

Clearinghouse Rule 21-085

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING, RENUMBERING AND AMENDING, AMENDING, AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 1.11 (3) (f) 2. c. and (4) (b), 2.07 (2) (d) and (e) (Note), 2.105 (6) (b) and (Example), 2.12 (5) (b), 2.88 (5) (Note 2) and (Note 3), 2.956, 2.98 (2) (b) (Note 1), (Note 2), and (Note 3), 3.096 (3) (Note 1) and (Note 2), 4.001 (2) (b), 7.001 (2) (b), 8.001 (2) (b), 9.001 (2) (b), and 14.05 (8) (b) (Example); **renumber and amend** Tax 1.11 (3) (d) 2.; **amend** Tax 1.10 (title), 1.11 (2), (3) (g) 1., (4) (c), and (5) (b), 1.13 (1) (b), 2.04 (2) (intro), 2.10 (1), 2.105 (4) (a) 1. f. (Note), (5) (c) 4. (Example 1) and (Example 2), and (6) (a) (Example), 2.12 (4) (b) 2. (Example 1), (Example 2), and (Example 3) and 3. a. (Example 1), (Example 2), (Example 3), (Example 4), and (Example 5) and (5) (a) and (c), 2.89 (8) (b) 3. (Note), 2.955 (5) (Example), 4.001 (2) (a) (intro), 4.75 (3) (a) 2. and (Note), 7.001 (2) (a) (intro), 7.01 (1), 7.21, 8.001 (2) (a) (intro), 8.22 (2) and (3), 9.001 (2) (a) (intro), 14.01 (5) (a) 2. (Example) and (b) (Example) and (7) (b) (Example), 14.02 (9) (Example), and 14.04 (3) (e) (Example); and **create** Tax 1.11 (3) (d) 2. and a., 3., 4., and 5.; **relating to** income and franchise tax provisions.

The scope statement for this rule, SS 097-19, was approved by the Governor on October 3, 2019, published in Register No. 766A1 on October 7, 2019, and approved by the Secretary of Revenue on October 29, 2019.

Analysis by the Department of Revenue

Statutes interpreted:

Tax 1.10 – s. 71.65 (3) (a), Stats.

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), 134.98, 139.11 (4), 139.38 (6) and 139.82 (6), Stats.

Tax 1.13 – ss. 71.78 (4) (e), 71.255 (7) (b), 72.06, 77.61 (5) (b) 5. a., 77.76 (3), 78.80 (3), 139.11 (4), 139.38 (6) and 139.82 (6), Stats.

Tax 2.04 – ss. 71.26 (3) (e), 71.63 (3m), 71.65 (2), 71.67 (4) and (5), 71.70, 71.71 (2), 71.715 (2), 71.72, 71.738 (2m), 71.74 (4) and 71.80 (20), Stats.

Tax 2.07 – ss. 71.07 (9e) and 73.03 (48), Stats.

Tax 2.10 – ss. 71.03 (5) and 71.20 (1), 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 2.12 – 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 2.88 – ss. 71.03 (7), 71.24 (7), 71.44 (3), 71.82 (1) and (2) (a) and 71.90 (1), Stats.

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

Tax 2.955 – s. 71.07 (7), Stats.

Tax 2.956 – ss. 71.07 (9m) and (9r), 71.28 (6) and 71.47 (5) and (6), Stats.

Tax 2.98 – ss. 71.01 (6), 71.22 (4), and 71.255 (7) (b) Stats.

Tax 3.096 – s. 71.05 (6) (b) 1., Stats.

Tax 4.001 – ss. 78.005 (6m), 78.39 (4m), and 78.55 (2r), Stats.

Tax 4.75 – s. 78.12 (5), Stats.

Tax 7.001 – s. 139.01 (2r), Stats.

Tax 7.01 – ss. 125.30, 125.33 (9), and 139.11 (1) and (4), Stats.

Tax 7.21 – s. 125.32 (7), Stats.

Tax 8.001 – s. 139.01 (2r), Stats.

