

## Report From Agency

### PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, AMENDING, AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 2.90 (6) and 2.97; **amend** Tax 1.11 (4) (d), 2.085 (1), (2), and (3), 2.98 (1) (b) and (Note 2), 11.04 (1), 11.05 (4) (a), 11.49 (2) (b), and 11.70 (2) (e); and **create** Tax 2.50 (1) (Note); **relating to** general provisions of income taxation and sales and use tax.

The scope statement for this rule, SS 074-12, was approved by the Governor on September 18, 2012, published in Register No. 682 on October 14, 2012, and approved by the Secretary of Revenue on October 29, 2012.

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

**Statutes interpreted:** ss. 71.07 (9e), 71.63 (6), and 71.78 (4) (L), Stats.

**Statutory authority:** ss. 71.80 (1) (c) and 227.11 (2) (a), Stats.

**Explanation of agency authority:** Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

In addition, under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out ch. 71, Stats., relating to income and franchise taxes. This authority pertains to all of the proposed changes in this rule, except those concerning ch. Tax 11.

**Related statute or rule:** There are no other applicable statutes or rules.

**Plain language analysis:** The proposed rule makes the following changes:

- Amends s. Tax 1.11 (4) (d) to reflect the Lottery Board no longer exists and the lottery is instead a division of the department.
- Amends s. Tax 2.085 (1), (2), and (3) to reflect a change in the process used to claim a refund on behalf of a deceased taxpayer.
- Adds a note to s. Tax 2.50 (1) explaining that a public utility that is a corporation may be in a combined group.
- Repeals s. Tax 2.90 (6) to reflect retirement pay or pension are not part of the statutory definition of "wages" for withholding purposes.
- Repeals s. Tax 2.97, which is out-of-date and thus obsolete.
- Amends s. Tax 2.98 (1) (b) to update a reference to the Internal Revenue Code.
- Revises s. Tax 2.98 (Note 2) to remove out-of-date statutory references and otherwise provide clarity.

- Amends ss. Tax 11.04 (1), 11.05 (4) (a), and 11.49 (2) (b) to reflect the addition of the Wisconsin Economic Development Corporation as an exempt entity (2011 Wisconsin Act 7).
- Amends s. Tax 11.70 (2) (e) to correct a grammatical error.

**Summary of, and comparison with, existing or proposed federal regulation:** There is no 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:** 2012 Executive Order 61 and 2011 Wisconsin Act 46 requires state agencies to work with the Small Business Regulatory Review Committee to review the agency's administrative rules that may be particularly onerous to small businesses in Wisconsin. In response, the department initiated a comprehensive review of all of its administrative rules. The changes described above were identified as part of that review. No other data was used in the preparation of this rule order or this analysis.

**Analysis and supporting documents used to determine effect on small business:** This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

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

**Effect on small business:** This rule order does not affect small business.

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this rule order.

**Place where comments are to be submitted and deadline for submission:** The deadline for comments on this proposed rule order was April 1, 2013.

**SECTION 1.** Tax 1.11 (4) (d) is amended to read:

Tax 1.11 (4) (d) *Lottery ~~board~~ division.* The ~~executive director~~ administrator of the lottery ~~board~~ may request examination of tax returns for the purpose of withholding delinquent Wisconsin taxes, child support, and other debts owing this state.

**SECTION 2.** Tax 2.085 (1), (2), and (3) are amended to read:

Tax 2.085 (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the ~~refund exceeds \$100~~ claimant is unable to cash the refund check, the claimant shall file, ~~with the income tax return,~~ a completed form ~~I-804~~ 804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) ~~Form I-804 does not have to be filed if the~~ If a refund is claimed on a joint Wisconsin income tax return of the surviving spouse and the decedent. ~~The,~~ the surviving spouse shall

write "filing as surviving spouse" in the signature area of the return. If someone other than the surviving spouse is the personal representative, the personal representative shall also sign the joint return.

(3) Forms required to be filed under sub. (1) shall be mailed to ~~the~~ Wisconsin Department of Revenue, Tax Operations Bureau – Mail Stop 3-164, P.O. Box 59 8903, Madison, WI 53785 53708-8903.

