

Report From Agency
DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 22-017
SECTION 227.19(2) AND (3), STATS., REPORT

1. Basis and Purpose of the Proposed Rule

The objective of the rule is to provide guidance for marketplace providers, sales agents, brokers, consignors and others facilitating sales of products subject to Wisconsin sales or use tax on behalf of sellers consistent with provisions in 2019 Wisconsin Act 10.

2. Comments and Responses

A public hearing was held on April 1, 2022. No one appeared offering testimony at the hearing.

No public comments to the proposed rule order were received.

3. Legislative Council Staff Recommendations

Legislative Council suggested that DOR consider the following:

Form, Style and Placement in Administrative Code

1. **Comment 1:** In the enumeration of provisions treated by the proposed rule, when identifying renumbered provisions, it is unnecessary to include the citation to which a provision is renumbered.

DOR's Response to Comment 1: This change was made.

2. **Comment 2:** What is the department's intent regarding the notes following ss. Tax 11.55 and 11.88 (6), as repealed and recreated? Generally, notes do not have the force of law; however, the added references to 2019 Wisconsin Act 10 in these particular Notes could be construed as a retroactive effective date or initial applicability provision, in conflict with SECTION 6 of the proposed rule. If the department intends those retroactive effects, the rule should be revised, considering s. 1.03 (3) and (4) of the Manual, and a detailed explanation of the department's authority to apply the provisions in a retroactive manner should be provided.

DOR's Response to Comment 2: The intent of the notes are to inform the reader of historical changes in tax treatment as a result of law changes. The notes following ss. Tax 11.55 and 11.88 were revised to provide the effective

date of 2019 Wis. Act 10 to avoid confusion relating to the effective date of the rule.

3. **Comment 3:** In s. Tax 11.55 (1) (b) 1., it appears the reference to “subd. 4.” should instead be to “sub. (4)”. Similarly, in s. Tax 11.55 (1) (e), it appears the reference to “subd. (d) (1) and (2)” should be to “par. (d) 1. and 2.”.

DOR's Response to Comment 3: These changes were made.

4. **Comment 4:** Based on these changes proposed in SECTIONS 1 to 3, it is not clear to the reader via the plain language analysis or renumbered provisions themselves why the *Enforcement of Liens* provision, s. Tax 11.55 (3), should be placed under the *Credit Sales* provision, s. Tax 11.30 (1). Please review this placement to make sure it fits the department's intent and revise the plain language analysis to provide detail as to why this renumbering is appropriate. Similar explanation should be considered regarding the proposed renumbering of s. Tax 11.55 (4). Relatedly, for clarity, the department may wish to review the numbering conventions used by the proposed rule. Why is it preferable to repeal and recreate s. Tax 11.55 to implement the marketplace provider provisions rather than repealing s. Tax 11.55 (1) and (2), renumbering or otherwise retaining s. Tax 11.55 (3) and (4), and creating a new provision, s. Tax 11.555 or 11.58, for example, to implement the marketplace provider provisions?

DOR's Response to Comment 4: These changes were made. Section Tax 11.55(1) & (2) were repealed and recreated in s. Tax 11.555 and no changes were made to s. Tax 11.30.

5. **Comment 5:** Related to comment d. above, use of titles throughout s. Tax 11.30 (1) (c), as renumbered, should be reviewed for clarity and consistency. Currently, as renumbered, it appears s. Tax 11.30 (1) (c) 1. and 2. will share the same title. The department may also consider revising the title of s. Tax 11.30 (1), in order to encompass all of the content that follows in this subsection. [See. s. 1.10 (2) (a), Manual.]

DOR's Response to Comment 5: See DOR's response to comment 4. No changes were made to s. Tax 11.30.

4. Regulatory Flexibility Analysis

The proposed rule order does not affect small businesses, as it only reflects changes made by law and current administrative practices.