

Clearinghouse Rule 25-015

STATE OF WISCONSIN
DEPARTMENT OF REVENUE

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

The Wisconsin Department of Revenue proposes an order to: **amend** Tax 1.11 (4) (e), 1.12, 2.105, 2.12, 2.89, 2.94, 11.01, 11.04, 11.11, 11.14, 11.32, 11.35, 11.53, 11.535, 11.68, 11.83, 11.945, 11.96, 13.03, 14.04, 14.05, and **repeal** Tax 2.11, 2.41 (1) (a), 2.502 (4), 2.957, 3.05 **relating to** income, franchise, excise, sales, and use taxes identified in the 2023 JCRAR Report, or affected by 2023 Wisconsin Acts 12 and 19.

ANALYSIS

The scope statement for this rule, SS 066-23, was approved by the Governor on September 7, 2023, published in Register No. 813A2 on September 11, 2023, and approved by the Secretary of Revenue on September 27, 2023.

Statutes Interpreted:

Tax 1.11 – ss. 70.375 (2) (b), 71.78, 72.06, 77.61 (5), 77.76 (3), 77.79, 78.80 (3) and (4), 139.11 (4), 139.38 (6) and 139.82 (6), Stats.

Tax 1.12 – ss. 71.01 (8r), 71.255 (7) (b), 71.42 (3m), 71.63 (1m) and (5m), 71.65 (3) (a), 73.029, 77.58 (1m), 77.61 (14), 77.96 (5m), 78.12 (5), 78.55 (5m), 139.01 (5m), 139.30 (8m) and 139.75 (5m), Stats.

Tax 2.105 – ss. 71.255 (1) and (7), 71.75 (2), 71.76, 71.77 (2) and (7) and 77.96 (4), Stats.

Tax 2.11 – ss. 71.26 (2), 71.28 (3) and 71.34 (1k) (e), Stats.

Tax 2.12 – ss. 71.255 (1), (4), and (7), 71.30 (4), 71.738 (2m), 71.74, 71.75, 71.76, 71.77, 71.80 (18) and 77.96 (4), Stats.

Tax 2.41 – ss. 71.04 (4) and 71.25 (6), Stats.

Tax 2.502 – ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats.

Tax 2.89 – ss. 71.09 (9), 71.255 (7), and 71.29 (5), Stats.

Tax 2.94 – s. 71.05 (1) (a), Stats.

Tax 2.957 – ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), 2019-20 Stats.

Tax 3.05 – ss. 71.05 (6) (b) 47m., 71.26 (1) (h), and 71.45 (1) (c), Stats.

Tax 11.01 – ss. 77.51 (3r), 77.58, 77.75, 77.982 (2), and 77.9941 (4), Stats.

Tax 11.04 – ss. 77.51 (2) and (14), 77.54 (9a), (9m), (26), (41), (62m), and (65) and 77.55 (1), Stats.

Tax 11.11 – s. 77.54 (26), Stats.

Tax 11.14 – ss. 77.52 (13) to (17), 77.53 (10) to (13), 77.54 (9a) and (9g), 77.60 (13), and 77.77 (3), Stats.

Tax 11.32 – ss. 77.51 (12m) (a) (intro.) and 2., 3. and 4., (b) 1., 5., 7. and 8. and (c), (15a), (15b) (a) (intro.), 2., 3., and 4., (b) 1., 5., 7. and 8. and (c), 77.54 (8), 77.585 (7), and 77.61 (3m), Stats.

Tax 11.35 – ss. 77.51 (9) and 77.54 (7m), Stats.

Tax 11.53 – ss. 73.03 (38) and (50), 77.51 (9), 77.52 (1), (7), (9), (11), (12), and (19), 77.54 (7), 77.58, and 77.61 (2), Stats.

Tax 11.535 – s. 73.03 (38), Stats.

Tax 11.68 – ss. 77.51 (2), (12m) (b) 7., (12t), (14) (intro.), (15a) (b) 1. and 4., (15b) (b) 7., 77.52 (2) (a) 10., 11., and 20. and (2m), 77.53 (1), 77.54 (5) (d), (6) (am) 1., 4., and 5., (9m), (26), (26m), (31), (41), (60), (62m), and (65), 77.71 (3), and 77.77 (3), Stats.

Tax 11.83 – ss. 77.51 (7m), (13) (am), (14) (j), and (15b) (b) 6., 77.52 (1), (2) (a) 10. and 13m., and (15), 77.53 (1), (1m), (16), (17), and (18), 77.54 (5) (a), (c) and (d), (7) and (22b), 77.56 (2) and (3), 77.61 (1), 77.71 (2) and (4), and 77.73, Stats.

Tax 11.945 – ss. 77.51 (11d) and 77.522, Stats.

Tax 11.96 – ss. 77.70, 77.705, 77.706, 77.707, 77.9941 (1) and (3), 229.68 (15), and 229.824 (15), Stats.

