

## CR 12-011

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

The Wisconsin Department of Revenue adopts an order to: **repeal** Tax 2.63 (4), 3.095 (4) (a) 9., and 8.24; **amend** Tax 2.105 (1), (3) (a) and (b), (4) (a) (intro.), 1. f., 2., and 3. and (b), (5) (c) 2., and (6) (a), 2.12 (1), (3) (a), (b), (c), and (e), and (Note), 2.32 (title), (1), (1) (Note), (2) (a) 1. and 7. (Note), (d) 1., 3., 4., 5., and 6., (e) 1., (g) 1. and 2., and (h) 1., (3), and (Note), 2.60 (2) (d), 2.65 (3) (c), 2.67 (2) (d) 3., 2.82 (1) (c), (6), and (Examples), 2.96 (2) (c) and (3) (a), (b), and (c), 2.99 (title), (1), and (2) (a), and 3.01 (4) (e) 4. b.; **repeal and recreate** Tax 1.11 (4) (e); and **create** Tax 2.99 (Note) and 3.095 (4) (a) 12. to 20.; **relating to** tax law changes made by 2011 Wisconsin Act 32 and other legislation.

The scope statement for this rule, SS 030-11, was approved by the Governor on October 21, 2011, published in Register No. 671 on November 14, 2011, and approved by the Secretary of Revenue on November 28, 2011.

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

**Statutes interpreted:** ss. 71.05 (1) (c), 71.07 (3n), 71.255 (2m) (d), 71.28 (3n), 71.47 (3n), 71.78 (4) (m), 71.83 (3), 73.03 (27), 77.93 (intro.), 77.96 (6), 77.97, and 125.535, Stats.

**Statutory authority:** ss. 71.80 (1) (c), 77.96 (4), 125.03 (1) (a), and 227.11 (2) (a), Stats.

#### **Explanation of agency authority:**

Section 71.80 (1) (c), Stats., provides “[t]he department may make such regulations as it shall deem necessary in order to carry out this chapter.” This provision applies to the rule changes relating to the authority to examine returns, late filing fees, the dairy investment credit and dairy and livestock farm investment credit, income tax exemptions for certain bonds and notes, and the controlled group election.

Section 77.96 (4), Stats., provides that the authority listed above under s. 71.80 (1) (c), Stats., applies to the economic development surcharge under subch. VII of ch. 77, Stats.

Section 125.03 (1) (a), Stats., provides “[t]he department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.” This provision applies to the rule change relating to the direct shipment of wine.

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...”

