

## Clearinghouse Rule 14-077

### PROPOSED ORDER OF THE DEPARTMENT OF REVENUE AMENDING AND CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **amend** Tax 2.495 (4) (d) 1. and **create** Tax 2.495 (4) (d) 1m.; **relating to** the apportionment of Wisconsin apportionable income of interstate brokers-dealers, investment advisers, investment companies, and underwriters.

The scope statement for this rule, SS 117-14, was approved by the Governor on November 11, 2014, published in Register No. 707 on November 30, 2014, and approved by the Secretary of Revenue on December 10, 2014.

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#### *Analysis by the Department of Revenue*

**Statutes interpreted:** ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

**Statutory authority:** ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

**Explanation of agency authority:** Section 71.04(8)(c) and sec. 71.25(10)(c), Wis. Stats., requires the department to promulgate rules for apportioning income of specialized industries, specifically "The net business income of railroads, sleeping car companies, car line companies, pipeline companies, financial organizations, telecommunications companies, air carriers, and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state."

**Related statute or rule:** There are no other applicable statutes or rules.

**Plain language analysis:** This proposed rule revises the method of assigning gross receipts from the sale of "trading assets" to Wisconsin for purposes of computing the amount of income apportioned to Wisconsin for interstate brokers-dealers, investment advisers, investment companies, and underwriters. "Trading assets" includes securities, commodities, and related financial instruments that a financial institution acquires and holds for sale in its inventory account.

The current method of assigning gross receipts is based on the commercial domicile of the financial institution. The revised method proposed by this rule order is based on the billing address of the customer.

**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 (86 ILL. Adm. Code 100.3405) and Iowa (Rule 701-54.6(3)) address the method of assigning gross receipts of financial institutions in their rules. Illinois uses a method based on the commercial domicile of the financial institution. Iowa uses a method based on the billing address of the customer. Michigan (sec. 206.659, Mich. Stats.) and Minnesota (sec. 290.191(3), Minn. Stats.) address the method of assigning gross receipts of financial institutions in

their statutes. Both Michigan and Minnesota use a method based on the billing address of the customer.

**Summary of factual data and analytical methodologies:** The department evaluated other methods of assigning gross receipts from the sale of trading assets to Wisconsin for purposes of computing the amount of income apportioned to Wisconsin for interstate brokers-dealers, investment advisers, investment companies, and underwriters. The revised method proposed by this rule order is the result of that evaluation.

**Analysis and supporting documents used to determine effect on small business:** This rule order will only apply to financial institutions, brokers-dealers, investment advisers, investment companies, and underwriters that are required to use apportionment. Apportionment applies to financial institutions, brokers-dealers, investment advisers, investment companies, and underwriters that are large, multistate corporations. Therefore, this rule order does not affect small business.

**Anticipated costs incurred by private sector:** It is the department's intent that the revised method of assigning gross receipts from the sale of trading assets to Wisconsin for purposes of computing the amount of income taxable to Wisconsin will not have a significant economic impact on any interstate broker-dealer, investment adviser, investment company, or underwriter.

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

**Agency contact person:** Please contact Dale Kleven at (608) 266-8253 or [dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.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 2.495 (4) (d) 1. is amended to read:

Tax 2.495 (4) (d) 1. Except as provided in subd. 2., for taxable years beginning after December 31, 2005, and before January 1, 2015, the numerator of the receipts factor includes gross receipts, net of commissions, from sales of trading assets, if the day-to-day decisions regarding the trading assets occur at a location in this state. If the day-to-day decisions regarding the trading assets occur at locations both in and outside this state, the assets shall be considered to be located at the location where the trading policies and guidelines are established. It shall be rebuttably presumed that the location where the trading policies and guidelines are established is at the taxpayer's commercial domicile.

**SECTION 2.** Tax 2.495 (4) (d) 1m. is created to read:

Tax 2.495 (4) (d) 1m. Except as provided in subd. 2, for taxable years beginning after December 31, 2014, the numerator of the receipts factor includes gross receipts, net of commissions, from sales of trading assets if the customer's billing address is in this state.

**SECTION 3.** EFFECTIVE DATE. 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.

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DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Richard G. Chandler  
Secretary of Revenue

E:Rules/2495 Proposed Order