Tax 13.03 – ch. 293

Tax 14.04 – ss. 71.52 (3) and (7) and 71.54 (2) (a) and (c) 2., Stats.

Tax 14.05 – ss. 71.52 (2) and (8), 71.53 (2) (e) and (f), 71.54 (2) (a) and (c) and 71.55 (2) and (8), Stats.

Statutory Authority: ss. 70.375 (2) (b), 71.04 (8) (c), 71.05 (6) (b) 47m., 71.25 (10) (c), 71.255 (7), 71.26 (1) (h), 71.45 (1) (c), 71.78 (4), 73.029, 77.61 (5) (b), and 227.11 (2), Stats.

Explanation of Agency Authority:

Section 70.375 (2) (b), Stats., provides statutory rule-making authority as follows:

(b) "The secretary may promulgate any rules necessary to implement the tax under ss. [70.37](#) to [70.39](#) and [70.395 \(1e\)](#). ..."

Section 71.04 (8) (c), Stats., provides statutory rule-making authority as follows:

(c) "The net business income of railroads, car line companies, pipeline companies, financial organizations, telecommunications companies, air carriers, and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue..."

Section 71.05 (6) (b) 47m, Stats., provides statutory rule-making authority as follows:

47m. "... No person may claim a deduction under this subdivision if the person may claim a deduction under this subchapter based on the person relocating the person's business from another state to this state and in an amount equal to the person's tax liability. No person may claim a deduction under this subdivision for taxable years beginning after December 31, 2014. The department shall promulgate rules to administer this subdivision."

Section 71.25 (10) (c), Stats., provides statutory rule-making authority as follows:

(c) "The net business income of railroads, car line companies, pipeline companies, financial organizations, telecommunications companies, air carriers, and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state."

Section 71.255 (7), Stats., provides statutory rule-making authority as follows:

(a) "Each combined group shall have one designated agent. Except as prescribed by the department by rule, the designated agent is the parent corporation of the combined group. If there is no such parent corporation, the designated agent may be appointed in the manner prescribed by the department."

(b) 10. "Other responsibilities as determined by rule by the department."

Section 71.26 (1) (h), Stats., provides statutory rule-making authority as follows:

(h) "*Small business job creation*. ... No person may claim a deduction under this paragraph if the person may claim a credit under this subchapter based on the person relocating the person's business from another state to this state and in an amount equal to the person's tax liability. No person may claim a deduction under this paragraph for taxable years beginning after December 31, 2014. The department shall promulgate rules to administer this paragraph."

Section 71.45 (1) (c), Stats., provides statutory rule-making authority as follows:

(c) "... No person may claim a deduction under this paragraph if the person may claim a credit under this subchapter based on the person relocating the person's business from another state to this state and in an amount equal to the person's tax liability. No person may claim a deduction under this paragraph for taxable years beginning after December 31, 2014. The department shall promulgate rules to administer this paragraph."

Section 71.78 (4), Stats., provides statutory rule-making authority as follows:

(4) "Persons qualified to examine returns for specified purposes. Subject to subs. [\(5\)](#) and [\(6\)](#) and to rules of the department..."

Section 73.029, Stats., provides statutory rule-making authority as follows:

"**Rules required.** The department of revenue may require electronic funds transfer only by promulgating rules."

Section 77.61 (5) (b), Stats., provides statutory rule-making authority as follows:

(b) "Subject to pars. [\(c\)](#) and [\(d\)](#) and to the rules of the department..."

Section 227.11 (2), Stats., provides, in part, statutory rule-making authority as follows:

(a) "Each 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..."

(b) "Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure."

(c) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules..."

Related Statutes and Rules: There are no other applicable statutes or rules.

Plain Language Analysis: The department identified the following provisions in need of updates relating to income, franchise, excise, sales, and use taxes for purposes of the JCRAR report submitted on March 30, 2023:

a. Chapter Tax 1 - General

- Section Tax 1.12: Listed taxes, fees, and other amounts described to be paid or deposited using the electronic funds transfer (EFT) payment method are outdated. For example, stadium sales and use taxes are obsolete and other tax payments, such as partnership tax payments are now required.