Tax 8.22 – ss. 125.52 (1), 125.54 (1), 125.53, and 139.11 (4), Stats.

Tax 9.001 – ss. 139.30 (4m) and 139.75 (4m), Stats.

Tax 14.01 – ss. 71.03 (6m), 71.51 to 71.55, 71.74 (8) (a), 71.75 (2) and (7), 71.77 (2) and 71.82 (1) (c), Stats.

Tax 14.02 – ss. 71.52 (1), (2) and (7), 71.53 (1) (b) and (c) and (2) (d) and 71.58 (1) (b), Stats.

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), 71.80 (1) (c), 77.65 (3), 78.79, 125.03 (1), 125.54 (7) (d), 139.08 (2), 139.39 (1), and 227.11 (2), Stats.

Explanation of agency authority: Under 70.375 (2) (b), Stats., the secretary may promulgate any rules necessary to implement the tax under ss. 70.37 to 70.39 and 70.395 (1e). This provision applies to the revisions of s. Tax 1.11.

Under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes.

Section 77.65 (3), Stats., provides "[t]he department may promulgate rules to administer this section..." This provision applies to the revisions of s. Tax 1.11.

Under s. 78.79, Stats., the department may promulgate reasonable rules relating to the administration and enforcement of chapter 78 of the Wisconsin Statutes, relating to vehicle and general aviation fuel taxes. This provision applies to the revisions of ss. Tax 4.001 and 4.75.

Under s. 125.03 (1), Stats., the department may promulgate rules consistent with chapters 125 and 139 of the Wisconsin Statutes, relating to alcohol beverages regulation and beverage,

controlled substances, and tobacco taxes, and to provide for registration of wine collectors and establishing standards of eligibility for registration as a wine collector. This provision applies to the revisions of ss. Tax 7.001, 7.01, 7.11, 7.21, 8.001, 8.22, 8.63, and 9.001.

Under s. 125.54 (7) (d), Stats., the department shall promulgate rules to administer and enforce the requirements relating to wholesalers' permits.

Under s. 139.08(2), Stats., the secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter.

Under s. 139.39, (1), Stats., the department shall adopt rules necessary to administer and enforce its duties.

Section 227.11 (2), Stats., provides 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..."
- (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 statute or rule: There are no other applicable statutes or rules.

Plain language analysis: Upon review of the administrative code, as it relates to income, franchise, and excise taxes for purposes of the JCRAR report submitted on March 26, 2019, the following sections were identified as needing updating or repeal:

a. Tax 1

- Section Tax 1.10: Replace "special fuel tax" with "alternate fuels tax" as a result of 1993 Wis. Act 16
- Section Tax 1.11
 - Replace "special fuel tax" with "alternate fuels tax" as a result of 1993 Wis. Act 13
 - Add other situations in which district attorneys may examine returns as specified in ss. 71.78 (8) and 77.61(5)(f), Stats.
 - Add language for situations in which tax return information is ordered to be produced in open court as specified in ss. 71.78(4)(f) and 77.61(5)(b)6., Stats.
 - Remove reference to older tax years
 - Update to address other situations relating to producing records as provided in s. 71.78 (4) (f), Stats.
 - Repeal section relating to commissioner of insurance, as a result of 2013 Wis. Act 20, as it no longer applies
 - Remove limitation of access to sales and use tax returns as access to these returns is allowed under sec. 77.61 (5) (b) 8., Stats.
 - Remove statement relating to open inspection by the public as this information may contain personally identifiable information, such as SSN, etc.
- Section Tax 1.13: Replace "special fuel" with "alternate fuels" as a result of 1993 Wis. Act 13

