

## Clearinghouse Rule 14-005

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 2.32 (2) (e) to (h) and (3) (Note 1) and 2.985; **renumber** Tax 2.957 (7); **amend** Tax 2.32 (1) (Note), 2.88 (3) (a) and (4), 2.957 (7) (title), 3.01 (4) (c) 8. (Note) and (e) 4.b., and 3.05 (6); and **create** Tax 2.88 (5) (Note), 2.957 (7) (b), 2.986, 2.99 (1) (Note), and 3.095 (2) (e) and (4) (a) 21.; **relating to** income and franchise tax provisions.

The scope statement for this rule, SS 101-13, was approved by the Governor on August 2, 2013, published in Register No. 692 on August 31, 2013, and approved by the Secretary of Revenue on September 10, 2013.

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

**Statutes interpreted:** ss. 71.05 (1) (c) 11. and (6) (b) 47., 71.07 (3n) and (5i) (b), 71.28 (3n), (5i) (b), and (9s), 71.47 (3n), (5i) (b), and (9s), 71.82 (1) (b), 71.90 (1), 73.03 (69), and subch. VII of ch. 77, Stats.

**Statutory authority:** ss. 71.05 (6) (b) 47.e., 71.28 (9s) (d) 2., 71.47 (9s) (d) 2., 73.03 (69) (c), 73.15 (3), 71.80 (1) (c), and 77.96 (4), Stats.

**Explanation of agency authority:** Sections 71.05 (6) (b) 47.e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., provide "[t]he department shall promulgate rules..." These provisions apply to the revisions to s. Tax 2.957.

Section 73.03 (69) (c), Stats., provides "[t]he department may promulgate rules for the administration of this subsection." This provision applies to the creation of s. Tax 2.986.

Section 73.15 (3), Stats., provides "[t]he department of revenue shall promulgate rules..." This provision applies to the repeal of s. Tax 2.985.

Under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes. This provision applies to the revision of ss. Tax 2.88, 2.99, and 3.095.

Section 77.96 (4), Stats., provides that the authority under s. 71.80 (1) (c), Stats., applies to the economic development surcharge. This provision applies to the revision to s. Tax 2.32.

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

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

- Revises ss. Tax 2.32 and 3.01 to reflect that, for taxable years beginning after December 31, 2012, the economic development surcharge does not apply to individuals, estates, trusts, partnerships, and limited liability companies treated as partnerships.
- Revises s. Tax 2.88 to reflect, effective July 2, 2013, the reduction in the rate of refund interest from 9% to 3%.

- Revises s. Tax 2.957 to reflect that the relocated business credit and deduction may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.
- Repeals s. Tax 2.985 to reflect that the electronic medical records credit may not be claimed for taxable years beginning after December 31, 2013.
- Creates s. Tax 2.986 to administer the registration of "qualified Wisconsin businesses" for purposes of the capital gains exclusion in s. 71.05 (25), Stats., and the income tax deferral in s. 71.05 (26), Stats.
- Revises s. Tax 2.99 to reflect that the dairy and livestock farm investment credit may not be claimed for taxable years beginning after December 31, 2013.
- Revises s. Tax 3.095 to reflect that, effective for taxable years beginning after December 31, 2012, certain interest from bonds issued by the Wisconsin Health and Educational Facilities Authority is exempt.
- Revises ss. Tax 3.01 and 3.05 to correct a web address and a statutory reference.

**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:** The 2013-2014 Legislative session has made various changes to Wisconsin's income and franchise tax provisions. The department has created this proposed rule order to reflect these statutory changes. No other data was used in the preparation of this proposed 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:** Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

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**SECTION 1.** Tax 2.32 (1) (Note) is amended to read:

Tax 2.32 (1) (Note) ~~For any taxable year~~ years beginning before January 1, 2013, an economic development surcharge is imposed on: (a) individuals, estates, trusts, statutory employees and partnerships that have at least \$4,000,000 in gross receipts from a trade or business for the taxable year; (b) corporations and insurers that have at least \$4,000,000 in gross receipts from all activities for the taxable year; and (c) individuals, estates, trusts and partnerships engaged in farming that have at least \$4,000,000 in gross receipts from farming for the taxable year. For taxable years beginning on or after January 1, 2013, an economic development surcharge is only imposed on corporations and insurers that have at least \$4,000,000 in gross receipts from all activities for the taxable year.