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

**Plain language analysis:** This rule concerns the statutory provisions and legislative actions indicated below.

- Section 71.78 (4) (m), Stats., as amended by 2011 Wisconsin Act 32 to provide the CEO of the WEDC with limited authority to examine returns. Existing provisions updated are in s. Tax 1.11.
- Section 71.83 (3), Stats., as renumbered and amended by 2009 Wisconsin Act 28 to change the amount of late filing fees for income, franchise, and partnership returns and withholding reports. The existing provision updated is in s. Tax 2.96.
- 2005 Wisconsin Act 25, which renumbered ss. 71.07 (3n) (b), 71.28 (3n) (b), and 71.47 (3n) (b), Stats., renumbered and amended ss. 71.07 (3n) (e), 71.28 (3n) (e), and 71.47 (3n) (e), Stats., amended ss. 71.07 (3n) (title) and (a) 2. (intro.), 71.28 (3n) (title) and (a) 2. (intro.), and 71.47 (3n) (title) and (a) 2. (intro.), Stats., and created ss. 71.07 (3n) (a) 4., 5., and 6., (b) 2., and (e) 2., 71.28 (3n) (a) 4., 5., and 6., (b) 2., and (e) 2., and 71.47 (3n) (a) 4., 5., and 6., (b) 2., and (e) 2., Stats., to clarify and expand the dairy investment credit; and 2011 Wisconsin Act 15, which amended ss. 71.07 (3n) (a) 2. (intro.), 5. (intro.), and 6. b. and (b) 1. and 2., 71.28 (3n) (a) 2. (intro.), 5. (intro.), and 6. b. and (b) 1. and 2., and 71.47 (3n) (a) 2. (intro.), 5. (intro.), and 6. b. and (b) 1. and 2., Stats., to extend the dairy and livestock farm investment credit. Existing provisions updated are in s. Tax 2.99.
- 1993 Wisconsin Act 263, which created s. 71.05 (1) (e), Stats. [subsequently renumbered 71.05 (1) (c) 3. by 1995 Wisconsin Act 56]; 1995 Wisconsin Act 56, which created s. 71.05 (1) (c) 4., Stats.; 1999 Wisconsin Act 65, which created s. 71.05 (1) (c) 6., Stats.; 1999 Wisconsin Act 167, which created s. 71.05 (1) (c) 5., Stats.; 2003 Wisconsin Act 85, which repealed s. 71.05 (1) (c) 2., Stats., and created s. 71.05 (1) (c) 1m., Stats.; 2005 Wisconsin Act 335, which created s. 71.05 (1) (c) 7., Stats.; 2007 Wisconsin Act 20, which created s. 71.05 (1) (c) 8., Stats.; 2009 Wisconsin Act 28, which created s. 71.05 (1) (c) 9., Stats.; 2009 Wisconsin Act 205, which created s. 71.05 (1) (c) 10., Stats.; and 2011 Wisconsin Act 32, which repealed s. 71.05 (1) (c) 9., Stats., and created s. 71.05 (1) (c) 12., Stats. These provisions all concern income tax exemptions for certain bonds and notes. Existing provisions updated are in s. Tax 3.095.
- Sections 73.03 (27), 77.93 (intro.), 77.96 (6), and 77.97, Stats., as amended by 2011 Wisconsin Act 32 to change the recycling surcharge to the economic development surcharge. Existing provisions updated are in chs. Tax 2 and 3.
- Section 71.255 (2m) (d), Stats., as amended by 2011 Wisconsin Act 32 to provide that the department may not disregard the tax effect or disallow the election for any controlled group member for any year of the controlled group election period. Existing provisions updated are in ch. Tax 2.
- 2007 Wisconsin Act 85, which, in part, repealed ss. 125.52 (8), 125.53 (3), and 125.58 (4) (a) 1. to 4., Stats., renumbered and amended s. 125.58 (4) (a) (intro.), Stats., repealed and recreated s. 139.035, Stats., and created s. 125.535, Stats., to authorize the direct shipment of wine. This update is part of a general clean-up prompted by the provisions in 2011 Wisconsin Act 32 concerning three-tier beer laws. The existing provision updated (repealed) is s. Tax 8.24.

In addition, the provisions of s. Tax 2.32 (2) (a) 1. And 7., (d) 1. And 3. to 6., (e) 1., (g) 1. and 2., and (h) 1. are amended to reflect differences between 1999 IRS forms and 2011 IRS forms.

**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:** 2011 Wisconsin Act 32 and the other legislation referenced in the above plain language analysis made various changes to Wisconsin's income, franchise, surcharge, and excise tax laws. The department has created this rule order to reflect these statutory changes. 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:** As explained above, this rule is created to administer changes in Wisconsin's income, franchise, surcharge, and excise tax laws. The rule itself does not have an effect beyond the statutes it interprets. As such, the department has determined that the rule does not affect small businesses.

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

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

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

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**SECTION 1.** Tax 1.11 (4) (e) is repealed and recreated to read:

Tax 1.11 (4) (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 ch. 238, Stats.

