in which the payments are to be allocated. The designated agent may make this notification in correspondence to the department unless the department prescribes a specific form for this purpose, in which case the prescribed form shall be used. In either case, the notification shall be submitted to the department separately from any return.

(b) *Combined estimated payments but no combined return.* If combined estimated payments are made for a taxable year but no combined return is filed for that year or for the previous year, the estimated payment shall only be credited to the corporation that made the payment.

(c) *Overpayments.* 1. If a combined group member has a credit for an overpayment of taxes from a prior taxable year when it was not a combined group member, the member may, through its designated agent, authorize the department to apply some or all of the credit against the total tax liability reported on the combined return. To carry out this authorization, the designated agent shall file a department-prescribed form with the combined return to notify the department of the amount to be applied. Alternatively, the member may file a claim for refund of the overpayment, in which case the overpayment shall be refunded to that member.

**Note:** The form prescribed for notifying the department of a member's prior year overpayments to be applied to the combined return is Part IV of Form 4M, Combined Group Member-Level Data.

2. If a corporation leaves a combined group that has an overpayment of taxes carried over from a prior combined return year, the designated agent may allocate a portion of that overpayment to the former member. The designated agent shall notify the department of the amount to be allocated to the former member. The designated agent may make this notification in correspondence to the department unless the department prescribes a specific form for this purpose, in which case the prescribed form shall be used. In either case, the notification shall be submitted to the department separately from any return.

(d) *Erroneous combined estimated payments.* If a designated agent makes estimated payments on the erroneous premise that a corporation is an eligible member of the combined group, and discovers the error prior to the time the combined group and the corporation file their respective returns, the designated agent may allocate some or all of the combined estimated payments to the corporation. The designated agent shall notify the department of the amount to be allocated. The designated agent may make this notification in correspondence to the department unless the department prescribes a specific form for this purpose, in which case the prescribed form shall be used. In either case, the notification shall be submitted to the department separately from any return. The combined group and the corporation shall each compute their addition to tax under s. 71.84(2), Stats., as if the estimated payments allocated to the corporation had actually been paid by it rather than by the combined group.

(e) *Erroneous separate estimated payments.* If a corporation makes separate estimated payments on the erroneous premise that it is not a combined group member, the following rules apply:

1. If the corporation discovers the error prior to the time the designated agent files the combined return for the taxable year, and the corporation has not filed a separate return for the period that should have been included in that combined return or otherwise received a refund of

the separate estimated payments, the corporation may apply the separate estimated payments to the combined return. The designated agent shall report the separate estimated payments in the manner described in sub. (2)(b).

2. If the corporation discovers the error prior to the time the designated agent files the combined return for the taxable year, but the corporation has already filed a separate return for the period that should have been included in the combined return, the corporation shall file an amended separate return showing no net income, overpayment, or underpayment, and stating that the corporation will join in the filing of a combined return and identifying the designated agent of the combined group. Unless the corporation specifies otherwise on the amended return, the department will not refund the erroneously paid amounts. When the designated agent files the combined return including that corporation, the corporation may apply the separate estimated payments to the combined return unless the corporation specified otherwise on its amended return or has otherwise received a refund of the separate estimated payments. The designated agent shall report the separate estimated payments so applied in the manner described in sub. (2)(b).

3. If the corporation discovers the error after the designated agent has filed the combined return for the taxable year, but the corporation has not filed a separate return or otherwise received a refund of the separate estimated payments, the designated agent shall file an amended combined return and apply the corporation's separate estimated payments to the amount due on the amended combined return. The designated agent shall report the separate estimated payments so applied in the manner described in sub. (2)(b).

4. If the corporation discovers the error after the designated agent has filed the combined return for the taxable year and after the corporation has already filed a separate return for the period that should have been included in the combined return, the corporation shall file an amended separate return and the combined group shall file an amended combined return. The provisions of subd. 2. apply with respect to the amended separate return. The corporation may apply the separate estimated payments to the amended combined return unless the corporation specified otherwise on its amended return or has otherwise received a refund of the separate estimated payments. The designated agent shall report the separate estimated payments so applied in the manner described in sub. (2)(b).