b. Chapter Tax 2 - Income Taxation, Returns, Records, and Gross Income

- Section Tax 2.105: Increase the 90-day Wisconsin reporting requirement to 180 days after federal or other state tax return adjustments, consistent with the reporting requirements in secs. 71.76 and 71.77(7), Wis. Stats. Update the dates in the examples to match new reporting requirement.
- Section Tax 2.11: The rule is obsolete and may be repealed. The credit for sales and use tax paid on fuel and electricity may no longer be claimed for taxable years that begin after December 31, 2005, pursuant to sec. 71.28(3)(c)7., Wis. Stats.
- Section Tax 2.12: Eliminate the example that references Form 1X-R, as it no longer exists.
- Tax 2.41: Repeal sub. (1)(a) as the deductibility of federal income taxes no longer applies after 1975.
- Tax 2.502: Repeal sub. (4), and remove references to sub. (4), as it only applied for taxable years beginning before January 1, 2009.
- Tax 2.89: Notes and examples need to be updated to reflect changes made by section 4 of 2017 Wisconsin Act 2.
- Tax 2.94: A note that references law changes made in 1965 is outdated and may be removed.
- Tax 2.957: Repeal the rule as secs. 71.05(6)(b), 71.28(9s) and 71.47(9s), Wis. Stats., were repealed by 2021 Wisconsin Act 127. Further, the relocated business credit cannot be claimed by businesses that relocated to Wisconsin after taxable years beginning after Dec 31, 2013.

c. Chapter Tax 3 – Income Taxation, Deductions from Gross Income, Exclusions, and Exemptions

- Section Tax 3.05: The rule is obsolete and may be repealed. The job creation deduction may no longer be claimed for taxable years beginning after Dec 31, 2014.

d. Chapter Tax 11 – Sales and Use Tax

- Section Tax 11.01: Remove reference to stadium taxes as baseball stadium taxes ended as provided in 2019 Wisconsin Act 28.
- Section Tax 11.04: Update rule to reflect 2021 Wisconsin Act 1, including new statutory language for entities described under sec. Tax 11.04(1m)(a)8.
- Section Tax 11.11: Update note to correct phone number and email address.

- Section Tax 11.14: Remove reference to stadium taxes as baseball stadium taxes ended as provided in 2019 Wisconsin Act 28.
- Section Tax 11.32: Remove reference to stadium taxes as baseball stadium taxes ended as provided in 2019 Wisconsin Act 28.
- Section Tax 11.35: Update entertainment definition and examples for the occasional sales exemption for nonprofit organizations as a result of changes made by 2021 Wisconsin Act 167 which increased the threshold from \$10,000 to \$50,000.
- Section Tax 11.53: Replace the term "receipts" with "sales" to match the tax returns.
- Section Tax 11.535: Update rule to reflect that an alternative reporting method is available for which a request and department approval is not necessary.
- Section Tax 11.68: Update rule to add University of Wisconsin Hospitals and Clinics Authority created under 2021 Wisconsin Act 1. Update note to add contracts with University of Wisconsin Hospitals and Clinics Authority effective February 20, 2021.
- Section Tax 11.83: Update sec. Tax 11.83(8)(b) of the rule and notes to remove outdated dollar amounts for use tax on license plates held by motor vehicle dealerships and refer to a department web page that shows amounts for each year.
- Section Tax 11.945: Update rule to reflect changes made by CR 22-044 which removed internet access from sec. Tax 11.66(3)(intro) and (c) and (d).
- Section Tax 11.96: Update rule or repeal provisions relating to adoption and repeal of baseball and football stadium taxes as they no longer apply.

e. Chapter Tax 13 – Investment and Local Impact Fund

- Section Tax 13.03: Update rule to remove references to sec. 293.43(3), Wis. Stats., which no longer exists, and update references to sec. NR 132.06, Wis. Adm. Code., which was moved to sec. NR 132.07, Wis. Adm. Code.

Further, the department intends to update the following provisions as a result of 2023 Wisconsin Acts 12 and 19:

f. Chapter Tax 1 – General Administration

- Section Tax 1.11: Update sec. Tax 1.11(4)(e) as 2023 Wisconsin Act 19 expanded the authority for WEDC to examine tax returns relating to all tax benefit programs administered by WEDC.

g. Chapter Tax 14 – Homestead Credit

- Sections Tax 14.04 and 14.05: Remove references to personal property tax as 2023 Wisconsin Act 12 repealed the personal property tax from Wisconsin law.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: There is no existing rule or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Summary of Comments Received during Preliminary Comment Period and at Public Hearing on the Statement of Scope: No preliminary public hearing was requested and no comments from the public were received on the statement of scope (SS 066-23).

Comparison with Rules in Adjacent States: Rules in adjacent states would not impact the changes in this proposed rule order.

Summary of Factual Data and Analytical Methodologies: No data analysis was used in the preparation of this proposed rule order.

Effect on Small Business: This rule order makes changes to reflect current law and administration. As a result, the department does not believe that this rule will create an effect on small business.

Analysis and Supporting Documents Used to Determine Effect on Small Business: Not Applicable.

Anticipated Costs Incurred by Private Sector: This proposed rule does not have a fiscal effect on the private sector.

Fiscal Effect and Economic Impact Analysis: The fiscal estimate and economic impact analysis are attached.

Environmental Impact Statement: This rule order makes changes to reflect law and administrative changes identified in the department's report to JCRAR on March 30, 2023. The department has concluded this rule will not have significant or substantial impact on the environment.

