

CR 88-179

CERTIFICATE

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Bureau

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to withholding taxes was duly approved and adopted by this department on May 23, 1989.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 23rd day of May, 1989.


Mark D. Bugher
Secretary of Revenue

LEG/M021159P

8-1-89

April 25, 1989

ORDER OF THE DEPARTMENT OF REVENUE
AMENDING RULES

To amend Tax 2.90(title), (1), (4), (5), (8), (12), (13) and (15), Tax 2.91(title), (1) and (2), Tax 2.92(title), (1), (2) and (3)(c), and Tax 2.93(title), (1) and (3)(d) relating to withholding taxes.

Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c) Stats.

Statutes interpreted: s. 71.66 and ch. 766, Stats.

The changes in this Order affect withholding tax rules.

SECTIONS 1, 2 and 4. Tax 2.90(title), (1), (4), (5), (8), (12), (13) and (15), Tax 2.91(title), (1) and (2), and Tax 2.93(title), (1) and (3)(d) are amended to change statutory references as a result of the revision of Chapter 71, Stats., by 1987 Wisconsin Act 312 and to update rule format and style consistent with current rule-making procedures.

SECTION 3. Tax 2.92(title), (1) (2) and (3)(c) are amended for the following reasons.

a. Statutory references are changed as a result of revision to Chapter 71, Stats., by 1987 Wisconsin Act 312.

b. Subs. (1) and (3)(c) are amended to reflect current department practice in determining exemptions as well as provide a specific form which must be filed with an employer if Wisconsin exemptions are different than federal exemptions.

c. Sub. (2) is amended to address marital property law for tax computation.

SECTION 1. Tax 2.90(title), (1), (4), (5), (8), (12), (13) and (15) are amended to read:

Tax 2.90(title) WITHHOLDING; WAGES. (ss. 71.63 and 71.66(3), Stats.)

(1) The term "wages" means all remuneration for services performed by an employe for ~~his~~ an employer unless specifically excepted under s. ~~71.19~~ 71.63, Stats.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. ~~{See, however, s. 71.19(1)(f), Stats.}~~ However, s. 71.63(6)(i), Stats., ~~relating to the exclusion~~ excludes from wages ~~of~~ remuneration paid in any medium other than cash for services not in the
April 25, 1989

course of the employer's trade or business}. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employes its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless ~~such~~ the remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe no longer exists between the person in whose employ the services were performed and the individual who performed them.

(8) Amounts of so-called "vacation allowances" paid to an employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding ~~his~~ the absence from work, constitutes wages.

(12) The value of any meals or lodging furnished to an employe by ~~his~~ an employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employe under the provisions of the internal revenue code, as defined in s. ~~71.02(2)(b)~~ 71.01(6), Stats.

(13) Ordinarily, facilities or privileges (, such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to ~~his~~ employes generally, are not considered as wages subject to withholding, if ~~such~~ the facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment or efficiency of ~~his~~ employes.

(15) Withholding is not required:

(a) Upon amounts paid to an employe by the employe's employer under a wage continuation plan for a period during which the employe is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the internal revenue code, as defined in s. ~~71.02(2)(b)~~ 71.01(6), Stats.

(b) When, as provided by s. 71.66(3), Stats., an employe certifies to an employer that the employe incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

SECTION 2. Tax 2.91(title), (1) and (2) are amended to read:

Tax 2.91(title) WITHHOLDING; FISCAL YEAR TAXPAYERS. (ss. 71.64, 71.65(1), 71.67 and 71.71(1), Stats.)

(1) Except as provided in ~~subsection~~ sub. (2) hereof, amounts withheld pursuant to ~~s. 71.20~~ ss. 71.64 and 71.67, Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in ~~such~~ the calendar year. If more than one taxable year begins in a calendar year, ~~such~~ the amount shall be allowed as a credit for the last taxable year ~~so~~ beginning in that calendar year.