b. Tax 2

- Section Tax 2.04 (2): Add reference to s. 71.715 (2), Stats. per 2017 Wis. Act 59
 - Section Tax 2.07
 - Remove mailing camera-ready copies of the earned income tax credit informational flyers to large Wisconsin employers as the department no longer performs this activity
 - Remove obsolete toll-free telephone information
 - Section Tax 2.10: Remove reference to obsolete forms
 - Section Tax 2.105
 - Update \$10,000 deficiency amount to \$50,000 relating to decisions in unappealable cases heard by the U.S. tax court pursuant to 26 USC 7463 and Public Law 105-206
 - Update old tax years
 - Repeal section Tax 2.105 (6) (b) relating to 1986 and prior taxable years as this is no longer needed
 - Section Tax 2.12
 - Update old tax years
 - Remove reference to obsolete forms
 - Section Tax 2.88: Remove reference to old tax years as they no longer apply
 - Section Tax 2.89: Remove reference to obsolete form
 - Section Tax 2.955: Update old tax years
 - Section Tax 2.956: Repeal section as it only applied for the initial applicability of projects begun after December 31, 1988
 - Section Tax 2.98: Repeal old tax years as they no longer apply
- c. Tax 3**
- Section Tax 3.096: Repeal old tax years as they no longer apply
- d. Tax 4**
- Section Tax 4.001: Update to reflect that all returns are electronically filed
 - Section Tax 4.75: Replace reference to fax with excise email address and customer service phone number
- e. Tax 7**
- Section Tax 7.001: Update to reflect that all returns are electronically filed
 - Section Tax 7.01: Update to reflect permits are posted online
 - Section Tax 7.21: Update reference to federal regulations
- f. Tax 8**
- Section Tax 8.001: Update to reflect that all returns are electronically filed
 - Section Tax 8.22: Update to reflect permits are posted online
- g. Tax 9**
- Section Tax 9.001: Update to reflect that all returns are electronically filed
- h. Tax 14**
- Section Tax 14.01: Update old tax years
 - Section Tax 14.02: Update old tax years
 - Section Tax 14.04: Update old tax years
 - Section Tax 14.05: Repeal example which is incorrectly listed under exempt housing (applies to non-arm's length rental transactions)

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: Upon review of the administrative code, as it relates to income, franchise, and excise taxes for purposes of the JCRAR report submitted on March 26, 2019, certain sections were identified as needing updating or repeal. No other data was used in the preparation of this proposed rule order or this analysis.

Analysis and supporting documents used to determine effect on small business: This rule order makes changes to reflect current law and current department policy. It makes no policy or other changes having an effect on small business.

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

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

Agency contact person: Please contact Jen Chadwick at (608) 266-8253 or jennifer.chadwick@wisconsin.gov, if you have any questions regarding this proposed 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 the date on which the public hearing on this proposed 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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SECTION 1. Tax 1.10 (title) is amended to read:

Tax 1.10 Depository bank requirements for estimated tax vouchers, sales and use tax returns, and withholding, motor fuel, general aviation fuel and ~~special fuel~~ alternate fuels tax deposit reports.

SECTION 2. Tax 1.11 (2) is amended to read:

Tax 1.11 (2) GENERAL. The provisions of 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., apply to the examination of mining net proceeds, income, franchise, fiduciary, partnership, estate, sales and use, county sales and use, withholding, motor fuel, general aviation fuel, ~~special fuel~~ alternate fuels, fermented malt beverage, distilled spirits and wine, cigarette and tobacco product tax

returns and tax credit claims. No person may examine or receive information from a tax return or tax credit claim unless specifically authorized to do so by the appropriate statute.

SECTION 3. Tax 1.11 (3) (d) 2. is renumbered Tax 1.11 (3) (d) 2. b. and amended to read:

Tax 1.11 (3) (d) 2. b. The department may allow the examination of information requested and the information may be examined and used solely for the proceeding or investigation for which it is requested if a district attorney requests examination of a tax or tax credit information relating to a person, the district attorney specifies in writing the purpose for each requested examination, identifies the requestor, and the person to whom the information relates, the statutory or other authority showing the duties of the office, and the relation of the purpose to the duties of the office.

SECTION 4. Tax 1.11 (3) (d) 2. and a. are created to read:

Tax 1.11 (3) (d) 2. If the department allows examination of information under subd. 1. then all of the following apply:

a. The department may make disclosure on its own motion if the department has referred the case to a district attorney.

