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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 18-079

#### 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 December 2014.]**

#### 1. Statutory Authority

a. The proposed rule refers to codifying the “federal nexus threshold” in a number of locations in the analysis (see page 3, comment 2, paragraph “3.-4.”). This appears inaccurate as the threshold used is a State of South Dakota threshold that was upheld by the U.S. Supreme Court in *Wayfair v. South Dakota*. Since no federal regulation specifying the maximum or minimum nexus threshold for taxation currently exists, it appears more accurate to refer to it as a nexus threshold consistent with that upheld by the U.S. Supreme Court in *Wayfair*.

b. While the question of statutory authority in regard to the minimum threshold of sales and transactions to establish nexus in Wisconsin may benefit from legislative clarification and it could be argued that a threshold higher or lower than that upheld in *Wayfair* could be applied by the department, it is clear that the current rule based on the *Quill* nexus standard was overruled by the U.S. Supreme Court, and is no longer required under federal law. Thus, there appears to be no statutory basis to maintain the current notion of locational nexus in the administrative code. Absent any specific legislative clarification, it appears that the department is within its authority to adopt the nexus threshold adopted by the State of South Dakota and upheld by the U.S. Supreme Court in *Wayfair*.

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

While acknowledged as October 1, 2018, in the analysis, an initial applicability clause within the text of the rule may help to avoid confusion. See s. 1.02 (3m), Manual, for further guidance.

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

In the first line of page 7, the paragraph opening to s. Tax 11.97 (4) (b) states that “for the purposes of this *subdivision*, all of the following apply”. [Emphasis added.] Paragraph (b) is then followed by subs. 1. through 5. It appears that this paragraph should either refer to the prior paragraph, the following paragraph, or the subsection as a whole, but it is unclear as to which it should refer. Stated another way, should the clarifications presented in this paragraph apply to one specific paragraph or the subsection as a whole? See s. 1.03 (1), Manual, for further guidance.