**SECTION 3.** Tax 2.50 (1) (Note) is created to read:

Tax 2.50 (1) (Note) A public utility that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

**SECTION 4.** Tax 2.90 (6) is repealed.

**SECTION 5.** Tax 2.97 is repealed.

**SECTION 6.** Tax 2.98 (1) (b) and (Note 2) are amended to read:

Tax 2.98 (1) (b) If a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, section 165 ~~(h)~~ (i) of the Internal Revenue Code gives taxpayers the election to deduct the loss on the return for the current tax year or on the return for the immediately preceding tax year.

(Note 2) ~~Section 71.02 (2) (d), 1983 Stats., which defines "Wisconsin taxable income," was renumbered 71.02 (2) (me), 1985 Stats., and amended by 1985 Wis. Act 29, The treatment described in this section became effective with 1986 individual income tax returns filed in taxable year 1987. This amendment is reflected in s. Tax 2.98. Section 71.02 (2) (me), 1985 Stats., was again renumbered, s. 71.01 (16), Stats., by 1987 Wis. Act 312. For 1985 and prior year income tax returns filed in 1986 and prior taxable years, disaster area losses from damage to property used for personal purposes were also allowed, as an itemized deduction, using the provisions in sub. (1) (b) and the individual treatment in sub. (2) (b).~~

**SECTION 7.** Tax 11.04 (1) is amended to read:

Tax 11.04 (1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exemption under s. 77.54 (9a) or 77.55 (1), Stats. Section 77.54 (9a), Stats., provides an exemption for sales to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, the Health Insurance Risk-Sharing Plan Authority, and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the

prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; a cemetery company or corporation described under section 501 (c) 13 of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated [incorporated] agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

**SECTION 8.** Tax 11.05 (4) (a) is amended to read:

Tax 11.05 (4) (a) Section 77.54 (9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and items and property under s. 77.52 (1) (b) and (c), Stats., and services by Wisconsin or by any agency of Wisconsin, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, the Health Insurance Risk-Sharing Plan Authority, and the Fox River Navigational System Authority; any county, city, village, town or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats.; and a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

**SECTION 9.** Tax 11.49 (2) (b) is amended to read:

Tax 11.49 (2) (b) Sales made directly to this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Economic Development Corporation, the Health Insurance Risk-Sharing Plan Authority, and the Fox River Navigational System Authority; any county, city, village, town, or school district in this state; a county-city hospital established under s. 66.0927, Stats.; a sewerage commission organized under s. 281.43 (4), Stats., or a metropolitan sewerage district organized under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats.; any other unit of government in this state or any agency or instrumentality of one or more units of government in this state; any federally recognized American Indian tribe or band in this state; any joint local water authority created under s. 66.0823, Stats.; any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), Stats., no part of the net income of which inures to the benefit

of any private stockholder, shareholder, member, or corporation; a local exposition district under subch. II of ch. 229, Stats.; a local cultural arts district under subch. V of ch. 229, Stats. Sales to a cemetery company or corporation described under section 501 (c) (13) of the Internal Revenue Code, are exempt from sales and use tax if the cemetery company or corporation uses the items exclusively for the purposes of the company or corporation. Section 77.55 (1), Stats., provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States. Sales to employees of these entities are not exempt, even though the entity may reimburse the employee for the expenditure.

**SECTION 10.** Tax 11.70 (2) (e) is amended to read:

Tax 11.70 (2) (e) Producing, fabricating, processing, printing, or imprinting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing, or imprinting of the property, items, or goods. However, the tax does not apply to the printing or imprinting of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), Stats., that results in printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m), Stats.

**SECTION 11.** Effective date. This rule 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.

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**Initial Regulatory Flexibility Analysis**

This rule order does not affect small businesses.

DEPARTMENT OF REVENUE

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

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

Richard G. Chandler  
Secretary of Revenue

E:Rules/SBRRB Proposed Order (v3)