SECTION 5. Tax 1.11 (3) (d) 3., 4., and 5. are created to read:

Tax 1.11 (3) (d) 3. Such information may be examined for use in preparation for any administrative or judicial proceeding or an investigation which may result in such proceeding pertaining to the enforcement of a specifically designated state criminal statute not involving tax administration to which this state or a governmental subdivision thereof is a party. Such information may be used solely for the proceeding or investigation for which it is requested.

4. If a district attorney petitions a court of record in this state for an order allowing the examination and the court issues an order after finding all of the following, the department may allow an examination of information under subd. 3:

a. There is reasonable cause to believe, based on information believed to be reliable, that a specific criminal act has been committed;

b. There is reason to believe that such information is probative evidence of a matter in issue related to the commission of the criminal act; and

c. The information sought to be examined cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the information constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

5. The department may deny access and shall certify the reason therefor to the court if the department determines the examination of information under subd. 4. would identify a confidential informant or seriously impair a civil or criminal tax investigation.

SECTION 6. Tax 1.11 (3) (f) 2. c. is repealed.

SECTION 7. Tax 1.11 (3) (g) 1. is amended to read:

1. The person serves a copy of the court order signed by a judge of a court of record on the custodian of files to produce a return or claim in open court in a court action pending before the judge.

SECTION 8. Tax 1.11 (4) (b) is repealed.

SECTION 9. Tax 1.11 (4) (c) and (5) (b) are amended to read:

Tax 1.11 (4) (c) *Legislative fiscal bureau*. Employees of the legislative fiscal bureau, to the extent the department deems the examination necessary to perform their duties under contracts or agreements between the department of revenue and the legislative fiscal bureau relating to the review and analysis of tax policy and state revenue collections, may examine tax returns under the provisions specified in sub. (2), ~~except state and county sales and use tax returns.~~

(5) (b) The information required to be submitted to the department under sub. (5) (a) shall be submitted on forms provided by the department ~~and shall be open to inspection by the public for a period of 2 years from the date the information is filed with the department. If a public officer, the attorney general or a district attorney responsible for enforcement of the criminal laws, in the statement required under sub. (3), declares that a return is being examined for the purpose of a criminal investigation, the department shall accept that declaration as prima facie evidence of the fact that making the knowledge public would result in harm to the public interest which outweighs any benefit that would result from making it public, and the department shall not make the knowledge public for a period of 30 days from the date of filing the statement.~~

SECTION 10. Tax 1.13 (1) (b) is amended to read:

Tax 1.13 (b) The power of attorney requirement applies to income, franchise, alternative minimum, withholding, sales and use, county sales and use, estate, motor fuel, general aviation fuel, ~~special fuel~~ alternate fuels, fermented malt beverage, intoxicating liquor, cigarette and tobacco products tax matters of individuals, partnerships and corporations, including (S) corporations, and homestead and farmland preservation credit matters.

SECTION 11. Tax 2.04 (2) (intro) is amended to read:

Tax 2.04 (2) (intro) COMPENSATION FOR SERVICES. Under ss. 71.65 (2), 71.71 (2), 71.715 (2), 71.72 and 71.80 (20), Stats., all persons carrying on activities within this state, whether taxable or not under ch. 71, Stats., are required to file with the department, on federal form W-2 or 1099-R, or on Wisconsin form 9b or other forms approved by the department, a statement of certain payments made within the preceding calendar year. As provided in sub. (6), the department may require such statement be filed electronically. For individuals who are residents of Wisconsin, the statement shall set forth the salaries, wages, bonuses, commissions, annuities, pensions, retirement pay, fees, or other remuneration paid for services whether subject to withholding or not. For individuals who are nonresidents, the statement shall include all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, except retirement plan distributions identified in s. Tax 3.085 as being exempt from Wisconsin income tax. A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b. The following shall also apply with respect to compensation for services:

SECTION 12. Tax 2.07 (2) (d) and (e) (Note) are repealed.

