

Clearinghouse Rule 06-087

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**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: **create** Tax 1.15; **relating to** the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

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

**Statute interpreted:** s. 895.59, Stats.

**Statutory authority:** s. 895.59 (2), Stats.

**Explanation of agency authority:** Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business.

**Related statute or rule:** s. 895.59, Stats.

**Plain language analysis:** This proposed rule order discloses that the enforcement of rules or guidelines as they apply to a small business shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

- History of compliance with the rule or guideline.
- The extent to which the rule or guideline allows for discretion in its enforcement.
- Voluntary disclosure.

**Summary of, and comparison with, existing or proposed federal regulation:** The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Comparison with rules in adjacent states:** The department is not aware of a similar rule in an adjacent state.

**Summary of factual data and analytical methodologies:** 2003 Wisconsin Act 145 created s. 895.59 (2), Stats., which sets forth a requirement that each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business. In response to this statutory requirement, the department has created this proposed rule order.

**Analysis and supporting documents used to determine effect on small business:** This proposed rule order describes existing department policy. It makes no policy or other changes having a significant effect on small business.

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

**Effect on small business:** This proposed rule order does not have a significant effect on small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us), if you have any questions regarding this proposed rule order.

**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 proposed rule order 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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SECTION 1. Tax 1.15 is created to read:

**Tax 1.15 Enforcement of rules and guidelines as they apply to a small business. (1)**  
PURPOSE. This section discloses the discretion that the department will follow in the enforcement of rules and guidelines as they apply to a small business.

**(2) DEFINITION OF SMALL BUSINESS.** In this section, "small business" has the meaning given in s. 227.114 (1), Stats., but does not include an entity defined in s. 48.685 (1) (b) or 50.065 (1) (c), Stats.

**(3) DISCRETION THE DEPARTMENT WILL FOLLOW.** The enforcement of rules or guidelines as they apply to a small business, including the reduction or waiver of penalties for a voluntary disclosure of actual or potential violations of rules or guidelines, shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

- (a) History of compliance with the rule or guideline.
- (b) The extent to which the rule or guideline allows for discretion in its enforcement.
- (c) Voluntary disclosure.

**(4) VOLUNTARY DISCLOSURE.** The department encourages a small business that is not in compliance with Wisconsin tax law to voluntarily come forward. On a case-by-case basis, considering all relevant factors, the department may exercise discretion to:

(a) Enter into a written agreement with the small business that restricts the statute of limitations.

(b) Waive penalties.

(c) Reduce the number of periods for which returns shall be filed.

**Note:** Section Tax 1.15 interprets s. 895.59, Stats.

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The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

#### **Initial Regulatory Flexibility Analysis**

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

#### **DEPARTMENT OF REVENUE**

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

By: \_\_\_\_\_  
Michael L. Morgan  
Secretary of Revenue