**SECTION 2.** Tax 2.105 (1), (3) (a) and (b), (4) (a) (intro.), 1. f., 2., and 3. and (b), (5) (c) 2., and (6) (a) are amended to read:

Tax 2.105 (1) **PURPOSE.** This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin franchise or income tax and ~~recycling~~ economic development surcharge purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(3) (a) Under ss. 71.76 and 77.96 (4), Stats., a taxpayer meeting the conditions described in sub. (4) shall report to the department changes or corrections made to a tax return by the internal revenue service, or file with the department amended Wisconsin franchise or income tax returns or amended ~~recycling~~ economic development surcharge returns reporting any information contained in amended returns filed with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state. If such changes, corrections, or amended returns 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 changes or corrections or file amended combined returns.

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

(4) (a) (intro.) 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 ~~recycling~~ 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 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:

1. f. For combined groups, the "finality of federal adjustments" is determined on the basis of that particular combined group member the adjustments of which ultimately affect the amount of Wisconsin net franchise or income tax or ~~recycling~~ economic development surcharge payable, the amount of a Wisconsin credit, credit carryforward, net business loss, net business loss carryforward, capital loss or capital loss carried forward of the combined group to which that member belongs.

2. The taxpayer shall submit to the department a copy of the final federal audit report issued by the internal revenue service together with any other documents or schedules necessary to inform the department of the adjustments as finally determined. The report shall be included with an amended Wisconsin return if a Wisconsin refund is being claimed and may be, but is not required to be, included with an amended return if additional Wisconsin tax or ~~recycling~~ economic development surcharge is due or if there is no change in tax or ~~recycling~~ economic development surcharge.

3. A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin franchise or income tax or ~~recycling~~ economic development surcharge purposes unless a statement is included with the report to the department stating why the taxpayer believes the adjustments are incorrect.

(b) 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 ~~recycling~~ 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 recycling 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. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

(5) (c) 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 recycling economic development surcharge liability, may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustments.

(6) (a) 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 90-day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax or recycling economic development surcharge relating to the adjustments or amended return within 4 years after discovery by the department.

**SECTION 3.** Tax 2.12 (1), (3) (a), (b), (c), and (e), and (Note) are amended to read:

Tax 2.12 (1) This section applies to amended Wisconsin franchise or income tax returns, including amended combined returns, amended partnership returns, amended recycling economic development surcharge returns and amended farmland preservation credit and homestead credit claims.

(3) (a) The department shall accept amended returns and credit claims to correct previously filed original, other amended or adjusted Wisconsin franchise or income tax returns, partnership returns, recycling economic development surcharge returns or farmland preservation credit or homestead credit claims.

(b) A refund of taxes or credits under ch. 71, Stats., or recycling economic development surcharge under s. 77.96 (4), Stats., may be claimed only by filing an amended return or credit claim, on a form and in the manner described in subs. (5) and (6).

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of Wisconsin net franchise or income tax or recycling economic development surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward.

(e) An amended return or credit claim does not begin or extend the statute of limitation periods for assessing additional tax or recycling economic development surcharge or claiming a refund.

(Note) Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9, to create a recycling surcharge effective for taxable years beginning on or after January 1, 2000, and by 2011 Wis. Act 32 to change the recycling surcharge to the economic

development surcharge effective July 1, 2011. For taxable years ending before April 1, 1999, subch. VII of ch. 77, Stats., provided for a temporary recycling surcharge; the term "recycling economic development surcharge" as used in this section refers to the "temporary recycling surcharge" for those years and to the "recycling surcharge" prior to July 1, 2011.

**SECTION 4.** Tax 2.32 (title), (1), (1) (Note), (2) (a) 1. and 7. (Note), (d) 1., 3., 4., 5., and 6., (e) 1., (g) 1. and 2., and (h) 1., (3), and (Note) are amended to read:

Tax 2.32(title) **Recycling Economic development surcharge — gross receipts defined.**

(1) This section defines "gross receipts" for purposes of the recycling economic development surcharge under subch. VII of ch. 77, Stats.

(1) (Note) For any taxable year, a recycling 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.