Comment Submission, Agency Contact Person, and Deadline: Comments may be submitted to the contact person shown below no later than the date of the public hearing on this proposed rule. The place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

John B. Wilson
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
john.wilson@wisconsin.gov
608.261.5313

RULE TEXT

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

(e) *Wisconsin economic development corporation.* The chief executive officer of the Wisconsin economic development corporation and employees of the corporation may examine tax returns, except state and county sales and use tax returns, under the provisions specified in sub. (2), to the extent necessary to administer the ~~development zone program under subch. II of tax benefit programs under ch. 238, Stats.,~~ including review of tax benefit applications, compliance with tax benefit certifications, and confirming the amount of tax benefits used for purposes of revoking tax benefits.

SECTION 2. Tax 1.12 (4) (a) 3. is amended to read:

3. General, and county, ~~and stadium~~ sales and use tax when the aggregate amount due in the prior calendar year was \$300 or more.

SECTION 3. Tax 1.12 (4) (a) 15. is amended to read:

15. Local exposition tax when the general, and county, ~~and stadium~~ sales and use tax is required to be paid using EFT, as provided in subd. 3.

SECTION 4. Tax 1.12 (4) (a) 16. is amended to read:

16. Premier resort area tax when the general, and county,~~and stadium~~ sales and use tax is required to be paid using EFT, as provided in subd. 3.

SECTION 5. Tax 1.12 (4) (a) 17. is amended to read:

17. Rental vehicle fee when the general, and county,~~and stadium~~ sales and use tax is required to be paid using EFT, as provided in subd. 3.

SECTION 6. Tax 1.12 (4) (a) 18. is amended to read:

18. Dry cleaning facility fee when the general, and county,~~and stadium~~ sales and use tax is required to be paid using EFT, as provided in subd. 3.

SECTION 7. Tax 1.12 (4) (a) 19. is created to read:

19. Partnership income and franchise tax estimated tax payments and tax due with the tax return when the net tax less refundable credits on the prior year's tax return was \$1,000 or more.

SECTION 8. Tax 2.105 (3) (b) is amended to read:

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within ~~90~~180 days of the date the department receives the taxpayer's report of federal adjustments or amended return described in par. (a). The ~~90~~180-day limitation does not apply to instances where the taxpayer files an incorrect franchise or income tax return or economic development surcharge return with intent to defeat or evade the franchise or income tax or economic development surcharge assessment.

SECTION 9. Tax 2.105 (4) (a) is amended to read:

(a) Federal adjustments. If the federal net income tax payable, a credit claimed or carried forward, a net operating loss carried forward or a capital loss carried forward on a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall report the adjustments to the department within ~~90~~180 days after they become final. If such adjustments relate to income, credits claimed or carried forward, net business losses or net business losses carried forward, capital losses or capital losses carried forward, or any other item that is required to be included in a combined report under s. 71.255 (1) (b), Stats., the designated agent of the combined group shall report such adjustments. The following shall also apply with respect to federal adjustments:

SECTION 10. Tax 2.105 (4) (a) 1. c. is amended to read:

c. Expiration of the ~~90~~180-day time period, or the 150-day period in the case of a notice addressed to a person outside the United States, within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within that time.

SECTION 11. Tax 2.105 (4) (b) is amended to read:

(b) Amended returns. If a taxpayer files an amended federal tax return and the changes on the amended federal tax return affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall file with the department an amended Wisconsin return reflecting the same changes. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the

changes affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. If the changes described in this paragraph relate to income, credits claimed or carried forward, net business losses or net business losses carried forward, capital losses or capital losses carried forward, or any other item that is required to be included in a combined report under s. 71.255 (1) (b), Stats., the designated agent of the combined group shall file an amended combined return. Changes to a net operating or business loss carryforward may not be made unless the change to the incurred loss was computed on a return that was filed within 4 years of the unextended due date for filing the original return for the taxable year in which the loss was incurred. Changes to a net operating or business loss carry-back may not be made unless the change to the loss is claimed within 4 years of the unextended due date for filing the original return for the taxable year to which the loss is carried back. The amended Wisconsin return shall be filed within ~~90~~180 days after the date the amended return is filed with the internal revenue service or other state.

SECTION 12. Tax 2.105 (5) is amended to read:

(5) Assessments and refunds by department. If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within ~~90~~180 days after the adjustments become final or after an amended return is filed with the internal revenue service or another state, the department may make an assessment or issue a refund relating to the report or amended return as follows:

SECTION 13. Tax 2.105 (5) (c) 1. is amended to read:

1. An assessment may be made later than the 4- and 6-year periods provided in par. (a) if notice of the assessment is given to the taxpayer within ~~90~~180 days of the date the department receives a timely report of federal adjustments or an amended Wisconsin return. However, the assessment made after the expiration of the 4- and 6-year periods shall only relate to those federal adjustments or the changes on the amended Wisconsin return.

