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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-064

#### Comments

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

#### 1. Statutory Authority

Does the department have the statutory authority to create a presumption of a unitary business based on absence of cooperation as described in s. Tax 2.62 (6) (g)?

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

a. Throughout the rule, subsection titles should be written in solid capital letters as specified in s. 1.05 (2) (c), Manual.

b. Throughout the rule, the use of terms like “such” and “thereof” should be avoided. [s. 1.09 (9) (c), Manual.] For example, in s. Tax 2.61 (2) (d) 3., “the” should replace “such” in two places in the first sentence.

c. In s. Tax 2.61 (2) (f) (intro.), the department should delete “, inclusive,”. [s. 1.01 (9) (d), Manual.]

d. Throughout the rule, definitions that apply to specific portions of the rule should be placed more prominently at the beginning of the subunit to which the definition applies. For example, the department should reconsider the placement of the definitions of “United States” in s. Tax 2.61 (4) (c) 1., “intangible property” in s. Tax 2.61 (4) (f) 1., and “intangible expenses” in s. Tax 2.61 (4) (f) 2.

e. Throughout the rule, the department should use consistent references to U.S. Treasury regulations. Compare references in s. Tax 2.61 (6) (b) (intro.) to those in sub. (6) (b) note. References to treasury regulations in the administrative code should refer to the Code of Federal Regulations. [s. 1.07 (3) (b), Manual.]

f. Throughout the rule, should case citations be placed in notes? For example, in s. Tax 2.62 (3) (a) 4., should the case citation be placed in a note?

g. In s. Tax 2.62 (3) (b) (intro.), could the department rephrase the sentence to state “Activities between participants that constitute a flow of value between them include all of the following:”?

h. Is s. Tax 2.62 (6) (c) inconsistent with material in sub. (4) (b) and (c) based on different burdens of proof? Will the relationship between evidence of unity of operation and unity of use be confused by the presumption created by the presence of centralized management?

i. Generally, should ss. Tax 2.63 and 2.64 address the issue of cessation of business with regard to its effect on a controlled group election and apportionment in specialized industries, respectively?

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In s. Tax 2.61 (7) (b) 2., “ch. 71,” should be inserted before “subchapter.”