

Report From Agency
DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 22-044
SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

Upon review of the administrative code, various sections were identified as needing updating, as it relates to income, franchise, excise, sales, and use taxes for purposes of the JCRAR report submitted on March 31, 2021.

Public Hearing

A public hearing was held on July 22, 2022. No one appeared offering testimony at the hearing.

No public comments to the proposed rule order were received.

Legislative Council Staff Recommendations

Legislative Council suggested that DOR consider the following:

1. *Statutory Authority*

Section 71.07 (3N) (g), Stats., permits the Dairy and Livestock Farm Investment Credit to be carried forward to taxable years that begin after December 31, 2013. Are there any credits remaining from prior years that may still be claimed in the current or in future years that should be exhausted prior to the repeal of s. Tax 2.99?

DOR's response – Yes, there are credits remaining from taxable years prior to January 1, 2014, that are being carried forward and may still be claimed on current and future tax returns. The repeal of sec. Tax [2.99](#), Wis. Adm. Code, has no impact on dairy and livestock farm investment credit carryforwards because the Administrative Code relates to computing the initial credit, which was required to be done prior to January 1, 2014.

2. *Form, Style, and Placement in Administrative Code*

- a. Consider inserting a heading for “Text of Rule” at the beginning of the text of the proposed changes, similar to the heading for the “Analysis by the Department of Revenue”.

DOR's Response – This change was made.

- b. SECTION 6 of the proposed rule should be separated into two SECTIONS, as follows:

- (1) To renumber and amend s. Tax 2.67 (2) (c) 4. to s. Tax 2.67 (2) (c) 4. (intro.).
(2) To create s. Tax 2.67 (2) (c) 4. a. to k.

DOR's Response – These changes were made.

- c. In SECTION 26 of the proposed rule, the treatment clause should be revised to renumber and amend s. Tax 11.63 (2) (c) (intro.) to s. Tax 11.63 (2) (c). Also, in the text of the proposed changes, the stricken phrase “the retailer of the merchandise” should be moved to appear before the underscored phrase “a marketplace provider”.

DOR's Response – These changes were made.

- d. The rule caption's listing of provisions affected in the proposed rule should be updated to reflect any treatment changes made in response to these comments.

DOR's Response – These changes were made.

3. *Adequacy of References to Related Statutes, Rules, and Forms*

SECTION 11 of the proposed rule repeals the reference to paper forms that were provided by the department upon request. It appears that the forms are still available from DOR via the website at <https://www.revenue.wi.gov/DORForms/mf-207.pdf>. A note referencing the availability of the form on the website and link may assist those who file under this provision.

DOR's response – Form MF-207 is not filed with the Wisconsin Department of Revenue. Fuel suppliers and buyers must retain a copy of the executed MF-207 with their records. The rule was updated to reference where blank forms may be obtained via our website.

Regulatory Flexibility Analysis

The proposed rule will have an effect on small businesses, as defined under s. 227.114 (1).

1. Description of the types of small businesses that will be affected by the rule:
Suppliers and restricted suppliers of motor vehicle fuel who must obtain a motor vehicle fuel tax license.

"**Suppliers**" include persons who:

- Import, or acquire immediately upon import, gasoline or diesel fuel by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a terminal.

- Produce, manufacture, or refine gasoline or diesel fuel within Wisconsin.
- Acquire motor vehicle fuel pursuant to an industry terminal exchange agreement or by a two-party exchange under sec. 4105 of the Internal Revenue Code.
- Produce in Wisconsin or import into Wisconsin alcohol, alcohol derivative substances, biodiesel, or fuels derived from vegetable oils or animal fats.

Suppliers also include "**restricted suppliers**" who may only:

- Import motor vehicle fuel and/or other petroleum products into Wisconsin from an out-of-state bulk plant.
 - Remove motor vehicle fuel from a bulk plant in Wisconsin to a destination outside Wisconsin.
2. Description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule: Business will no longer be able to use certificates of deposit as a form of security when applying for a fuel tax license.
 3. Description of the types of professional skills necessary for compliance with the rule: No additional professional skills will be required to comply with the proposed rule.