**Note:** If an allocation described in sub. (4)(a), (c)2., or (d) is necessary and the department has not prescribed a form to use to notify the department of the allocation, send correspondence notifying the department of the allocation to: Corporation Processing Unit, Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

**Note:** Section Tax 2.66 interprets ss. 71.255(7), 71.29, and 71.84(2), Stats.

**Cross References:** See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.67 for more information on combined returns.

**Tax 2.67 Combined Returns. (1) SCOPE.** This section provides rules relating to the filing of combined returns by corporations required to use combined reporting under s. 71.255, Stats. This section explains the filing requirements for combined returns, provides rules relating to defining the taxable year included in a combined return, and describes how interest, penalties, and statutes of limitations apply to combined returns.

**(2) FILING REQUIREMENTS FOR COMBINED RETURNS.** (a) *General.* The designated agent of a combined group shall file a combined return on behalf of the group. For each combined group member included in the combined return, the combined return satisfies the member's requirement for filing returns under ss. 71.24(1) or (1m) or 71.44(1) or (1m), Stats., as applicable. The combined return shall be filed by the date provided in ss. 71.24(1), (1m), and (7) or 71.44(1), (1m), and (3), Stats., as applicable.

(b) *Electronic filing.* All combined returns shall be filed electronically. The secretary of revenue may waive the requirement to file a combined return electronically when the secretary determines that the requirement causes an undue hardship, if the person requests the waiver in writing and clearly indicates why the requirement causes an undue hardship. In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

**Example:** The person does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

**Note:** Written requests should be e-mailed to [DORWaiverRequest@revenue.wi.gov](mailto:DORWaiverRequest@revenue.wi.gov), faxed to (608) 264-7776, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949.

**Note:** Forms not filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to the address specified on the form or in the instructions.

(c) *Components of combined return.* A combined return shall include the following items, and shall be considered incomplete if any of these items are excluded:

1. One Wisconsin Form 4, Income or Franchise Tax Return, for the combined group as a whole.

2. One Wisconsin Form 4R, Federal Taxable Income Reconciliation for Combined Groups, for the combined group as a whole. The purpose of Form 4R is to reconcile federal taxable income per the federal consolidated return and separate returns, as applicable, with the amount on Form 4, line 1. Form 4R shall be considered complete only if the designated agent submits a supporting schedule which identifies each corporation to which each reconciling amount is attributable, and a schedule which identifies each corporation in the commonly controlled group which is not included in either the federal consolidated return or the combined return.

3. One Wisconsin Form 4M, Combined Group Member-Level Data, for each member of the combined group. The purpose of Form 4M is to identify the members of the combined group, provide information regarding the member's items included in the combined return, and account for payments to be applied to the combined return.

4. If the combined group is using apportionment, one Wisconsin Form 4A, Apportionment Data for Combined Groups, and the apportionment factor computation for each member of the combined group as performed on Form 4A-1, Apportionment Data for Single Factor Formulas, or Form 4A-2, Apportionment Data for Multiple Factor Formulas, as applicable.

5. Any other required supporting forms and schedules listed in s. Tax. 2.03, as applicable. Unless stated otherwise in the instructions, supporting forms and schedules shall be prepared separately for each combined group member.

6. A copy of the complete federal return for each combined group member, including all supporting schedules and any amended returns, for the member's taxable year included in the combined return. For combined group members that also file in a federal consolidated return, any of the following alternatives shall be considered to satisfy this requirement:

a. A copy of the federal consolidated return, including all supporting forms, schedules, and statements for each corporation included in the consolidated return, as submitted to the Internal Revenue Service.

b. Pro forma federal returns prepared separately for each combined group member, including all supporting forms and schedules prepared separately for each combined group member.

c. A spreadsheet showing the line-by-line computation of taxable income of each combined group member included in the federal consolidated return, including consolidating adjustments, plus the supporting forms, schedules, and statements filed with the Internal Revenue Service pertaining to each member. The supporting statements shall include balance sheets as of the beginning and end of the tax year, a reconciliation of income per books with income per return, and a reconciliation of retained earnings, to the extent the member was required to submit these items to the Internal Revenue Service.