(2) (a) 1. Gross receipts or sales reportable on line ~~4a~~ 1c of federal form 1120, U. S. corporation income tax return.

7. (Note) In this subsection, line numbers of forms refer to the ~~1999~~ 2011 forms.

(d) 1. Gross receipts or sales reportable on line ~~4a~~ 1c of federal form 1120S, U. S. corporation income tax return for an S corporation.

3. Gross interest income reportable on line ~~4a~~ 4 of schedule K on federal form 1120S.

4. ~~Gross Ordinary~~ Ordinary dividends reportable on line ~~4b~~ 5a of schedule K on federal form 1120S.

5. Gross royalties includable in computing royalty income reportable on line ~~4e~~ 6 of schedule K on federal form 1120S.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on line 4 of federal form 1120S and lines ~~4d, 4e, 4f and 5~~ 7, 8a, and 9 of schedule K on federal form 1120S.

(e) 1. Gross receipts or sales reportable on lines 4 1c, 4 2a, 2b, 3a, 4a, 5a, 6a, 7a, ~~8a~~ and 9 7b of federal schedule F, profit or loss from farming.

(g) 1. Gross receipts or sales reportable on line 4 1d of federal schedule C, profit or loss from business.

2. Gross receipts reportable on line 4 1d of federal schedule C-EZ, net profit from business.

(h) 1. Gross receipts or sales reportable on line 4a 1c of federal form 1065, U. S. partnership return of income.

(3) The ~~recycling~~ economic development surcharge applies to each member of a combined group separately. See s. Tax 2.82 for rules pertaining to the imposition and calculation of the ~~recycling~~ economic development surcharge for combined group members.

(Note) Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9, to replace the expired temporary recycling surcharge with a recycling surcharge, effective for taxable years beginning on or after January 1, 2000, and by 2011 Wis. Act 32 to change the recycling surcharge to the economic development surcharge effective July 1, 2011. This section applies to the ~~recycling~~ economic development surcharge imposed for taxable years beginning on or after January 1, 2000.

**SECTION 5.** Tax 2.60 (2) (d) is amended to read:

Tax 2.60 (2) (d) "Combined return" has the same meaning as "combined report" as explained in par. (c). In general, a combined return includes the computation of combined unitary income, the apportionment of the income to each combined group member, as applicable, any separate entity items, loss carryforwards, and credits of each combined group member, and the net tax and ~~recycling~~ economic development surcharge liability of each combined group member. To be considered complete, a combined return shall contain all the items required in s. Tax 2.67 (2) (c).

**SECTION 6.** Tax 2.63 (4) is repealed.

**SECTION 7.** Tax 2.65 (3) (c) is amended to read:

Tax 2.65 (3) (c) If a combined group member chooses to file a separate Wisconsin return to report its separate entity items rather than having the designated agent include them in the combined return in the manner described in s. Tax 2.67 (2) (d) 3., the member shall consider the totality of its share of items from the combined return plus its separate entity items for purposes of applying any limitations, so that its total net tax plus ~~recycling~~ economic development surcharge does not differ from the amount that would have been due if the separate entity items had been included in the combined return. The combined group member shall submit a copy of the combined return with its separate return.

**SECTION 8.** Tax 2.67 (2) (d) 3. is amended to read:

Tax 2.67 (2) (d) 3. The separate entity net income or loss and apportionment factors included in the combined return shall be reported on Wisconsin Form 4N, Nonapportionable and Separately Apportioned Income. The designated agent shall complete and submit Form 4N with the combined return for each applicable corporation and carry forward the total Form 4N amounts to the appropriate line on Form 4. For purposes of the requirement of s. 71.255 (2) (d), Stats., separate entity items reported on Form 4N shall be considered filed on a separate return. However, for purposes of determining a combined group member's net income, tax, interest, underpayment interest, ~~recycling~~ economic development surcharge, and the statute of limitations, the separate entity amounts shall be added to its amounts, if any, computed in the unitary combination.