SECTION 13. Tax 2.10 (1) is amended to read:

Tax 2.10 (1) INDIVIDUALS AND FIDUCIARIES. At the time of filing Wisconsin income tax returns by individuals and fiduciaries, a complete copy of the federal income tax return for the same taxable year, including all schedules, statements, documents and computations which affect the computation of Wisconsin income, credits or penalties, shall be included and filed with the Wisconsin return. ~~Copies of the short form federal returns 1040A and 1040EZ are not required to be filed if a Wisconsin form 1A or WI-Z is being filed for the same taxable year.~~ If the federal form is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designated by the electronic filer shall be included and filed with the Wisconsin return.

SECTION 14. Tax 2.105 (4) (a) 1. f. (Note), (5) (c) 4. (Example 1) and (Example 2), and (6) (a) (Example) are amended to read:

Tax 2.105 (4) (a) 1. f. **Note:** Decisions of the U.S. tax court and other courts ordinarily become final as follows:

a. If no appeal is made of a U.S. tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable cases involving deficiencies of ~~\$10,000~~ \$50,000 or less heard by the U.S. tax court under section 7463 of the Internal Revenue Code become final 90 days after they are entered.

b. Appealed decisions of the U.S. tax court become final as set forth in section 7481 of the Internal Revenue Code.

c. A decision of a U.S. district court normally becomes final if not appealed to the U.S. court of appeals within 60 days of the judgment, decree or order.

d. A decision of the U.S. court of claims or the U.S. court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the U.S. supreme court within 90 days of the judgment or decree.

e. A decision of the U.S. supreme court is normally final upon the expiration of a period of 25 days from the date the decision is rendered, if a motion for reconsideration or rehearing is not filed within that time.

(5) (c) 4. **Examples:** 1) Federal adjustments were made to an individual's ~~1989~~ 2013 calendar-year basis federal income tax return; the adjustments became final on June 1, ~~1994~~ 2018. On August 15, ~~1994~~ 2018, within 90 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 ~~1989~~ 2013 Wisconsin return expired on April 15, ~~1994~~ 2018, the department had until November 13, ~~1994~~ 2018, 90 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 ~~1993~~ 2015 calendar-year basis New York return on June 1, ~~1994~~ 2016. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 12, ~~1994~~ 2016. Under the 4-year assessment period in s. 71.77 (2), Stats., the department has 4 years from April 15, ~~1994~~ 2016, the due date of the ~~1993~~ 2015 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(6) (a) **Example:** An individual taxpayer filed a ~~1993~~ 2015 calendar-year basis Wisconsin income tax return on April 15, ~~1994~~ 2016. The internal revenue service made adjustments to the ~~1993~~ 2015 federal income tax return which the taxpayer did not report to the department within 90 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, ~~1996~~ 2018. The department may issue an assessment for the adjustments any time on or before May 1, ~~2000~~ 2022.

SECTION 15. Tax 2.105 (6) (b) and (Example) are repealed.

SECTION 16. Tax 2.12 (4) (b) 2. (Example 1), (Example 2), and (Example 3), 3. a. (Example 1), (Example 2), (Example 3), (Example 4), and (Example 5), and (5) (a) are amended to read:

Tax 2.12 (4) (b) 2. **Examples:** 1) Taxpayer A files an amended ~~2000~~ 2016 return to claim additional business expenses. The department allows only a portion of the claimed additional expenses, based on a difference in interpretation of the law. A notice of refund is issued March 1, ~~2003~~ 2019. The taxpayer does not file a petition for redetermination. In December ~~2003~~ 2019, the taxpayer files another amended return claiming the same additional business deductions as

those disallowed in the prior notice of refund. The taxpayer is not entitled to a refund on the claim for refund. The March 1, ~~2003~~ 2019, notice of refund is final.