7. For combined groups that also file in a federal consolidated return, a copy of federal Form 851, Affiliations Schedule.

(d) *Separate entity items.* 1. Subject to the provisions of s. Tax 2.65(3)(b), if any combined group member has separate entity items, the designated agent shall include those separate entity items in the combined return. If a corporation that would otherwise be a combined group member has no items that are subject to combination under the water's edge rules of s. Tax 2.61 (4), the designated agent may include that corporation's separate entity items in the combined return, in which case the combined return shall include the items specified in sub. (2) (b) 3., 5., and 6. and subd. 3. for that corporation as if it is a combined group member. Alternatively, the corporation may file a separate Wisconsin return to report those items.

2. The joint and several liability provisions of s. Tax 2.65(3)(f) do not apply to any tax, interest, or penalty attributable to separate entity items. Although the department may send correspondence, notices, refunds, assessments, or other documents relating to any combined group member's separate entity items to the designated agent, and the designated agent may choose to pay any tax, interest, or penalty on behalf of a combined group member, the tax, interest, or penalty attributable to separate entity items is ultimately the responsibility of the combined group member or members to which the separate entity items are attributable.

3. The separate entity net income or loss and apportionment factors included in the combined return shall be reported on Wisconsin Form 4N, Nonapportionable and Separately Apportioned Income. The designated agent shall complete and submit Form 4N with the combined return for each applicable corporation and carry forward the total Form 4N amounts to the appropriate line on Form 4. For purposes of the requirement of s. 71.255(2)(d), Stats., separate entity items reported on Form 4N shall be considered filed on a separate return.

However, for purposes of determining a combined group member's net income, tax, interest, underpayment interest, recycling surcharge, and the statute of limitations, the separate entity amounts shall be added to its amounts, if any, computed in the unitary combination.

4. If a corporation is a member of more than one combined group at the same time, the corporation shall include its separate entity items, if any, in the combined return of only one group.

(e) *Amended returns.* If a corporation erroneously fails to join in the filing of a combined return, the designated agent shall file an amended combined return adding the corporation and, if a separate return was filed by the corporation, the corporation shall file an amended separate return showing no net income, overpayment, or underpayment, and stating that the corporation has joined in the filing of a combined return and identifying the designated agent of the combined group in which the corporation has been included.

**(3) TAXABLE YEAR OF COMBINED RETURN.** The taxable year included in a combined return is the combined group's taxable year as determined in s. 71.255(8), Stats. For purposes of determining the taxable year and the items includable in the combined group's taxable year, the following rules apply:

(a) *Combined group's taxable year.* If two or more members of the combined group file in a federal consolidated return, the combined group's taxable year is the taxable year of that federal consolidated return. If no federal consolidated return applies or there is more than one federal consolidated return, the combined group's taxable year is the taxable year of the designated agent. In any case, s. Tax 2.65(2)(a) requires that the designated agent's taxable year shall be the same as the combined group's taxable year.

(b) *Methods for members with differing taxable years.* If the taxable year of a combined group member differs from the taxable year of the combined group, the designated agent shall include that member's net income or loss and apportionment factors in the combined return by using one of the following methods:

1. Preparing a separate income statement from the member's books and records for the months included in the combined group's taxable year and using that income statement to determine the amounts includable in the combined return.

2. Using the net income or loss for the member's taxable year that ends during the combined group's taxable year to determine the amounts includable in the combined return.

