

Publication Date: April 7, 2011
Effective Date: April 7, 2011 through September 3, 2011

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats.

Statutory authority: ss. 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., 71.47 (9s) (d) 2., and 227.24, Stats.

Explanation of agency authority: Sections 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., require the department to promulgate rules to administer the income and franchise tax credits and deductions created by 2011 Wisconsin Act 3 for businesses that relocate to Wisconsin.

Section 227.24, Stats., provides an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of the statutes if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

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

Plain language analysis: This emergency rule prescribes the method by which the percent of the workforce payroll of a business and the dollar amount of wages paid to such workforce moved to this state during a taxable year shall be determined for purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats. It also provides examples of actions that may indicate a business has relocated to this state from another state or country and limits the deduction provided for in s. 71.05 (6) (b) 47. am., b., and c., Stats.

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 emergency rule.

Comparison with rules in adjacent states: The department has researched provisions in adjacent states and is not aware of the existence of a similar rule.

Summary of factual data and analytical methodologies: 2011 Wisconsin Act 3 created income and franchise tax credits and deductions for businesses that relocate to Wisconsin. Among the provisions created is a requirement for the department to promulgate rules to administer these credits and deductions. The department has created this emergency rule order to comply with this statutory requirement.

Analysis and supporting documents used to determine effect on small business: As explained above, this emergency rule is created to administer changes in Wisconsin's income and franchise tax laws. As the rule itself does not impose any significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

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

Effect on small business: This emergency rule does not have a significant effect on 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 emergency rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this emergency 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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FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

SECTION 1. Tax 2.957 is created to read:

Tax 2.957 Relocated business credit or deduction. (1) PURPOSE. The purpose of this section is to prescribe the method by which the percent of the workforce payroll of a business and the dollar amount of wages paid to such workforce moved to this state during a taxable year shall be determined for purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats.; provide examples of actions that may indicate a business has relocated to this state from another state or country; and limit the deduction provided for in s. 71.05 (6) (b) 47. am., b., and c., Stats.

(2) DEFINITIONS. In this section:

(a) "Business" means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association.

(b) "Doing business in this state" has the meaning given in s. 71.22 (1r), Stats.

(c) "Employee" has the meaning given in section 3121 (d) of the Internal Revenue Code.

(d) "Taxable year" has the meaning given in ss. 71.01 (12), 71.22 (10), and 71.42 (5), Stats.

(e) "Wages" has the meaning given in section 3121 (a) of the Internal Revenue Code.

(3) RELOCATION TO THIS STATE. For purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., actions that may indicate a business has relocated to this state from another state or country include the following:

- (a) Registering with the department, as provided in s. 73.03 (50), Stats.
- (b) Registering to do business in Wisconsin with the department of financial institutions.

(4) DOING BUSINESS IN THIS STATE. For purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., doing business in this state for any portion of a taxable year means doing business in this state for the entire taxable year, as provided in s. 71.22 (1r), Stats.

(5) WORKFORCE PAYROLL. For purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., the determination as to whether fifty-one (51%) percent or more of the workforce payroll of a business has moved to this state during a taxable year shall be made using a fraction, the numerator of which is the total amount of wages paid by the business during the taxable year to employees of the business who are residents of this state, and the denominator of which is the total amount of wages paid by the business during the taxable year to all employees of the business.

Example: During the taxable year in which Business A begins doing business in Wisconsin, Business A pays \$6,000,000 of wages to employees of Business A who are residents of Wisconsin and \$10,000,000 of total wages to all employees of Business A. Sixty (60) percent of the workforce payroll of Business A moved to Wisconsin during the taxable year (6,000,000/10,000,000).

(6) WORKFORCE WAGES. For purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., the determination as to whether at least \$200,000 of wages paid to the workforce of a business has moved to this state during a taxable year shall be made using the total amount of wages paid by the business during the taxable year to employees of the business who are residents of this state.

Example: During the taxable year in which Business B begins doing business in Wisconsin, Business B pays \$250,000 of wages to employees of Business B who are residents of Wisconsin. Wages of \$250,000 paid to the workforce of Business B moved to Wisconsin during the taxable year.

(7) LIMITATION ON DEDUCTION. No modification may be made under s. 71.05 (6) (b) 47. am., b., or c., Stats., if the amount otherwise eligible for the modification is less than zero.

Example: Partner B determines the amount otherwise eligible for the modification under s. 71.05 (6) (b) 47. b., Stats., is a loss of \$5,000. Partner B may not make a modification under s. 71.05 (6) (b) 47. b., Stats.

The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22 (2) (c), Stats.

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Richard G. Chandler
Secretary of Revenue

E:Rules/2957 Proposed Order (emergency – v4)