**SECTION 9.** Tax 2.82 (1) (c), (6), and (Examples) are amended to read:

Tax 2.82 (1) (c) An unlicensed foreign corporation is subject to Wisconsin franchise or income taxes if it has nexus with Wisconsin. The purpose of this rule is to provide guidelines for determining what constitutes nexus, that is, what business activities are needed for a foreign corporation to be subject to Wisconsin franchise or income taxes. The rule also explains how nexus applies to a foreign corporation in the context of s. 71.255, Stats., relating to combined reporting, and s. 77.93, Stats., relating to the recycling economic development surcharge.

(6) ~~RECYCLING ECONOMIC DEVELOPMENT SURCHARGE.~~ If a corporation has nexus under this section, the corporation is considered to be doing business in this state for purposes of s. 77.93, Stats., relating to the recycling economic development surcharge. Therefore, if a corporation, other than a corporation exempt from taxation, has nexus and has at least \$4,000,000 of gross receipts from all activities for the taxable year, the corporation is subject to the recycling economic development surcharge. The recycling economic development surcharge applies to each member of a combined group separately.

(Examples) **1)** Corporation A is incorporated outside Wisconsin and is not a member of a combined group. Corporation A is licensed to do business in Wisconsin, but all of its activities in Wisconsin are protected by P.L. 86-272. Therefore, Corporation A does not have nexus. Corporation A is not subject to the recycling economic development surcharge because it does not have nexus in Wisconsin.

**2)** Assume the same facts as Example 1, except that Corporation A is in Combined Group ABCD, which consists of Corporations A, B, C, and D. Corporation D has a warehouse and several stores in Wisconsin that are part of the combined group's common unitary business. Since Corporation D has nexus in Wisconsin, all corporations in the combined group have nexus in Wisconsin. Corporations A, B, and D have sales to Wisconsin customers but Corporation C does not. The gross receipts, Wisconsin income, gross tax, and resulting recycling economic development surcharge for each corporation in the group are as follows:

Corporation	Gross Receipts	Wisconsin Income	Gross Tax	<u>Recycling</u> Surcharge
A	<b>\$10,000,000</b>	<b>\$100,000</b>	<b>\$7,900</b>	<b>\$237</b>
B	<b>\$3,000,000</b>	<b>\$400,000</b>	<b>\$31,600</b>	<b>\$0</b>
C	<b>\$50,000,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$25</b>
D	<b>\$100,000,000</b>	<b>\$6,000,000</b>	<b>\$474,000</b>	<b>\$9,800</b>

The Wisconsin income and gross tax are computed using the method described in s. Tax 2.61. Since the recycling economic development surcharge applies to each member of a combined group separately:

- Corporation A is subject to the recycling economic development surcharge because its gross receipts are at least \$4,000,000.
- Corporation B is not subject to the recycling economic development surcharge because its gross receipts are less than \$4,000,000.



- Corporation C is subject to the minimum \$25 recycling economic development surcharge because its gross receipts are at least \$4,000,000 and it has no gross tax liability.
- Corporation D is subject to the maximum \$9,800 recycling economic development surcharge because its gross tax of \$474,000 multiplied by the recycling economic development surcharge rate of 3% exceeds \$9,800. The amount in excess of \$9,800 is not imposed even though the other members have recycling economic development surcharge liability of less than \$9,800.

**SECTION 10.** Tax 2.96 (2) (c) and (3) (a), (b), and (c) are amended to read:

Tax 2.96 (2) (c) A taxpayer who desires to minimize interest charges during the extension period may pay the estimated tax liability on or before the original due date of the franchise or income tax return. The estimated tax liability includes the recycling economic development surcharge imposed under s. 77.93, Stats.

(3) (a) Except as provided in par. (b), additional tax due with the complete return and the recycling economic development surcharge imposed under s. 77.93, Stats., which are not paid by the original due date are subject to interest at 12% per year during the extension period and 1 1/2% per month from the end of the extension period until the date of payment.

