

ORDER OF THE DEPARTMENT OF REVENUE AMENDING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to: **amend** Tax 1.12(4)(a)(intro.) and (7)(a)2. and 2.04(1) and (2)(d); and **create** Tax 1.12(3)(fm) and (4)(a)13., 2.04(1)(a) and (b) and (2)(de), (dm), and (ds), and 2.04(8); **relating to** electronic funds transfer, information returns, and wage statements.

Analysis by the Department of Revenue

Statute interpreted: ss. 71.63 (3m), 71.738 (2), and 73.029, Stats.

Statutory authority: ss. 73.029 and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 73.029, Stats., provides that the department may require electronic funds transfer only by promulgating rules. Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: ss. 71.63 (3m), 71.738 (2), and 73.029, Stats.

Plain language analysis: This rule order does the following:

- Creates a provision specifying that income and franchise tax withholding payments of pass-through entities are required to be made by electronic funds transfer (EFT).
- Changes a provision to specify that EFT payments made by automated clearing house (ACH) debit transfer may be initiated up until 4:00 p.m. on the due date of the payment.
- Creates a provision specifying that the department may require pass-through entities to file returns for nonresident withholding taxes by electronic means. An exception is provided for situations where the Secretary of Revenue determines that the requirement to file by electronic means causes an undue hardship.
- Creates a provision specifying that the department may require Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to be filed by electronic means. An exception is provided for situations where the Secretary of Revenue determines that the requirement to file by electronic means causes an undue hardship.
- Updates notes to list current street and mailing addresses.

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:

Illinois – No similar rule exists.

Iowa – No similar rule exists.

Michigan – No similar rule exists with regard to filing an annual withholding tax reconciliation (the equivalent of Wisconsin Form WT-7) or a return for nonresident withholding taxes by electronic means. EFT payment of pass-through entity withholding is required if total pass-through entity withholding plus employee withholding averages at least \$40,000 per month.

Minnesota – No similar rule exists with regard to filing an annual withholding tax reconciliation (the equivalent of Wisconsin Form WT-7) or a return for nonresident withholding taxes by electronic means. If a pass-through entity is required to pay any Minnesota tax by EFT, it is required to pay all Minnesota taxes by EFT. The threshold for withholding tax is \$20,000 per year.

Summary of factual data and analytical methodologies: 2005 Wisconsin Act 25 created s. 71.775, Stats., which requires pass-through entities to file and pay withholding tax on the income allocable to their nonresident members. The department has determined that in order to administer this tax in a cost effective manner, it is necessary to require pass-through entities to file and pay the tax by electronic means. The department has also determined that, in the interest of cost effectiveness, a requirement to file Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, should also be put in place. In light of this, a rule has been promulgated which allows the department to prescribe the method by which Form WT-7 is to be filed and by which pass-through entities are to file and pay withholding tax on the income allocable to their nonresident members.

Analysis and supporting documents used to determine effect on small business: The department provides methods to pay taxes using EFT and file returns electronically that occur at no or minimal cost to the payer or filer. In addition, an exception to the requirement to pay or file electronically for situations where an undue hardship is caused is provided in the rule. Based on this, the department has concluded that this rule order does not have a significant effect on small business.

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

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

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dkleven@dor.state.wi.us, if you have any questions regarding this rule order.

SECTION 1. Tax 1.12(3)(fm) is created to read:

Tax 1.12(3)(fm) "Pass-through entity" has the meaning given in s. 71.775(1)(b), Stats.

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

Tax 1.12(4)(a)(intro.). Except as provided in sub. (11), the department requires a person who owes taxes and fees as described in subds. 1. to ~~42.~~ 13. to pay or deposit the taxes and fees using the EFT payment method. The following taxes and fees are included in the EFT payment requirement:

SECTION 3. Tax 1.12(4)(a)13. is created to read:

Tax 1.12(4)(a)13. Income and franchise tax withholding payments of pass-through entities under s. 71.775, Stats.

SECTION 4. Tax 1.12(7)(a)2. is amended to read:

Tax 1.12(7)(a)2. The payer shall initiate ACH debit transfers before 4:00 p.m. central standard time or central daylight savings time, as applicable, ~~at least one business day before~~ on the prescribed due date of the payment in order for the payment to have a settlement date on or before the prescribed due date.

Note to Revisor: Replace the example at the end of Tax 1.12(10)(c) with the following:

Example: If the prescribed due date falls on a Monday which is also memorial day, an ACH debit transfer must be initiated on or before the following Tuesday, when the payment is due. A payer using an ACH credit transfer must work with the financial institution to initiate the transfer in time to settle on or before the revised payment due date.