SECTION 14. Tax 2.105 (5) (c) 2. is amended to read:

2. If a taxpayer reports federal adjustments to the department after the expiration of the 4-year period for filing an amended Wisconsin return as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax or economic development surcharge liability, may still be made if notice of the refund is given to the taxpayer within ~~90~~180 days of the date the department received a timely report of the federal adjustments.

SECTION 15. Tax 2.105 (5) (c) 3. is amended to read:

3. The ~~90~~180-day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of the ~~90~~180 days.

SECTION 16. Tax 2.105 (5) (c) 4. is amended to read:

4. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund shall only relate to those federal adjustments or the changes on the amended return. Notice of the assessment or refund shall be given to the taxpayer within ~~90~~180 days of the date the department received the report of federal adjustments or an amended Wisconsin return from the taxpayer.

Examples: 1) Federal adjustments were made to an individual's ~~2013~~2018 calendar- year basis federal income tax return; the adjustments became final on June 1, ~~2018~~2023. On ~~August~~ November 15, ~~2018~~2023, within ~~90~~180 days after the adjustments became final, the department received the taxpayer's report of the adjustments. Although the 4-year period provided by s. ~~71.77~~ (2), Stats., for making adjustments to the ~~2013~~2018 Wisconsin return expired on April 15, ~~2018~~2023, the department had until ~~November 13, 2018~~May

13, 2024, 90180 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) An individual filed an amended ~~201523~~ calendar-year basis New York return on June 1, ~~201624~~. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 12, ~~201624~~. Under the 4-year assessment period in s. ~~71.77 (2)~~, Stats., the department has 4 years from April 15, ~~201624~~, the due date of the ~~201523~~ return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

SECTION 17. Tax 2.105 (6) is amended to read:

(6) Taxpayer's failure to report federal adjustments or file amended Wisconsin return; adjustments and amended returns relating to taxable year 1987 and thereafter. If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return, relating to the taxable year 1987 and thereafter, within the 90180-day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax or economic development surcharge relating to the adjustments or amended return within 4 years after discovery by the department.

Example: An individual taxpayer filed a 2015 calendar-year basis Wisconsin income tax return on April 15, 2016. The internal revenue service made adjustments to the 2015 federal income tax return which the taxpayer did not report to the department within 90180 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on May 1, 2018. The department may issue an assessment for the adjustments any time on or before May 1, 2022.

SECTION 18. Tax 2.11 is repealed.

SECTION 19. Tax 2.12 (4) (b) 6. is amended to read:

6. An amended Wisconsin return filed under the provisions of sub. (3) (c) shall be filed with the department within 90180 days after the date the amended federal or other state return is filed.

SECTION 20. Tax 2.12 (4) (b) 7. is amended to read:

7. An amended Wisconsin return filed under the provisions of sub. (3) (d) shall be filed with the department within 90180 days of the date on which the federal audit adjustments become final.

SECTION 21. Tax 2.12 (5) (c) (Example) is repealed.

SECTION 22. Tax 2.41 (1) (a) is repealed.

SECTION 23. Tax 2.502 (3) is amended to read:

3) Apportionment formula computation. For taxable years beginning after December 31, 2004, a telecommunications company that is engaged in business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The telecommunications company shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats. The telecommunications company shall apportion its remaining net income to this state using an apportionment fraction obtained by taking the arithmetical average of the property factor, payroll factor, and sales factor. The sales factor is determined as prescribed in subs. ~~(4) and (5)~~, as applicable.

SECTION 24. Tax 2.502 (4) is repealed.

SECTION 25. Tax 2.89 (1) (Note) is amended to read:

Note: ~~For taxable years beginning on or after January 1, 1994, and ending before April 1, 1999, e~~
Estimated tax includes the temporary recycling economic development surcharge under s. 77.93, Stats.

SECTION 26. Tax 2.89 (3) (c) (Note) is repealed.


SECTION 27. Tax 2.89 (7) (a) (Examples 1 and 2) are repealed.

SECTION 28. Tax 2.89 (7) (b) 4. (Examples 1 and 2) are repealed.

SECTION 29. Tax 2.89 (8) (a) 4. (Example) is amended to read:

Example: Corporation J's taxable year begins January 1 and ends May 10. It has Wisconsin net income of \$200,000 for the period from January 1 through February 28. Corporation J's annualization factor for that period is $2.51.667$, calculated by dividing the 5 months of the taxable year by the 23 months of the annualization period. The annualized income for that period is $\$500,000 \times 2.51.667$, which is \$200,000 Wisconsin net income x $2.51.667$ annualization factor.