(b) If 90% of the tax shown on the return is not paid by the unextended due date of the return, the difference between that amount and the estimated taxes paid along with any interest due is subject to interest at 11/2% per month until paid regardless of any extension granted for filing the return. The tax shown on the return includes the recycling economic development surcharge imposed under s. 77.93, Stats.

(c) A corporation return filed after the extension period is subject to a ~~\$30~~ \$150 late filing fee.

**SECTION 11.** Tax 2.99 (title), (1), and (2) (a) are amended to read:

Tax 2.99 (title) **Dairy and livestock farm investment credit.**

(1) This section clarifies certain terms as they apply to the dairy and livestock farm investment credit under ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

(2) (a) "Amount the claimant paid in the taxable year" means the purchase price of facilities or equipment acquired and first placed in service in this state during taxable years that begin after December 31, 2003, and before January 1, ~~2010~~ 2017.

**SECTION 12.** Tax 2.99 (Note) is created to read:

Tax 2.99 (Note) 2005 Wis. Act 25 renamed the "dairy investment credit" the "dairy and livestock farm investment credit," effective for taxable years beginning on or after January 1, 2006. The term "dairy and livestock farm investment credit" as used in this section refers to the "dairy investment credit" for taxable years prior to January 1, 2006.

**SECTION 13.** Tax 3.01 (4) (e) 4. b. is amended to read:

Tax 3.01 (4) (e) 4. b. The Wisconsin recycling economic development surcharge, which is imposed on partnerships and tax-option (S) corporations pursuant to s. 77.93 (1), (3), and (5), Stats.

**SECTION 14.** Tax 3.095 (4) (a) 9. is repealed.

**SECTION 15.** Tax 3.095 (4) (a) 12. to 20. are created to read:

Tax 3.095 (4) (a) 12. WHEDA bonds or notes issued under s. 234.08 or 234.61, Stats., on or after January 1, 2004, if the bonds or notes are issued to fund multifamily affordable housing projects or elderly housing projects.

13. Bonds or notes issued by a local exposition district created under subch. II of ch. 229, Stats.

14. Bonds or notes issued by a local professional baseball park district created under subch. III of ch. 229, Stats.

15. Bonds or notes issued by a local professional football stadium district created under subch. IV of ch. 229, Stats.

16. Bonds or notes issued by a local cultural arts district created under subch. V of ch. 229, Stats.

17. Bonds or notes issued by the Wisconsin Aerospace Authority.

18. Wisconsin Health and Educational Facilities Authority bonds or notes issued under s. 231.03 (6), Stats., on or after October 27, 2007, if the proceeds from the bonds or notes that are issued are used by a health facility, as defined in s. 231.01 (5), Stats., to fund the acquisition of information technology hardware or software.

19. Bonds or notes issued by a commission created under s. 66.0304, Stats., if any of the following applies:

a. The bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in this state, and WHEDA has the authority to issue its bonds or notes for the project being funded.

b. The bonds or notes are used by a health facility, as defined in s. 231.01 (5), Stats., to fund the acquisition of information technology hardware or software, in this state, and the Wisconsin Health and Educational Facilities Authority has the authority to issue its bonds or notes for the project being funded.

c. The bonds or notes are issued to fund a redevelopment project in this state or a housing project in this state, and the authority exists for bonds or notes to be issued by an entity described under s. 66.1201, 66.1333, or 66.1335, Stats.

20. WHEDA bonds or notes, if the bonds or notes are issued to provide loans to a public affairs network under s. 234.75 (4), Stats.

**SECTION 16.** Tax 8.24 is repealed.

**SECTION 17.** 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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**Final Regulatory Flexibility Analysis**

This rule order does not affect small businesses.

DEPARTMENT OF REVENUE

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

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

E:Rules/Act 32 Final Order