(c) *Election of method.* If the designated agent converts a combined group member's taxable year to the combined group's taxable year as described in par. (b)1. or 2., it shall use the same method for each combined group member subject to the election. Once the designated agent files the first combined return including a member whose taxable year is properly converted, the designated agent may not file an amended return to change the election, except that if the original return was not filed under extension, the designated agent may file an amended return to change the election on or before the end of the automatic seven-month extension period provided in ss. 71.24(7) or 71.44(3), Stats., as applicable. The designated agent shall use the same method in each subsequent taxable year unless it obtains written approval from the department to use the other method.

**Note:** Send written requests for approval to change the election to: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.



(d) *Part-year members.* If, during a combined group's taxable year, a corporation ceases to be a member of the combined group or a new corporation becomes a member, the designated agent shall include that corporation's items attributable to the portion of the taxable year that the corporation was a member in the combined return covering the combined group's entire taxable year. For the portion of the taxable year when the corporation was not a member of the combined group, the corporation shall file a separate return or file in the combined return of another combined group, as applicable.

**(4) INTEREST, PENALTIES, AND STATUTES OF LIMITATIONS.** (a) *Interest.* For purposes of computing interest on late payments by or on behalf of combined group members, the following rules apply:

1. Interest shall be assessed to the designated agent of a combined group based upon the combined tax liability or deficiency shown on the combined return for the combined group's taxable year. However, the joint and several liability provisions of s. Tax 2.65(3)(f) do not apply to any interest attributable to separate entity items. If a notice of an interest amount due is attributable to separate entity items of a combined group member other than the designated agent, the designated agent may pay the amount due or may submit a written request to the department to reissue the notice or a portion of the amount assessed to the combined group member responsible for the separate entity items. The designated agent shall submit the written request on or before the due date shown on the notice.

**Note:** Send written requests to reissue notices relating to separate entity items to: Wisconsin Department of Revenue, Mail Stop 5-257, P.O. Box 8906, Madison, WI 53708-8906.

2. An extension filed by the designated agent shall be considered an extension filed by all members of the combined group. However, the extension filed by the designated agent does not apply to affiliated corporations that are not combined group members, even if those corporations will be included in the combined return under the provisions of par. (d) 1.

3. Interest due to underpayment of estimated taxes shall be computed based on the estimated tax requirements and other provisions described in s. Tax 2.66.

4. If a corporation erroneously fails to join in the filing of the combined return, all payments, credits, and other amounts collected from the corporation which are properly attributable to the combined group's taxable year and attributable to a period of time that the corporation was a member of the combined group shall be treated as having been paid by the combined group.

(b) *Late filing fees.* If a combined group fails to timely file a combined return and the late filing fee under s. 71.83(3), Stats., applies, the amount of the late filing fee shall be the amount provided in s. 71.83(3), Stats., regardless of the number of combined group members.

(c) *Failure to file.* For purposes of the penalty provided in s. 71.83(1)(a)1., Stats., the following rules apply:

1. A corporation which erroneously fails to join in the filing of a combined return, but which timely files a separate Wisconsin return or joins in the timely filing of a combined return for another combined group, may not be subject to a penalty for failure to file. In determining whether the return is timely filed, the taxable year of the erroneously filed return shall be used, rather than the taxable year of the combined group with which the corporation should have filed.

2. A corporation which erroneously fails to join in the filing of a combined return and which fails, without reasonable cause, to timely file a separate Wisconsin return or join in the timely filing of a combined return for another combined group, shall be subject to the penalty computed based on its share of tax required to be reported on the combined return for its proper combined group, including its tax attributable to separate entity items. Except as provided in sub. (2)(d)2., the members of the combined group shall be jointly and severally liable for the penalty because under s. 71.255 (1) (n), Stats., joint and several liability may apply to penalties and it is the duty of the designated agent to include the corporation in the combined return. The department may send a notice of assessment of the penalty to the designated agent instead of the corporation which was erroneously omitted from the combined return.