SECTION 30. Tax 2.89 (8) (b) 3. (Example) is amended to read:

Example: Corporation K, a calendar year filer, merges into Corporation L on July 14. Corporation K elects the annualized income method for determining whether it paid sufficient estimated tax. Corporation K's Wisconsin net income is \$300,000 for the first 2 months of the taxable year, \$1,400,000 for the first 5 months of the taxable year, and \$1,800,000 for the first 6 months of the taxable year. Corporation K has \$9,000 of tax credits and its net tax due for the year ending July 14 is \$135,000. Therefore, Corporation K's estimated tax payable is \$121,500. For Corporation K's 7-month year, the annualization factors are $3.52.333$ (7 months/ 23 months), 1.400 (7 months/5 months), and 1.167 (7 months/6 months). Corporation K calculates its required estimated tax payments as follows: - See PDF for table 

SECTION 31. Tax 2.94 (1) (a) (Note) is repealed.

SECTION 32. Tax 2.957 is repealed.

SECTION 33. Tax 3.05 is repealed.

SECTION 34. Tax 11.01 (1) (b) is amended to read:

Tax 11.01 (1) (b) Form S-012. Also called form ST-12. The monthly, quarterly, or annual return used to report state, ~~and county, and stadium~~ taxes by persons holding a Wisconsin seller's permit, use tax registration certificate, or consumer's use tax registration certificate. This form is also used to file refund claims or report additional taxes for prior periods.

SECTION 35. Tax 11.04 (1m) (a) 8. is amended to read:

Tax 11.04 (1m) (a) 8. Any corporation, community chest, fund, or 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 that is exempt from federal income tax under section 501 (c) (3) of the Internal Revenue Code and has received a determination letter from the internal revenue service. The exemption under this subdivision applies to churches and religious organizations that meet the requirements of section 501 (c) (3) but are not required to apply for and obtain tax-exempt status from the internal revenue service.~~

SECTION 36. Tax 11.11 (2) (Note) is amended to read:

Tax 11.11 (2) Note: Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines, and pipelines, approved by the department, write to Wisconsin Department of Revenue, Manufacturing and Utility Bureau, PO Box 8971, Madison WI 53708-8971; telephone ~~(608) 266-3845~~ (608) 266-8162; send an e-mail to ~~mfgteleo@wisconsin.gov~~ utility@wisconsin.gov; or access the department's web site at www.revenue.wi.gov and search "waste treatment facilities".

SECTION 37. Tax 11.14 (2) (a) 2. is amended to read:

Tax 11.14 (2) (a) 2. Construction contract entered into before the effective date of a ~~county/stadium~~ tax, form S-207CT-1. This is a certificate which may be used by a contractor to purchase building materials without a county ~~or stadium~~ tax under the circumstances described in sub. (13).

SECTION 38. Tax 11.14 (13) (title) is amended to read:

Tax 11.14 (13) Construction contracts entered into before the effective date of a county ~~or stadium~~ tax.

SECTION 39. Tax 11.14 (13) (a) is amended to read:

Tax 11.14 (13) (a) The certificate for a construction contract entered into before the effective date of a county tax, ~~or a stadium tax as defined in s. Tax 11.001 (2) (d)~~, form S-207CT-1, is used by contractors to purchase building materials without the county ~~or stadium~~ tax. The certificate shall be used by a contractor only if the following 3 conditions are met:

SECTION 40. Tax 11.14 (13) (a) (Note) is repealed.

SECTION 41. Tax 11.14 (13) (a) 1. is amended to read:

Tax 11.14 (13) (a) 1. The contractor entered into a written contract or made a formal bid before the effective date of the county ~~or stadium~~ tax to construct, alter, repair, or improve real estate for another person.

SECTION 42. Tax 11.14 (13) (a) 3. is amended to read:

Tax 11.14 (13) (a) 3. The building materials purchased on or after the effective date of the county ~~or stadium~~ tax are affixed and made a part of real estate in fulfilling the written contract or formal written bid.

SECTION 43. Tax 11.14 (13) (b) is amended to read:

Tax 11.14 (13) (b) The certificate shall give the descriptive name of the contract, job site, county ~~or stadium~~ tax effective date, date of prime contract and bid, date contract was signed, seller's name, date of performance of the contract, and contractor's name and address and shall be signed by the contractor, except that if the certificate is received electronically, a signature is not required.

SECTION 44. Tax 11.32 (5) (b) 1. is amended to read:

Tax 11.32 (5) (b) 1. In locations with no county ~~or stadium-district~~ taxes the following bracket system may be used.

SECTION 45. Tax 11.32 (5) (b) 2. is amended to read:

Tax 11.32 (5) (b) 2. In counties having a county tax, ~~but no stadium tax~~, the following bracket system may be used.

SECTION 46. Tax 11.32 (5) (b) 3. is repealed.

SECTION 47. Tax 11.32 (5) (b) 4. is repealed.

SECTION 48. Tax 11.35 (2) (b) is amended to read:

Tax 11.35 (2) (b) "Entertainment" means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than ~~\$10,000~~ \$50,000 per event by all persons for performing, for reimbursement of expenses or for prize money.