2) Taxpayer B files an amended ~~2000~~ 2016 return to claim additional business expenses. The department disallows a portion of the claimed additional expenses, due to lack of substantiation of the expenses as requested in a letter to the taxpayer. A notice of refund is issued March 1, ~~2003~~ 2019. The taxpayer does not file a petition for redetermination. In December ~~2003~~ 2019, the taxpayer submits adequate substantiation to support the full deduction. The deduction is not allowed and no additional refund will be issued. Since no petition for redetermination was filed for the March 1, ~~2003~~ 2019, notice of refund, that notice is final.

3) Taxpayer C files a timely ~~1998~~ 2017 return claiming a refund of earned income credit and excess income tax withheld. During the processing of the return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. The taxpayer does not respond to the request for additional information. A notice of refund is issued in July ~~1999~~ 2018, to refund the excess income tax withheld only. The taxpayer does not file a petition for redetermination. The taxpayer files a timely ~~1999~~ 2018 return claiming a refund of earned income credit and excess income tax withheld. During the processing of this return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. This letter requests the same information that was requested for the processing of the ~~1998~~ 2017 return. The taxpayer submits the additional information needed for both the ~~1998~~ 2017 and ~~1999~~ 2018 returns. Since the taxpayer did not submit a petition for redetermination for the ~~1998~~ 2017 notice of refund, that notice is final. A notice of refund for the earned income credit is issued for ~~1999~~ 2018 only.

3. a. **Examples:** 1) Taxpayer D files a timely ~~2000~~ 2015 return. The department completes an office audit of this return by issuing a notice of refund dated March 30, ~~2005~~ 2020. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer E files timely ~~2000~~ 2015 and ~~2004~~ 2016 returns. The department completes an audit of the returns and issues a notice of refund dated March 30, ~~2005~~ 2020. The notice of refund allows an additional itemized deduction credit for each year but also disallows a portion of the claimed business expenses for each year, with the net result being a refund for each year. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

3) Taxpayer F files a timely ~~2000~~ 2010 return on April 15, ~~2004~~ 2011. The department completes an office audit of this return by issuing a notice of additional tax due dated March 30, ~~2005~~ 2015. The notice of additional tax due allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, ~~2009~~ 2019, to file a claim for refund for the disallowed business expenses.

4) Taxpayer G files timely ~~2000~~ 2010 and ~~2004~~ 2011 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, ~~2005~~ 2015. The notice of refund allows an additional itemized deduction credit resulting in a refund for ~~2000~~ 2010 and disallows a portion of the claimed business expenses for an assessment for ~~2004~~ 2011, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, ~~2009~~ 2019, to file a claim for refund for the disallowed business expenses for the year ~~2004~~ 2011.

5) Taxpayer H files timely ~~2000~~ 2010 and ~~2004~~ 2011 returns. The department completes an office audit of these returns by issuing a notice of additional tax due dated March 30, ~~2005~~ 2015. The notice of additional tax due allows an additional itemized deduction credit resulting in

a refund for ~~2000~~ 2010 and disallows a portion of the claimed business expenses resulting in an assessment for ~~2004~~ 2011, with the net result being an assessment for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, ~~2009~~ 2019, to file a claim for refund for the disallowed business expenses for the year ~~2004~~ 2011.

(5) (a) Beginning on or after January 1, 2015, except as provided in par. ~~(b)~~ or (c), a claim for refund shall be filed on the same form as the original form, in the manner prescribed in sub. (6).

SECTION 17. Tax 2.12 (5) (b) is repealed.

SECTION 18. Tax 2.12 (5) (c) is amended to read:

Tax 2.12 (5) (c) The department may prescribe a special form for taxpayers to use in claiming a refund, to address a specific tax issue. In this situation, the special form may be used in lieu of the amended form prescribed in par. (a) ~~or (b)~~.

SECTION 19. Tax 2.88 (5) (Note 2) and (Note 3) are repealed.

SECTION 20. Tax 2.89 (8) (b) 3. (Note) is amended to read:

Tax 2.89 (8) (b) 3. **Note:** After the end of the taxable year, persons other than corporations shall use ~~schedule~~ Schedule U and corporations shall use ~~form 4U~~ Form U to determine whether they have made sufficient estimated tax payments. Taxpayers with short taxable years shall adjust the computations on those forms as provided in this section.