(d) *Statutes of limitations.* 1. The designated agent's filing of a combined return shall be considered to be a return filed by each combined group member whose items are included in the combined unitary income reported on that return.

2. If a combined return includes separate entity items of a corporation that would otherwise be a combined group member but for the water's edge rules of s. Tax 2.61 (4), the designated agent's filing of the combined return shall be considered to be a return filed by that corporation.

3. For purposes of the statute of limitations in s. 71.77 (7) (a), Stats., allowing the department to make an assessment within six years after the filing of a return, the statute of limitations shall be determined for each combined group member separately based on its total net income reported on its return, which is its net income or loss from the unitary combination as included in the combined return, plus its net income or loss from separate entity items. The six-year statute of limitations applies if a combined group member's total net income reported on its return is less than 75 percent of the net income properly assessable and the tax attributable to the additional income is in excess of \$100. The designated agent shall be responsible for any combined group member's return that is open under the 6-year statute of limitations, subject to the provisions of s. Tax 2.65(3)(f), even if the designated agent's return, as included in the combined return, is not open under the six-year statute of limitations.

**Note:** Section Tax 2.67 interprets ss. 71.24(1), (1m), and (7), 71.255(1)(b), (7)(b), (8), and (9), 71.44(1), (1m), and (3), 71.77, 71.82, and 71.83, Stats.

**Cross References:** See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.66 for more information on combined estimated tax requirements.

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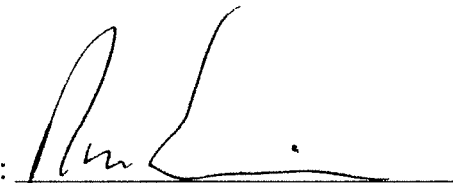
The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

DEPARTMENT OF REVENUE

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

1/7/10

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



Roger M. Ervin  
Secretary of Revenue

**FISCAL ESTIMATE FORM**

**2009 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

<b>LRB #</b>
<b>INTRODUCTION #</b>
Admin. Rule # Chapter Tax 2.60 through 2.67 (emergency)

**Subject:** Combined Reporting

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

**Local:**  No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

**Fund Sources Affected**

- GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate:**

The emergency rules create Tax 2.60 through 2.67 to incorporate tax law changes included in 2009 Act 2 and 2009 Act 28 related to combined reporting for commonly controlled groups of corporations.

The fiscal effect from implementation of combined reporting was included in the fiscal effect for Act 2, and the fiscal effect of certain changes to combined reporting that were a part of Act 28 were included in the fiscal effect for the Act. The administrative rules for these provisions have no fiscal effect independent of Acts 2 and 28.

In addition to the rule changes made necessary by the statutory changes under Acts 2 and 28, the rule also specifies that basis for depreciable assets for corporations that are subject to tax for the first time shall be the federal basis of the assets, except that the basis shall be computed without regard to any bonus depreciation claimed for federal purposes as required by statute. The fiscal effect of this provision is unknown.

**Long-Range Fiscal Implications:**

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Michael Oakleaf (608) 261-5173	Rebecca Boldt (608) 266-6785	





**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

January 14, 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: Section Tax 1.17

Dear Senator Holperin and Representative Zepnick:

I am forwarding an advance copy of an emergency rule which the Department of Revenue intends to adopt effective later this month.

The rule pertains to the ambulatory surgical center assessment.

The Legislature, by SECTION 9143 (4u) of 2009 Wisconsin Act 28, provides an exemption from a finding of emergency for the adoption of the rule.

If you have any questions or require further information, please let me know.

Sincerely,

Roger M. Ervin  
Secretary of Revenue

RME:DSK  
e:rules\117 Emergency - JCRAR

Enclosure

## ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 146.98, Stats., relating to the ambulatory surgical center assessment.