(2) Any employe who reports ~~his~~ income for taxation to the state of Wisconsin on ~~an income~~ a taxable year other than the calendar year shall be allowed as a credit for ~~any-such~~ the fiscal year amounts withheld by his or her employer in ~~such~~ the fiscal year, provided ~~his~~ the employer, on or before the end of the first month following the close of ~~such~~ the fiscal year, shall voluntarily furnish ~~such~~ the employe with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to ~~such~~ the fiscal year, but otherwise consistent with the written statement referred to in

~~s. 71.10(8)(a)~~ ss. 71.65(1) and 71.71(1), Stats., and the employe files a copy of ~~such~~ the statement along with ~~his~~ the fiscal year return.

SECTION 3. Tax 2.92(title), (1), (2) and (3)(c) are amended to read:

Tax 2.92 WITHHOLDING TAX EXEMPTIONS. (ss. 71.66 and 71.83(1)(a)5 and (b)4 and (2)(a)5, Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. ~~An employe who elects to have the same number of Wisconsin withholding exemptions as are allowable for federal purposes shall notify his or her employer of this election. An employe making this election is not required to complete a Wisconsin withholding exemption certificate, form WT-4.~~ The maximum number of federal exemptions allowable is computed by completing a federal form W-4, "Employee's Withholding Allowance Certificate." An employe claiming the same number of exemptions for both state and federal purposes is not required to complete a form WT-4, "Employee's Wisconsin Withholding Exemption Certificate." An employe who claims a different number of withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed ~~Wisconsin withholding exemption certificate,~~ form WT-4.

(2) An employe who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employe provides his or her employer with a completed form WT-4, "Employee's Wisconsin Withholding Exemption Certificate" which shows a claim for total exemption. For this purpose, a tax liability is "incurred" if the employe had for the preceding year, or anticipates for the current year, a net Wisconsin income tax due, i.e., gross tax less personal exemptions on a Wisconsin return. If an employe is married,

the ~~net-tax-of-the-employee's-spouse-shall-not~~ Wisconsin marital property laws for tax computation shall be considered in determining if the employe may claim this exemption.

(3)(c) If the department determines that an agreement is incomplete, incorrect, or would result in an insufficient amount of tax being withheld, the department may void the agreement by notification to the employer and employe.

SECTION 4. Tax 2.93(title), (1) and (3)(d) are amended to read:

Tax 2.93(title) WITHHOLDING FROM WAGES OF A DECEASED EMPLOYE AND FROM DEATH BENEFIT PAYMENTS. (ss. 71.63(6)(j) and 71.64(1)(a), Stats.) (1) GENERAL. Section ~~71.20(1)~~ 71.64(1)(a), Stats., requires employers to withhold Wisconsin income tax from payments of wages "to an employe." Various types of payments are made to the estate or to beneficiaries of a deceased employe which resulted from the deceased person's employment. The department shall follow the federal internal revenue service's policy in determining whether withholding of income tax is required from ~~such~~ these payments.

(3)(d) Death benefits such as pensions, annuities and distributions from a decedent's interest in an employer's qualified stock bonus plan or profit sharing plan, as provided in (s. 71.19(1)(j) 71.63(6)(j), Stats.).

The amendments contained in this Order shall take effect on the first day of the month following publication as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: May 22, 1989

DEPARTMENT OF REVENUE

By: Mark D. Bugher
Secretary of Revenue

RPT/M022328K

April 25, 1989



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708

May 23, 1989

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MAY 26 1989

Revisor of Statutes
Bureau

Orlan L. Prestegard
Revisor of Statutes
30 West Mifflin Street, Suite 702
Madison, Wisconsin 53703

Re: Clearinghouse Rule 88-179

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to withholding taxes.

These materials are filed with you pursuant to s. 227.20 (1), Wis. Stats.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Bugher', written over a horizontal line.

Mark D. Bugher
Secretary of Revenue

MDB:VLG:bem
Enclosure
LEG/M0211590

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.



State of Wisconsin ● DEPARTMENT OF REVENUE

126 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708

May 23, 1989

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Revisor of Statutes
Bureau

Douglas LaFollette
Secretary of State
Room 271, GEF-1
Madison, WI 53702

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 88-179.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Mark D. Bugher'.

Mark D. Bugher
Secretary of Revenue

MDB:VLG:bem
Enclosure
LEG/M021159N

cc: Revisor of Statutes