SECTION 5. Tax 2.04(1) is amended to read:

Tax 2.04(1). ~~DEFINITION~~ DEFINITIONS. In this section, ~~“person” means an individual, trust, estate, partnership, limited liability company, association or corporation ;~~

SECTION 6. Tax 2.04(1)(a) and (b) are created to read:

Tax 2.04(1)(a). “Pass-through entity” has the meaning given in s. 71.775(1)(b), Stats.

Tax 2.04(1)(b). “Person” means an individual, trust, estate, partnership, limited liability company, association or corporation.

SECTION 7. Tax 2.04(2)(d) is amended to read:

Tax 2.04(2)(d). All statements required shall be filed by January 31, by delivering or mailing them to the department. Form WT-7, "Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages," shall accompany the statements submitted, either on paper or, on magnetic media or in other machine-readable form, or by electronic means prescribed by the department, if the employer is required to be registered to withhold Wisconsin income taxes from employees' wages.

Note to Revisor: Replace the note at the end of Tax 2.04(2)(d) with the following:

Note: Forms may be delivered in person to the department of revenue at 2135 Rimrock Road, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, Magnetic Media Coordinator, Room 232B, 2135 Rimrock Road, Madison, WI 53708-8906. Forms W-2 or 1099-R filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708-8920. Forms 9b or substitute forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8932, Madison, WI 53708-8932.

SECTION 8. Tax 2.04(2)(de), (dm), and (ds) are created to read:

Tax 2.04(2)(de). The department may require an employer registered or required to be registered to withhold Wisconsin income taxes from employees' wages to file its Form WT-7 by electronic means. The department shall notify the employer at least 90 days prior to the due date of the first Form WT-7 required to be filed by electronic means of the requirement to file by electronic means.

Tax 2.04(2)(dm). The secretary of revenue may waive the requirement for an employer to file by electronic means when the secretary determines that the requirement causes an undue hardship, if the employer does all of the following:

1. Requests the waiver in writing.

Note: Written requests should be addressed to Wisconsin Department of Revenue, Secretary's Office, Mail Stop 3-258, PO Box 8903, Madison WI 53708-8903

2. Clearly indicates why the requirement causes an undue hardship.

Tax 2.04(2)(ds). In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the employer from filing by electronic means.

Example: The employer does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note to Revisor: 1) Replace the note at the end of Tax 2.04(2)(e) with the following:

Note: Written requests for extensions may be mailed to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison, WI 53708-8902.

2) Replace the note at the end of Tax 2.04(3)(b) with the following:

Note: Forms may be delivered in person to the department of revenue at 2135 Rimrock Road, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, Magnetic Media Coordinator, Room 232B, 2135 Rimrock Road, Madison, WI 53708-8906. Forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8932, Madison, WI 53708-8932.

3) Replace the note at the end of Tax 2.04(4)(d) with the following:

Note: Forms W-2G or substitute forms may be delivered in person to the department of revenue at 2135 Rimrock Road, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, Magnetic Media Coordinator, Room 232B, 2135 Rimrock Road, Madison, WI 53708-8906. Forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708-8920.

SECTION 9. Tax 2.04(8) is created to read:

Tax 2.04(8). ELECTRONIC FILING REQUIREMENT FOR TAXES WITHHELD BY PASS-THROUGH ENTITIES. (a) Except as provided in par. (b), the department may require a pass-through entity to file its return for nonresident withholding taxes under s. 71.775, Stats., by electronic means.

(b) The secretary of revenue may waive the requirement to file by electronic means when the secretary determines that the requirement causes an undue hardship, if the pass-through entity does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to Wisconsin Department of Revenue, Secretary's Office, Mail Stop 3-258, PO Box 8903, Madison WI 53708-8903.

2. Clearly indicates why the requirement causes an undue hardship.

(c) In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the pass-through entity from filing by electronic means.

Example: The pass-through entity does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note to Revisor: 1) Move the last three notes at the end of Tax 2.04(7) to the end of Tax 2.04(8).

- 2) Replace the last note at the end of Tax 2.04(8) with the following:

Note: Section Tax 2.04 interprets ss. 71.26 (3) (e), 71.63 (3m), 71.65 (2), 71.67 (4) and (5), 71.70, 71.71 (2), 71.72, 71.738 (2), 71.74 (4) and 71.80 (20), Stats.

The rules contained in this order 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.

Final Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Michael L. Morgan
Secretary of Revenue

E:Rules/112 (204) Final Order