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### ***Analysis by the Department of Revenue***

**Statutes interpreted:** ss. 146.98 and 20.566 (1) (gn), Stats.

**Statutory authority:** ss. 146.98 (3), (4), and (5) and 227.24 Stats.

**Related statute or rule:** section 50.38, Stats., imposes a hospital assessment, and s. 50.14, Stats., imposes an assessment on licensed nursing home beds and intermediate care facilities for the mentally retarded (ICF-MR).

**Plain language analysis:** This emergency rule does the following:

- Establishes the requirements for administration of the ambulatory surgical center assessment.
- Describes how the amount of the assessment for each ambulatory surgical center is determined.
- Details how the department will collect assessments.
- Provides guidance regarding data required to be submitted to the department to determine assessment amounts.
- Specifies the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

**Summary of, and comparison with, existing or proposed federal regulation:** Federal law 42 CFR §433.68 describes permissible health care-related taxes that states may impose without a reduction in Medicaid Federal Financial Participation (FFP) in the medical assistance program jointly funded by the federal government and the state. The taxes must be broad based, uniformly imposed throughout a jurisdiction, and cannot exceed 5.5% of revenues. Ambulatory surgical center or ASC is defined in 42 CFR §416.2 as "any distinct entity that operates for the purposes of providing surgical services to patients not requiring hospitalization, has an agreement with the Center for Medicare and Medicaid Services (CMS) to participate in Medicare as an ASC, and meets the conditions set forth in subparts B and C of this part."

### **Comparison with rules in adjacent states:**

Illinois imposes health care provider taxes on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, and nursing homes. There is no assessment of ambulatory surgical centers.

Iowa imposes a health care provider tax on intermediate care facilities for the mentally retarded or developmentally disabled. There is no assessment on ambulatory surgical centers.

Michigan imposes a health care provider tax on hospitals, managed care organizations, nursing homes and community mental health programs. There is no assessment on ambulatory surgical centers.

Minnesota imposes a health care provider tax on hospitals, intermediate care facilities for the mentally retarded or developmentally disabled, managed care organizations, and nursing homes. In addition, a tax of 2% of total gross receipts is imposed on surgical centers.

**Summary of factual data and analytical methodologies:** 2009 Wisconsin Act 28 created s. 146.98 Stats., imposing an assessment on Medicare-certified ambulatory surgical centers in Wisconsin. The statute directs the department of revenue to allocate any assessment imposed among ambulatory surgical centers in proportion to their gross patient revenue. The department may determine the amount of the assessment, collect the assessment, require ambulatory surgical centers to provide any data that is required to determine assessment amounts, establish deadlines by which assessments shall be paid, and impose penalties for failure to comply with the requirements of the statute or any rules promulgated. The department is directed to transfer 99.5 percent of the assessments collected to the medical assistance trust fund and retain 0.5% of the assessment revenues collected to support the administrative costs related to the assessment.

Within the provisions of s. 146.98 (5), Stats., is a requirement that the department promulgate rules for the administration of the assessment. The department is authorized to promulgate the rule as an emergency rule for the period before the effective date of a permanent rule.

In consultation with ambulatory surgical centers, the departments of administration and health services, the department has created this emergency rule order to satisfy the above requirements.

**Analysis and supporting documents used to determine effect on small business:** This emergency rule is created in accordance with SECTIONS 2433x., 601s., 681g., and 9143.(4u) of 2009 Wisconsin Act 28 to administer and enforce statutory requirements relating to the assessment of ambulatory surgical centers. As the rule 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](mailto: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

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### EXEMPTION FROM FINDING OF EMERGENCY

The legislature by SECTION 9143. (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

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**SECTION 1.** Tax 1.17 is created to read:

**Tax 1.17 Ambulatory surgical center assessment. (1) PURPOSE.** The purpose of this section is to establish procedures and other requirements necessary for levying and collecting the ambulatory surgical center assessment imposed under s. 146.98, Stats.

**(2) DEFINITIONS.** In this section:

(a) "Ambulatory surgical center" or "ASC" has the meaning given in s. 146.98 (1), Stats.

