

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-184

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

Section Tax 2.395 (1) (a) is drafted incorrectly because definitions may not be drafted to include substantive provisions. [See s. 1.01 (7) (b), Manual.] The requirements that a corporation retain direct or indirect ownership of 100% of the subsidiary stocks and that a subsidiary is eligible to participate in a restructuring only if it has been “completely inactive” are substantive provisions and should be placed elsewhere in Clearinghouse Rule 98-184.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Tax 2.395 (1) (a) could be drafted more clearly in a number of respects. First, would it be more accurate to state that a corporate restructuring means the transfer by a corporation of *property*, rather than “operations,” in exchange for 100% of the subsidiary’s stock? Second, is it intended that a corporate restructuring includes the transfer by a corporation of “all” of its operations to a subsidiary? Third, it is suggested that the phrase “newly organized or existing” in the first sentence of s. Tax 2.395 (1) (a) be deleted because it is ambiguous. A “newly organized” subsidiary is an existing subsidiary. Similarly, the word “existing” should be deleted from the third sentence of s. Tax 2.395 (1) (a). Fourth, would it be more accurate in the last sentence of s. Tax 2.395 (1) (a) to require that a corporation “has not been engaged in business” rather than “has been completely inactive” in order to be eligible to participate in a corporate restructuring? The phrase “completely inactive” appears to be vague in the context in which it is used because there are activities that probably must be undertaken for a corporation to become organized before it conducts business.

b. The phrase “that files an application under this section and” in s. Tax 2.395 (1) (b) should be deleted. Section Tax 2.395 (2) (intro.) states that “(a) corporation may file an application”

c. The phrase “will file” in s. Tax 2.395 (1) (c) should be replaced with the word “files.” [See s. 1.01 (1), Manual.] In addition, s. Tax 2.395 (1) (c), when read in conjunction with s. Tax 2.395 (2), is confusing as to whether the corporation or its subsidiary, or both the corporation and its subsidiary, must file an application. Section Tax 2.395 (1) (c) defines subsidiary as a corporation that will file an application with a corporation. Section Tax 2.395 (2) states that a corporation may file an application but does not address whether the subsidiary has to file an application either with the corporation or separately. This ambiguity in Clearinghouse Rule 98-184 should be addressed.

d. Section Tax 2.395 (1) (d) defines “unfair representation of the degree of business activity in this state,” in part, as meaning that the sum of the Wisconsin tax liability of a corporation and its subsidiaries exceeds 200% of the Wisconsin tax liability that the corporation would have “computed” if the corporation “did not contribute business operations to one or more subsidiaries.” It is suggested that the word “owed” be substituted for the word “computed.” In addition, it is suggested that the phrase “if corporate restructuring had not occurred” be substituted for the term “if the corporation did not contribute business operations to one or more subsidiaries,” since “corporate restructuring” is a defined term.

e. It is suggested that the phrase “under this section” be placed after the word “apportionment” in s. Tax 2.395 (2).

f. It is suggested that the word “present” be substituted for the word “current” in s. Tax 2.395 (3) (j), in order to more clearly refer back to the allocation or apportionment method described in s. Tax 2.395 (3) (g).

g. Section Tax 2.395 (3) (m) would be more clear if the information requested was whether the corporation is being audited by the department at the time of the application. [See s. 1.01 (9) (b), Manual.]

h. Section Tax 2.395 (7) (b) appears to conflict with the definition of “unfair representation of the degree of business activity in this state” in s. Tax 2.395 (1) (d). The defined term specifies when unfair representation of the degree of business activity exists, so it is unclear what is meant by s. Tax 2.395 (7) (b) and (c).

i. The meaning of s. Tax 2.395 (7) (d) is unclear. Does this paragraph mean that if the department terminates an approved alternative apportionment method, a corporation has the right to request a new alternative apportionment method and the department *must* resubmit the proposed alternative method to the Joint Committee for Review of Administrative Rules (JCRAR)? If so, the paragraph conflicts with s. 71.25 (14), Stats., which provides that the Department of Revenue may authorize an alternative apportionment method. Alternatively, does the paragraph mean that the Department of Revenue must submit to the JCRAR the alternative apportionment method that has been terminated by the department? The department should clarify the meaning of this paragraph of the rule.