SECTION 49. Tax 11.35 (6) (a) Example 1 is amended to read:

Examples: 1) Four different bands are paid ~~\$3,000~~ \$15,000 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (~~\$12,000~~\$60,000) exceeds the ~~\$10,000~~\$50,000 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

SECTION 50. Tax 11.35 (6) (a) Example 2 is amended to read:

2) Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band ~~\$5,500~~\$25,500. Since the total payment for entertainment (~~\$11,000~~\$51,000) exceeds the ~~\$10,000~~\$50,000 limit in sub. (2) (b), entertainment is deemed to be involved. As a result, receipts from the event are taxable.

SECTION 51. Tax 11.35 (6) (a) Example 3 is amended to read:

3) A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of the ~~\$10,000~~\$50,000 limit in sub. (2) (b). There is no separate admission charge. However, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving entertainment. Therefore, sales by the nonprofit organization at this event are taxable.

SECTION 52. Tax 11.35 (6) (a) Example 5 is amended to read:

5) Nonprofit Organization A sponsors an admission event at which a band is hired to perform. The band is paid more than ~~\$10,000~~\$50,000. Nonprofit Organization A allows Nonprofit Organization B, a separate entity, to sell soft drinks and food at the event for consumption on the premises of the event. Although Nonprofit Organization A's sales at the event do not qualify for the occasional sales exemption, Nonprofit Organization B's sales at the event may qualify as exempt occasional sales. The admission charge to the event involving entertainment is made by Nonprofit Organization A, not Nonprofit Organization B.

SECTION 53. Tax 11.35 (8) Note is amended to read:

Tax 11.35 (8) Note: The interpretations contained in s. Tax 11.35 became effective January 1, 1989, pursuant to 1987 Wis. Act 399, except: (a) the \$25,000 receipts standard and the \$500 entertainment standard became effective January 1, 2006, pursuant to 2005 Wis. Act 25; (b) The change of the term "gross receipts" to "sales price" and the separate impositions of tax on coins and stamps sold above face value under s. 77.52 (1) (b), Stats., certain leased property affixed to real property under s. 77.52 (1) (c), Stats., and digital goods under s. 77.52 (1) (d), Stats., became effective October 1, 2009, pursuant to 2009 Wis. Act 2; and (c) the 75 day standard, the \$50,000 receipts standard, and the \$10,000 entertainment standard became effective January 1, 2017, pursuant to 2015 Wis. Act 364, and (d) the \$50,000 entertainment standard became effective June 1, 2022, pursuant to 2021 Wis. Act 167.

SECTION 54. Tax 11.53 (5) is amended to read:

Tax 11.53 (5) Returns. Sales and use tax returns due from persons holding seller's permits are subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the returns and shall be due quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under s. 77.52 (19) or 77.58 (1) and (2), Stats., and shall include on the return ~~receipts~~ sales from all temporary events and other taxable transactions of the permittee during the reporting period.

SECTION 55. Tax 11.535 (5) is amended to read:

Tax 11.535 (5) Alternative reporting method. Operators of continuing or successive events with more than one event per month have the option of reporting all sellers for each event or reporting once a month in a combined report all sellers at the events. The combined report must have the same operator and location, and sellers should only be reported once in a report. The department may, at its discretion, require separate event reports. may report all vendors for each event or may report under an alternative method approved by the department. Any operator may request approval from the department of an alternative method of reporting which will provide the department with the required information on all vendors at each event. The request shall be made in writing to: Wisconsin Department of Revenue, Temporary Events Program, PO Box 8910, Madison, WI 53708 8910. It shall list the dates and locations of events to be held during the calendar year and the proposed method for reporting the information required.

SECTION 56. Tax 11.68 (4) (i) 2. a. is amended to read:

Tax 11.68 (4) (i) 2. a. "Qualifying exempt entity" means an entity described in s. 77.54 (9a) (b), (c), (d), (em), and (f), and (fc), and (9g), Stats., a technical college district, the University of Wisconsin Hospitals and Clinics Authority, the Board of Regents of the University of Wisconsin System, an institution, as defined in s. 36.05 (9), Stats., a college campus, as defined in s. 36.05 (6m), Stats., or the University of Wisconsin-Extension.

SECTION 57. Tax 11.68 (4) (i) 2. g. Note: is amended to read:

Tax 11.68 (4) (i) 2. g. Note: The effective date is different for contracts with certain exempt qualifying entities. Contracts with certain title holding companies became effective September 1, 2017. Contracts with technical colleges, the UW System, and state veterans organization became effective July 1, 2018. Contracts with the University of Wisconsin Hospitals and Clinics Authority became effective February 20, 2021.