(b) "Cash basis" is the method of accounting where income is reported in the year that it is actually or constructively received in the form of cash or its equivalent or other property.

(c) "Department" means the department of revenue.

(d) "Gross patient revenue" means the gross amount received on a cash basis by the ambulatory surgical center from all patient services.



(e) "Patient services" include any of the following goods and services provided to a patient or consumer:

1. Bed and board.
2. Nursing services and other related services.
3. Use of the ambulatory surgical center.
4. Medical social services.
5. Drugs, biologicals, supplies, appliances and equipment.
6. Other diagnostic or therapeutic items or services.
7. Medical or surgical services.
8. Laboratory services.
9. Items and services furnished to ambulatory patients not requiring emergency care.
10. Emergency services including ambulance services.

**(3) REGISTRATION.** (a) Ambulatory surgical centers in this state are required to be registered with the department, in the manner prescribed by the department.

(b) On or before January 1, ambulatory surgical centers in this state shall notify the department of a change in ownership, address change, and any other information pertinent to the ambulatory surgical center's assessment under s. 146.98, Stats., occurring in the previous calendar year.

(c) The department shall update ambulatory surgical center registration using information provided by the department of health services, division of quality assurance.

**(4) ANNUAL GROSS PATIENT REVENUE SURVEY.** (a) The department shall annually survey ambulatory surgical centers required to be registered under sub. (3) (a) to obtain any data required by the department needed to determine the amount of the assessment imposed in s. 146.98, Stats. Survey data filed shall be subject to the confidentiality provisions under s. 71.78, Stats.

(b) Ambulatory surgical centers required to be registered shall electronically file the survey annually on or before March 15.

(c) Ambulatory surgical centers may apply for a 5 day extension of the survey due date. An extension will be granted for good cause only. The application for an extension shall be filed electronically with the department on or before March 15 at <https://tap.revenue.wi.gov>.

(d) Failure to electronically file the survey with the department by the due date, including any extension, shall result in a late filing penalty of \$500 per day calculated from the day after the unextended due date up to the date the completed survey is received by the department, or April 1, whichever is earlier. Failure to file the survey during the period for the extension shall make the extension null and void.

**Examples: 1)** An ambulatory surgical center does not request an extension to file the annual survey and fails to file the survey by April 1, 2010. A daily \$500 late filing penalty is assessed for the period of March 16, 2010 through April 1, 2010, for a total late filing penalty of \$8,500.

**2)** An ambulatory surgical center is granted an extension, and files the annual survey on March 19, 2010. No late filing penalty is assessed.

**3)** An ambulatory surgical center is granted an extension to file the annual survey, but files the survey on March 24, 2010, after the expiration of the 5 day extension. A \$4,000 late filing penalty is assessed for the period of March 16, 2010 through March 23, 2010.

(e) The deadline for filing an amended survey is April 1. Information received after April 1 shall not be considered in the determination of the assessment. If any ambulatory surgical center fails, within the time required by this chapter, to file the survey, or files an incomplete or incorrect survey, the department shall make an assessment based upon any other information in the department's possession and according to its best judgment.

(f) The department may impose a penalty of 25% of the amount of the assessment if the ambulatory surgical center fails to file the survey by April 1, pursuant to s. 146.98 (3) (e), Stats.

**(5) ASSESSMENT.** (a) The assessment shall be calculated using a uniform percentage that satisfies the requirements under 42 CFR 433.68 for collecting an assessment without incurring a reduction in federal financial participation under the federal Medicaid program.

(b) The department shall electronically notify an ambulatory surgical center of the amount of the assessment on April 15.

(c) The assessment shall be paid electronically on or before June 1 in a manner prescribed by the department. Failure to pay the assessment by June 1 shall result in a penalty of \$500 per day calculated from the day after the due date up to the date the assessment is received by the department, subject to a maximum penalty equal to the amount of the assessment. Payment of the penalty under this subdivision does not relieve the ambulatory surgical center from the responsibility of paying the assessment.