SECTION 21. Tax 2.955 (5) (Example) is amended to read:

Tax 2.955 (5) **Example:** A Wisconsin resident receives income of \$4,000 in ~~2016~~ 2018 from rental property located in Iowa. The person files a ~~2016~~ 2018 declaration of estimated tax of \$200 with Iowa, with \$150 of estimated tax payments being made in ~~2016~~ 2018 and the fourth quarter payment of \$50 being made in January ~~2017~~ 2019. The Iowa income of \$4,000 is reported as income on the ~~2016~~ 2018 Iowa and Wisconsin returns. The ~~1992~~ 2018 Iowa income tax return shows the following:

2016 <u>2018</u> Iowa	
Return	
Iowa Rental Income	<u>\$4,000</u>
Iowa Net Tax	\$ 185
Estimated Tax	<u>200</u>
Payments	
Refund	\$ <u>15</u>

The taxpayer may claim a credit for net income tax paid to other states of \$185 on the ~~2016~~ 2018 Wisconsin return, even though a part of the tax was paid in ~~2017~~ 2019.

SECTION 22. Tax 2.956 is repealed.

SECTION 23. Tax 2.98 (2) (b) (Note 1), (Note 2), and (Note 3) are repealed.

SECTION 24. Tax 3.096 (3) (Note 1) and (Note 2) are repealed.

SECTION 25. Tax 4.001 (2) (a) (intro) is amended to read:

Tax 4.001 (2) (a) (intro) Forms filed with the department shall be submitted as prescribed by the department or by one of the following means:

SECTION 26. Tax 4.001 (2) (b) is repealed.

SECTION 27. Tax 4.75 (3) (a) 2. and (Note) is amended to read:

Tax 4.75 (3) (a) 2. Name of any wholesaler distributor who fails to make timely delayed tax payments. The supplier shall notify the department via ~~facsimile, or FAX, transmittal email or phone~~ within 5 days after the due date of the tax to the department.

Note: The ~~FAX number~~ email address or phone by which to notify the department is ~~(608) 267-0834~~ DORExciseTaxpayerAssistance@wisconsin.gov or (608) 266-6701.

SECTION 28. Tax 7.001 (2) (a) (intro) is amended to read:

Tax 7.001 (2) (a) (intro) Forms filed with the department shall be submitted as prescribed by the department or by one of the following means:

SECTION 29. Tax 7.001 (2) (b) is repealed.

SECTION 30. Tax 7.01 (1) is amended to read:

Tax 7.01 (1) Wisconsin wholesalers properly registered and licensed may purchase and receive fermented malt beverages only from registered Wisconsin breweries and wholesalers or from out-of-state firms holding a fermented malt beverage permit. ~~Wisconsin breweries and wholesalers will upon request be furnished with a~~ A list of out-of-state firms having a permit to ship into Wisconsin is available at revenue.wi.gov/Pages/ISE/excise.aspx.

SECTION 31. Tax 7.21 is amended to read:

Tax 7.21 **Labeling.** All fermented malt beverages sold in this state shall be labeled in accordance with federal ~~regulation No. 7, now in effect or as subsequently amended, relating to the labeling and advertising of malt beverages, issued under the federal alcohol administration act regulations.~~

SECTION 32. Tax 8.001 (2) (a) (intro) is amended to read:

Tax 8.001 (2) (a) (intro) Forms filed with the department shall be submitted as prescribed by the department or by one of the following means:

SECTION 33. Tax 8.001 (2) (b) is repealed.

SECTION 34. Tax 8.22 (2) and (3) are amended to read:

Tax 8.22 (2) ~~Upon request, the department will furnish Wisconsin manufacturers, rectifiers, wholesalers and wineries with a~~ A list of out-of-state permittees duly licensed to ship intoxicating liquor into the state is available at revenue.wi.gov/Pages/ISE/excise.aspx.