**SECTION 2.** Tax 2.32 (2) (e) to (h) and (3) (Note 1) are repealed.

**SECTION 3.** Tax 2.88 (3) (a) and (4) are amended to read:

Tax 2.88 (3) (a) Any refund of individual income or corporate franchise or income taxes, ~~where the tax being refunded is from a return which has a filing due date on or after November 1, 1975,~~ shall include interest at the rate of ~~9%~~ 3% per year from the due date of the return to the date paid by the department, except as provided in par. (b).

(4) INTEREST ON DEPOSIT OF CONTESTED TAXES. Any refund of an amount deposited with the department pursuant to s. 71.90 (1), Stats., shall include interest at the rate of ~~9%~~ 3% per year from the date the funds were deposited to the date refunded, ~~provided the funds being refunded are from a return which has a filing due date on or after November 1, 1975.~~

**SECTION 4.** Tax 2.88 (5) (Note) is created to read:

Tax 2.88 (5) (Note) **Note:** 2013 Wis. Act 20 reduced the rate of interest on refunds of taxes and refunds of the deposit of contested taxes from 9% to 3%. The 3% rate applies to refunds paid on or after July 2, 2013, regardless of the taxable periods to which the refunds pertain.

**SECTION 5.** Tax 2.957 (7) (title) is amended to read:

Tax 2.957 (7) (title) ~~LIMITATION~~ LIMITATIONS ON CREDIT AND DEDUCTION.

**SECTION 6.** Tax 2.957 (7) is renumbered Tax 2.957 (7) (a).

**SECTION 7.** Tax 2.957 (7) (b) is created to read:

Tax 2.957 (7) (b) The credit or deduction under this section may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.

**SECTION 8.** Tax 2.985 is repealed.

**SECTION 9.** Tax 2.986 is created to read:

Tax 2.986 **Registration of a business under s. 73.03 (69), Stats. (1) PURPOSE.** This section establishes the method of valuing property and the registration deadline for purposes of s. 73.03 (69), Stats.

**(2) DEFINITION.** In this section, "doing business in this state" has the meaning given in s. 71.22 (1r), Stats.

**(3) METHOD OF VALUING PROPERTY.** For purposes of s. 73.03 (69) (b) 2., Stats., real and tangible personal property owned by the business shall be valued at its original cost and real and tangible personal property rented by the business shall be valued at an amount equal to the annual rental paid by the business, less any annual rental received by the business from sub-rentals, multiplied by 8.

**(4) REGISTRATION DEADLINE.** (a) Except as provided in par. (b), a business shall register with the department under s. 73.03 (69), Stats., on or before the close of the calendar year for which the business desires registration. A business may not be registered for a calendar year if the registration is not within the time provided in this subsection.

(b) A business that desires registration for the calendar year in which it begins doing business in this state shall register with the department during the following calendar year.

**Example:** Business A begins doing business in Wisconsin on March 8, 2014. Business A must register with the department for calendar year 2014 between January 1, 2015, and December 31, 2015.

**SECTION 10.** Tax 2.99 (1) (Note) is created to read:

Tax 2.99 (1) (Note) **Note:** Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were revised by 2013 Wis. Act 20 to provide the credit under this section may not be claimed for taxable years beginning on or after January 1, 2014.

**SECTION 11.** Tax 3.01 (4) (c) 8. (Note) and (e) 4.b. are amended to read:

Tax 3.01 (4) (c) 8. (Note) Financial Accounting Standards Board Interpretation number 48 is available on the Financial Accounting Standards Board's web site at <http://www.fasb.org/pdf/fin%2048.pdf> [www.fasb.org](http://www.fasb.org).

(e) 4.b. The Wisconsin economic development surcharge, which is imposed on ~~partnerships and tax-option~~ (S) corporations pursuant to s. 77.93 (1), ~~(3), and (5)~~, Stats.

**SECTION 12.** Tax 3.05 (6) is amended to read:

Tax 3.05 (6) **PROFESSIONAL EMPLOYER ORGANIZATIONS.** The provisions of s. ~~461.04~~ 202.24 (4) (b), Stats., apply to this section and ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.

**SECTION 13.** Tax 3.095 (2) (e) and (4) (a) 21. are created to read:

Tax 3.095 (2) (e) "WHEFA" means "Wisconsin Health and Educational Facilities Authority."

(4) (a) 21. WHEFA bonds or notes, if the bonds or notes are issued for the benefit of a person who is eligible to receive the proceeds of bonds or notes from another entity for the same purpose for which the bonds or notes are issued and the interest income received from the other bonds or notes is exempt from taxation under subch. I of ch. 71, Stats.

**SECTION 14.** 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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DEPARTMENT OF REVENUE

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

By: \_\_\_\_\_  
Richard G. Chandler  
Secretary of Revenue

E:Rules/Chapters 2 and 3 Proposed Order (v4)