(d) The department may require estimated pre-payment of the assessment, in a manner prescribed by the department. The department shall notify ambulatory surgical centers at least 90 days before the first estimated payment is due.

**(6) AUDIT.** (a) The department may conduct an office or field audit to determine the assessment under s. 146.98, Stats., or to ascertain the correctness of the information reported on the annual survey required to be filed under sub. (4) (b).

(b) Ambulatory surgical centers shall retain financial books and records that support the information reported on the annual survey, and provide it to the department pursuant to s. 146.98 (3) (c), Stats.

(c) The department may impose a penalty equal to the amount of any unreported gross patient revenue multiplied by the percentage established for that period in sub. (5) (a).

**(7) APPEALS.** Ambulatory surgical centers claiming to be adversely affected by the department's action or inaction, other than a rulemaking action or proposal for legislation, may petition the department for a contested case hearing under s. 227.42, Stats. The request for hearing shall be in writing and served upon the Secretary of Revenue within 30 days after the department's action or inaction complained of.

**Note:** Written requests for hearing should be addressed to: Wisconsin Department of Revenue, Office of the Secretary, P.O. Box 8933, Madison, WI 53708.

**(8) COLLECTIONS.** (a) Assessments under sub. (5) (c) shall become delinquent if not paid when due, unless the department receives a request for hearing under sub. (7).

(b) The department may immediately proceed to collect delinquent assessments, including any penalties, in a manner comparable to that described in s. 77.62, Stats.

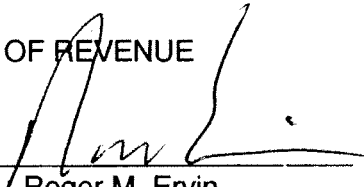
(c) Assessments unpaid for more than 90 days after appeal rights have expired shall be posted on the list on the Internet site maintained by the department under s. 73.03 (62), Stats.

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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: 1/13/10

DEPARTMENT OF REVENUE

By:   
Roger M. Ervin  
Secretary of Revenue

E:Rules/117 Proposed Order (emergency)

**FISCAL ESTIMATE FORM**

**2009 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

**LRB # 09-**

**INTRODUCTION #**

**Admin. Rule # Tax 1.17 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.  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 Act 28 created s. 146.98, which directs the Department of Revenue to collect an annual assessment on ambulatory surgical centers in this state in proportion to their gross patient revenue, and to promulgate rules to implement the assessment.

This emergency rule does the following:

- establishes the requirements for administration of the ambulatory surgical center assessment;
- describes how the amount of the assessment for each ambulatory surgical center is determined;
- details how the department will collect assessments;
- provides guidance regarding data required to be submitted to the department to determine assessment amounts; and
- specifies the filing, reporting, and payment deadlines for the assessment, and penalties imposed for failure to meet the requirements.

The fiscal effect of the assessment under s. 146.98 was included in the fiscal effect of 2009 Act 28. Therefore this rule has no fiscal effect.

(continued on page two)

**Long-Range Fiscal Implications:**

Agency/Prepared by: Michael Oakleaf Wisconsin Department of Revenue 261-5173	Authorized Signature/Telephone No. Rebecca Boldt 261-6785	Date November 25, 2009
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**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect

**2009 Session**

- ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

**LRB # 09**  
**INTRODUCTION #**

Admin. Rule #  
 Tax 1.17  
 Emergency

**Subject**

**I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringe	\$	\$ -
(FTE Position Changes)	( FTE)	(- FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	\$	\$ -
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		-
<b>TOTAL State Revenues</b>	\$	\$ -

**NET ANNUALIZED FISCAL IMPACT**

STATE

LOCAL

NET CHANGE IN COSTS                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_  
 NET CHANGE IN REVENUES                \$ See Text                         \$ \_\_\_\_\_

Agency/Prepared by: Michael Oakleaf	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue	Rebecca Boldt	November 25, 2009
261-5173	261-6785	