Purchases may be made and shipments received only from the permittees included on the lists.

(3) ~~Upon request, the department will furnish out-of-state permittees with a~~ A list of Wisconsin manufacturers, rectifiers, wholesalers, wineries and other permittees to whom sales

and shipments of intoxicating liquor may be made is available at revenue.wi.gov/Pages/ISE/excise.aspx.

SECTION 35. Tax 9.001 (2) (a) (intro) is amended to read:

Tax 9.001 (2) (a) Forms filed with the department shall be submitted as prescribed by the department or by one of the following means:

SECTION 36. Tax 9.001 (2) (b) is repealed.

SECTION 37. Tax 14.01 (5) (a) 2. (Example) and (b) (Example) and (7) (b) (Example) are amended to read:

Tax 14.01 (5) (a) 2. **Example:** A ~~1998~~ 2018 homestead credit claim filed for the calendar year ending December 31, ~~1998~~ 2018, must be filed by April 15, ~~2003~~ 2023.

(b) **Example:** Claimant A, who filed a ~~1994~~ 2015 homestead credit claim on May 1, ~~1996~~ 2017, wishes to file an amended ~~1994~~ 2015 claim. The amended claim may be filed any time on or before April 15, ~~2003~~ 2024, since the deadline for filing the original ~~1994~~ 2015 claim was April 15, ~~1999~~ 2020.

(7) (b) **Example:** Claimant A timely files a ~~1995~~ 2013 claim for homestead credit and receives a homestead credit of \$500. On November 1, ~~2004~~ 2019, Claimant A files an amended ~~1995~~ 2013 claim for homestead credit claiming a revised ~~1995~~ 2013 credit of \$700. Upon review of the file, the department determines that Claimant A's correct homestead credit for ~~1995~~ 2013 is \$300 rather than the \$500 allowed on the original claim or the \$700 claimed on the amended claim.

Since the amended ~~1995~~ 2013 homestead credit claim will be acted on after April 15, ~~2000~~ 2018, the last date for adjusting an original ~~1995~~ 2013 claim, the department must act on the amended claim by November 1, ~~2002~~ 2020. Prior to that date the department may notify Claimant A that no additional credit is allowable for ~~1995~~ 2013. However, the \$200 of excessive credit allowed on the original claim, the difference between the \$500 allowed and the correct credit of \$300, may not be recovered by the department.

SECTION 38. Tax 14.02 (9) (Example) is amended to read:

Tax 14.02 (9) **Example:** A ~~1997~~ 2017 homestead credit claim filed after the withdrawal of a ~~1997~~ 2017 farmland preservation credit claim must be filed on or before April 15, ~~2002~~ 2022.

SECTION 39. Tax 14.04 (3) (e) (Example) is amended to read:

Tax 14.04 (3) (e) **Example:** A claimant moves on July 1, ~~1997~~ 2017, from the homestead she owns to an apartment that is exempt from property taxes. She has listed her former homestead for sale with a realtor. While continuing to reside in the apartment, she sells the former homestead; the date on the closing agreement is May 31, ~~1998~~ 2018. The property taxes accrued on the former homestead are \$2,400 for ~~1997~~ 2017 and the prorated property taxes on the closing agreement are \$1,000.

The claimant may file a ~~1997~~ 2017 homestead credit claim, based on the ~~1997~~ 2017 property taxes accrued of \$2,400 for the entire year. She may also file a ~~1998~~ 2018 claim, based on the property taxes accrued of \$1,000, prorated from January 1, ~~1998~~ 2018, to the date of the sale.

SECTION 40. Tax 14.05 (8) (b) (Example) is repealed.

SECTION 41. EFFECTIVE DATE; GENERAL. 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.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Peter W. Barca
Secretary of Revenue

E:Rules/171 – Biennial Review – Tax 1, 2, 3, 4, 7, 8, 9, 14 Update – SS 097-19/Tax 1,2,3,4,7,8,9,14 Update
Proposed Order