

Clearinghouse Rule 07-091

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE AMENDING RULES

The Wisconsin Department of Revenue proposes an order to: **amend** Tax 2.505 (title) and (intro.), (1), (2), and (3) (intro.) and (d); **relating to** the computation of the apportionment fraction by multistate professional sports clubs.

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.04 (4) and 71.25 (6), Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: 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(s) or rule(s): ss. 71.04 (4m), (5), (6), and (7) and 71.25 (6m), (7), (8), and (9), Stats., and s. Tax 2.39.

Plain language analysis: This proposed rule order prescribes the method to be used for apportioning the apportionable income of interstate professional sports clubs.

Section 1. The phase-in of the single sales factor apportionment formula will apply to professional sports clubs.

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 does not have a special apportionment formula for interstate professional sports clubs. Their apportionment formula consists solely of a sales factor. Sales of services are attributed to the state where the income-producing activity occurred.
- Iowa does not have a special apportionment formula for interstate professional sports clubs. The apportionment formula consists solely of a sales factor. Sales of services are sourced where the benefit of the service is received.
- Michigan does not have a special apportionment formula for interstate professional sports clubs. The apportionment formula consists of a three-factor formula with sales weighted 90%, and property and payroll each weighted 5%. Sales of services are sourced where the income-producing activity occurred.
- Minnesota's apportionment formula for interstate professional sports clubs consists of a three-factor formula with sales weighted 75%, and property and payroll each weighted 12.5%. Sales of services are sourced where the benefit of the service is received, where the service was ordered, or where the service was billed, depending on the circumstances. All income from the operation of an athletic team when the

visiting team does not share in the gate receipts is assigned to the state in which the team's operation is based.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 37 changed the apportionment formula used by multistate businesses for determining the income taxable by Wisconsin. As a result of this legislation, single sales factor apportionment will be phased in for most businesses. The phase-in of single sales factor apportionment begins for taxable years beginning on January 1, 2006. 2005 Wisconsin Act 25 changed how gross receipts from services are sourced for purposes of the apportionment formula. Receipts from services are sourced where the benefit of the service is received. The change in the sourcing rules first applies to taxable years beginning January 1, 2005.

Analysis and supporting documents used to determine effect on small business: The department has determined that this proposed rule will not have a significant economic impact on a substantial number of small businesses. The department is not aware of any interstate professional sports clubs to which the rule will apply that meet the definition of a small business under s. 227.114(1), Stats.

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

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

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this proposed rule order.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order 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 2.505 (title) and (intro.), (1), (2), and (3) (intro.) and (d) are amended to read:

Tax 2.505 Apportionment of ~~net business~~ apportionable income of interstate professional sports clubs. The apportionable income of professional sports clubs engaged in ~~income-producing activities~~ business both inside and outside Wisconsin during the year shall be

apportioned to Wisconsin using ~~an~~ the apportionment fraction ~~composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined~~ described in s. 71.25 (6), Stats., and the apportionment formula computation described in s. 71.25 (6m), Stats., if applicable. The property, payroll, and sales factors described in s. 71.25 (6) and (6m), Stats., shall be determined as follows:

(1) PROPERTY FACTOR. The property factor is a fraction as defined in s. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), Stats., and s. Tax 2.39 ~~(3)~~ (4). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), Stats., and s. Tax 2.39 ~~(4)~~ (5). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) SALES FACTOR. The sales factor is a fraction as defined in s. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 ~~(5)~~ (6) and the following rules:

(d) *Player contracts, franchises, etc. and similar sources.* Income from player contract transactions, franchise fees, and other similar sources shall be excluded from the numerator and the denominator of the sales fraction.

Note: The provisions of s. Tax 2.505 first apply for taxable years beginning on January 1, 2005.

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.

Initial Regulatory Flexibility Analysis

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

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Roger M. Ervin
Secretary of Revenue

E:Rules/2505 Proposed Order