SECTION 58. Tax 11.83 (8) (b) 1. is amended to read:

Tax 11.83 (8) (b) 1. Motor vehicles held for sale which are assigned to and used by a specific dealer employee subject to withholding from federal income tax on wages are subject to Wisconsin use tax ~~on~~ \$140 per motor vehicle registration plate per month. The \$140 per plate per month amount is effective January 1, 2009 adjusted annually. The current and historic amount subject to use tax is available on the department's web site at: <https://www.revenue.wi.gov/Pages/FAQS/ise-dealerplates.aspx> and is subject to change annually as explained in the notes following par. (b).

SECTION 59. Tax 11.83 (8) (b) 2. is amended to read:

Tax 11.83 (8) (b) 2. Motor vehicles held for sale which are assigned to and used by persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, are subject to Wisconsin use tax ~~on~~ \$140 per motor vehicle registration plate per month. The \$140 per plate per month amount is effective January 1, 2009 adjusted annually. The current and historic amount subject to use tax is available on the department's web site at: <https://www.revenue.wi.gov/Pages/FAQS/ise-dealerplates.aspx> and is subject to change annually as explained in the notes following this subdivision.

SECTION 60. Tax 11.83 (8) (b) 2. (Note 1) is amended to read:

Tax 11.83 (8) (b) 2. (Note 1) As provided in s. 77.53 (1m), Stats., the department will annually adjust the amount per plate to the nearest whole dollar to reflect the annual percentage change in the U.S. consumer price index for all urban customers, U.S. city average, as determined by the United States department of labor, for the 12 months ending on June 30 of the year before the change. The department will publicize any rate change in an issue of the *Wisconsin Tax Bulletin* and ~~*Sales and Use Tax Report*~~ on the department's web site at: <https://www.revenue.wi.gov/Pages/FAQS/ise-dealerplates.aspx> prior to the January 1 that the change becomes effective.

SECTION 61. Tax 11.83 (8) (b) 2. (Note 2): is repealed.

SECTION 62. Tax 11.945 (2) (intro) is amended to read:

Tax 11.945 (2) Sourcing — General. Except as provided in subs. (3), (4), and (5), and except as provided in s. Tax 11.66 (3) relating to the sourcing of telecommunications services; and ancillary services, and Internet access services; a sale is sourced to a location based on the following:

SECTION 63. Tax 11.96 (title) is amended to read:

Tax 11.96 Delivery of ordinance or resolution; ~~county, stadium,~~ and premier resort area tax.

SECTION 64. Tax 11.96 (1) is amended to read:

Tax 11.96 (1) Purpose. This section clarifies requirements for the timely delivery of county ~~and stadium~~ sales and use tax and premier resort area tax ordinances or resolutions to the secretary of revenue.

SECTION 65. Tax 11.96 (2) (e) is repealed.

SECTION 66. Tax 11.96 (2) (f) is repealed.

SECTION 67. Tax 13.03 (4m) is amended to read:

(4m) "Eligible recipient" means a county, city, village, town, tribal government, or local impact committee authorized under s. 293.43 (~~3~~), Stats., actively involved or eligible to be involved in the good faith negotiation of a local agreement under s. 293.43, Stats., with the person filing the notice of intent under s. 293.31 (1), Stats.

SECTION 68. Tax 13.03 (10) is amended to read:

(10) "Mining permit application" means the mining permit application form filed with the department of natural resources pursuant to s. ~~NR 432.06~~132.107, Wis. Adm. Code

SECTION 69. Tax 13.03 (10) (Note) is repealed.

SECTION 70. Tax 14.04 (2) is amended to read:

Under s. 71.52 (7), Stats., "property taxes accrued" means real ~~or personal~~ property taxes or monthly parking permit fees under s. 66.0435 (3) (c), Stats., exclusive of special assessments, delinquent interest and charges for service, levied under ch. 70, Stats., on a homestead owned by a claimant or a member of the claimant's household, less the tax credit, if any, afforded in respect of the property by s. 79.10, Stats. With respect to sub. (3) (e), "property taxes accrued" means the property taxes accrued levied on the former homestead owned by the claimant.

SECTION 71. Tax 14.04 (3) (c) is amended to read:

"Property taxes accrued" includes ~~personal~~ real property taxes assessed on a homestead or former homestead that is constructed on leased land or assessed on a mobile home owned by the claimant or a member of the claimant's household. "Property taxes accrued" also includes mobile home parking permit fees assessed under s. 66.0435 (3) (c), Stats., for a mobile home owned by the claimant or a member of the claimant's household.

SECTION 72. Tax 14.05 (3) (c) is amended to read:

~~Personal~~ Real property taxes or mobile home parking permit fees assessed under s. 66.0435 (3) (c), Stats., paid by a claimant for a rented mobile home shall be considered gross rent. In addition, rental paid to a landlord for a mobile home or for land on which a mobile home is located shall be considered gross rent.

SECTION 73. Effective date. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro), Stats.

END OF RULE TEXT

DEPARTMENT OF REVENUE

Dated: _____

By: _____
David M. Casey
Secretary of Revenue